

## **8. DISCIPLINE**

801. This chapter outlines the existing administrative and institutional arrangements for handling disciplinary matters affecting registered company auditors and compares them with the arrangements in place in other countries. The chapter then outlines a number of proposals that have been put forward by the CALDB. Finally, options for revising the existing arrangements are considered.

### **COMPANIES AUDITORS AND LIQUIDATORS DISCIPLINARY BOARD**

#### **Establishment**

802. The CALDB is a statutory board established by section 202 of the ASC Act. Sections 203 and 209 of the ASC Act provide for the Board's membership to consist of:

- (a) a chairperson (who must be a lawyer who has been enrolled for at least five years);
- (b) a member and deputy member selected by the Minister from a panel of five nominations put forward by the ICAA; and
- (c) a member and deputy member selected by the Minister from a panel of five nominations put forward by the ASCPA.

#### **Functions of CALDB**

803. The CALDB is responsible for dealing with disciplinary matters concerning auditors and liquidators referred to it by the ASC.

804. Matters that may be referred to the CALDB under section 1292 of the Law include:

- (a) the failure of an auditor to lodge a triennial statement;
- (b) the failure of an auditor to carry out or perform adequately and properly the duties of an auditor;

- (c) the failure of an auditor to carry out or perform adequately and properly any duties or functions required by an Australian law to be carried out or performed by a registered company auditor;
- (d) that an auditor is subject to a section 229 prohibition, a section 230 order, a section 599 order, a section 600 notice or a civil penalty disqualification;<sup>1</sup>
- (e) that the auditor is incapable, because of mental infirmity, of managing his or her own affairs; and
- (f) that (in the opinion of the ASC) a person is not a fit and proper person to remain registered as an auditor.

805. Section 218 of the ASC Act provides that the proceedings of the CALDB are to be conducted with as little formality and technicality, and with as much expedition, as the requirements of the Law and a proper consideration of the matters before the Board permit. The section also provides that the Board is not bound by the rules of evidence. However, the CALDB is required to observe the rules of natural justice.

## **Powers of CALDB**

806. Penalties that may be imposed by the CALDB are the cancellation of an auditor's registration or the suspension of that registration for a specified period of time. The CALDB may also deal with a person:

- (a) by admonishing or reprimanding the person;
- (b) by requiring the person to give an undertaking that he or she will not engage in specified conduct; or
- (c) by requiring the person to give an undertaking that he or she will not engage in specified conduct except under certain conditions.

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<sup>1</sup> Sections 229, 230, 599 and 600 all deal with circumstances in which a person is prohibited from managing a corporation.

807. Under the former co-operative companies and securities scheme legislation the CALDB could also impose a monetary penalty not exceeding \$5,000. Constitutional considerations prevented the inclusion of an equivalent provision in the *Corporations Act 1989*. However, with the subsequent modification of the national scheme from a Commonwealth only to a Commonwealth-State arrangement (based on State and Territory powers), the Law could be amended to allow the imposition of monetary penalties.

## **Review of CALDB Decisions**

808. Subsection 1317B(1) provides that a decision of the CALDB may be reviewed by the Administrative Appeals Tribunal (AAT). A review of a decision may be sought by any person (including the ASC) whose interests are affected by the decision.

## **Amendments Proposed by CALDB**

809. The CALDB has proposed a number of minor amendments to the Law which it believes would assist in its functioning. These amendments include:

- (a) providing for the appointment of a Deputy Chairperson of the Board;
- (b) giving the Board the ability to sit simultaneously in two divisions;
- (c) giving statutory authority to the Registrar of the Board to attend to certain matters, particularly those of a procedural nature, such as mentions, pre-hearing conferences and costs and taxation matters (presently there is no legislative authority for the Registrar to so act);
- (d) clarifying the Board's ability to issue practice notes, enforce orders made during the pre-hearing process, and impose monetary penalties as well as, or in lieu of, a cancellation or suspension of a registration;
- (e) giving the Board the power to publicise its hearings and decisions;
- (f) giving the Board clear statutory authority to use mediation and/or arbitration; and
- (g) streamlining procedures which enable parties to settle a matter which is before the Board.

810. The Board's proposals are considered under appropriate headings later in this chapter.

## OVERSEAS POSITION

811. In the overseas jurisdictions examined by the Working Party, there are two basic ways of dealing with disciplinary matters:

- (a) by the professional bodies, as in Great Britain, New Zealand and the United States;<sup>2</sup> and
- (b) by public accountants registration boards, as in Canada (Ontario) and South Africa.

812. The Working Party understands that, in the jurisdictions where public accountants registration boards deal with disciplinary matters in respect of a particular person, the accounting bodies in those jurisdictions may also take appropriate disciplinary action against that person.

## ISSUES

813. The Working Party has identified a number of issues concerning the requirements for disciplining auditors that they consider should be examined as part of this review. The issues are:

- (a) whether the existing institutional arrangements for dealing with disciplinary matters operate in an efficient and effective manner;
- (b) whether the matters that may be dealt with by the CALDB are appropriate;
- (c) whether the penalties that may be imposed by the CALDB are appropriate; and
- (d) whether the CALDB and/or the ASC should be authorised to exchange information with the accounting bodies for the purpose of disciplinary proceedings.

814. The Working Party also notes that, in theory at least, it is possible to have up to six separate actions against an RCA in respect of the one matter. These actions are:

- (a) being subject to a damages action by a party that claims to have suffered loss as a result of the auditor's lack of independence or by the ASC under section 50 of the ASC Act;

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<sup>2</sup> The Working Party understands that in the United States discipline is done by the professional bodies under a regime that is overseen by the regulatory bodies.

- (b) under section 52 of the Trade Practices Act (or under a Fair Trading Act) for ‘conduct that is misleading or deceptive’;
- (c) where the lack of independence arises through the auditor’s breach of subsection 324(1), being prosecuted under section 1311 of the Law;
- (d) being subject to a hearing by the CALDB as to whether the auditor is a fit and proper person to remain registered as an auditor
  - (i) where the auditor is convicted of an offence under section 1311; or
  - (ii) when the ASC has formed the prima facie view that an auditor has failed to carry out or perform adequately and properly the duties of an auditor (section 1292);
- (e) being subject to disciplinary action by the auditor’s accounting body (if he or she is a member of such a body); and
- (f) criminal action.

815. While issues associated with criminal prosecutions of RCAs and civil actions for damages are outside the Working Party’s terms of reference, the Working Party has kept in mind the need to try and streamline procedures for CALDB hearings and disciplinary action by the professional bodies when those bodies are considering the issues identified above.

## INSTITUTIONAL ARRANGEMENTS

816. The options regarding institutional arrangements for taking disciplinary action against RCAs are very similar to those that have been identified for undertaking the registration and supervisory functions. In summary, they are:

- (a) retaining the existing arrangements (possibly with some minor modifications to improve the efficiency and effectiveness of the disciplinary process);
- (b) transferring the function to the ASC or to a newly established ARB; or
- (c) having the accounting bodies assume primary responsibility for the disciplinary function.

817. The form of institutional arrangements for disciplinary procedures has also been considered by the Working Party established to review the regulation of corporate insolvency practitioners. The report of that Working Party has recommended that the existing institutional arrangements should be retained for conduct matters, with administrative matters being dealt with by the registering body. The report also recommends that the CALDB should be given greater flexibility in the penalties it may impose and that it should be given powers to enforce orders made during the pre-hearing period and to use mediation and arbitration.

818. The Working Party also notes that, irrespective of which model is ultimately chosen for dealing with the disciplinary function, provision must be made for the three distinct phases of the disciplinary process:

- (a) the investigation of complaints;
- (b) the disciplinary hearing; and
- (c) the appeal process.

819. The Working Party further notes that, in deciding upon the form of institutional arrangements for taking action against RCAs, it is important that the disciplinary body is, and is seen to be, independent, impartial, expert, informed and proactive.

## Retain Existing Arrangements

820. Putting aside for the moment the disciplinary processes of the accounting bodies, under existing disciplinary arrangements the ASC is responsible for the investigation of complaints, the CALDB is responsible for the disciplinary hearing and the AAT is responsible for the appeal process.

821. There are a wide range of views on the effectiveness of these arrangements. Some submissions received by the Working Party indicate that the existing arrangements are adequate, others argue that some matters are too expensive to process through the CALDB.

822. A strength of the existing institutional arrangements is that the CALDB is independent of the ASC and the accounting bodies. This enables it to be totally impartial in considering the evidence presented to it and in giving a judgment.

823. Retention of an independent body for disciplining RCAs would also be in keeping with the kind of disciplinary arrangements that have been recommended for the legal profession. The 'Access to Justice' report<sup>3</sup> recommends that the governments of all States should vest the regulatory functions relating to the legal profession in a body independent of the legal profession.

824. A number of options are available for improving the way in which the CALDB currently operates. For example, consideration could be given to allowing the accounting bodies to refer significant matters concerning the conduct of RCAs that had been detected during the course of quality reviews to the CALDB. The amendments proposed by the CALDB would also have the potential to streamline its operations.

825. While the retention of the CALDB would result in some duplication of effort with the accounting profession's disciplinary processes, this could be minimised if the CALDB were authorised to provide information to the Investigation and Disciplinary Committees of the accounting bodies.<sup>4</sup>

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<sup>3</sup> Report of the Access to Justice Advisory Committee, 'Access to Justice — an Action Plan', 1994, p. 103.

<sup>4</sup> The submission by the ICAA and the ASCPA states that the findings of the CALDB are now provided to accounting bodies in respect of members. Such findings form the basis of an alleged breach which can be the subject of the accounting bodies' disciplinary process.

826. None of the overseas jurisdictions examined during the course of this Review has established a disciplinary body for dealing with matters involving either auditors or liquidators. In Great Britain and New Zealand the accounting bodies of those countries are responsible for disciplinary matters, while in Canada and South Africa the public accountants registration boards deal with disciplinary matters.

## **Accounting Bodies to Undertake Function**

827. The second option identified by the Working Party — and the one advocated in many of the submissions about the issues that should be considered during this Review — is for the accounting bodies to assume responsibility for the disciplinary function.

828. The Working Party notes that the ICAA and ASCPA have long established procedures for disciplining members, including members who have already been disciplined by other bodies such as the CALDB. A significant advantage of having the accounting bodies undertake the disciplinary function would therefore be the merging of the CALDB and the disciplinary processes of the accounting bodies.

829. As with the functions of registering and supervising RCAs, the disciplinary function could either be delegated to the accounting bodies by the ASC or conferred on them by legislation. The former approach would also necessitate the Law being amended to transfer the function from the CALDB to the ASC. In addition, mechanisms would need to be put in place to enable the accounting bodies' performance of the disciplinary function to be monitored.

830. A disadvantage of having the accounting bodies undertake the disciplinary function is that they are not seen as being totally independent and impartial. In this regard, there has been concern expressed in some quarters about the profession's ability to handle disciplinary cases which may involve breaches of the Law or criminal misconduct. Furthermore, in major cases of significant public interest (eg Qintex, Estate Mortgage), it would seem unreasonable for the accounting bodies to bear the full burden of costs.

831. In the case of the accounting profession, the disciplinary procedures of the accounting bodies already have a high level of transparency in that disciplinary committees include lay members and the findings of the disciplinary and appeal committees are published in the professional journals. Nevertheless, procedures would need to be put in place to ensure that all complaints against RCAs are recorded and the results of subsequent investigations are documented.

832. Giving the accounting bodies responsibility for the disciplinary function would bring Australia broadly into line with New Zealand, where the NZSA is responsible for taking any disciplinary action that may be necessary against those members (and non-members) who hold certificates of public practice issued by the NZSA and who

have accepted appointments as auditors of New Zealand companies.<sup>5</sup> It would also result in the Australian requirements being similar to the requirements in Great Britain.

## **ASC to Undertake Function**

833. A third option would be for the ASC, or another statutory body such as an ARB, to assume responsibility for the disciplinary function.

834. The ASC already exercises disciplinary powers in respect of occupational licence holders in the futures and securities industries and, accordingly, there would appear to be no reason why the ASC could not perform a similar function in respect of RCAs.

835. An advantage of having the ASC undertake the disciplinary function is that it would be a totally independent and impartial body. This would especially be the case if the accounting bodies performed the registration and supervisory functions, as proposed elsewhere in this paper. Nevertheless, even if the ASC continued to perform the registration and supervisory functions, arrangements could be put in place to ensure that the person or persons hearing a matter had had no prior involvement in the matter and thus could be regarded as independent and impartial.

836. The principal disadvantage of this option is that it would still result in some duplication of effort with the accounting bodies' disciplinary processes. The ASC may also be seen to be lacking in personnel with appropriate expertise.

## **Working Party's Position**

837. The Working Party notes that there are both advantages and disadvantages in leaving the disciplinary function with the CALDB, transferring the function to the ASC or merging the function with the accounting bodies' disciplinary processes. They also note that many of the submissions received by the Working Party advocate or support giving the disciplinary function to the accounting bodies.

838. Public interest considerations necessitate that the disciplinary process, where the outcome can result in the removal of the right to practice as a professional auditor and/or the imposition of substantial monetary penalties, be undertaken by a body that is 'independent' or in circumstances where the disciplinary process is transparent. Such a body must have the resources to 'carry through' complex and lengthy proceedings to a conclusion and, as a matter of law, be required to comply with the rules of natural justice.

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<sup>5</sup> While this comment refers specifically to auditors of New Zealand companies, the NZSA has the power to take disciplinary action against all of its members and any non-members who have been issued with certificates of public practice.

839. One approach is that the accounting bodies could assume responsibility for the discipline function, subject to the bodies taking appropriate steps to ensure complaints handling and disciplinary procedures are fully transparent, thus giving the government and the public confidence in the procedures.

840. An alternative approach is based on the view that, having regard to the nature of the audit function as, in essence, an extension of an executive government responsibility to ensure continuing confidence in the capital and securities markets, the responsibility for discipline should be undertaken by a statutory body (that is, the CALDB or the ASC). An appeal can be made to the AAT from a decision of such a body and the result of that appeal both with respect to the facts and the reasons for the decision are made public.

841. The Working Party believes, on balance, that the CALDB should be retained for dealing with conduct matters.

842. The Working Party also believes that, where the ASC has delegated the registration function to authorised accounting bodies, the authorised accounting bodies should be permitted to bring conduct matters before the CALDB. It was noted that allowing authorised accounting bodies to bring matters before the CALDB also offered potential for making the disciplinary procedures of the bodies more efficient.

### **Recommendation 8.1**

The CALDB should be retained for dealing with those disciplinary matters that the Law provides should be brought before an independent disciplinary body.

### **Recommendation 8.2**

Where the ASC has delegated the registration of auditors to authorised accounting bodies, those bodies should be permitted to bring conduct matters directly before the CALDB.

## MEMBERSHIP OF CALDB

843. The Working Party considered several proposals having the objective of making the operation of the Board more efficient and ensuring that Board members have a wide range of legal, accounting and business skills.

844. The CALDB has proposed that the ASC Act should be amended to provide for the appointment of a deputy to the chairperson. The CALDB notes that, while there has never been a situation in which the chairperson has had a conflict of interest or otherwise found it necessary to disqualify himself, such a situation could arise. In these circumstances, not having a chairperson could seriously delay the work of the CALDB as it would be necessary for the chairperson to either resign or take leave. In the former case, the Minister would have to appoint a new chairperson while in the latter he could appoint an acting chairperson.

845. The CALDB has also proposed that the ASC Act should be amended to allow the Board to sit simultaneously in two divisions. Such an arrangement would have the potential to facilitate the operations of the CALDB, especially at times when the Board had a number of major matters listed for hearing.

846. A further issue, raised with the Working Party by the Group of 100 (G100), is whether the membership structure of the CALDB needs to be significantly different to that of the current Board if it is to be seen to be independent, impartial, expert, informed and proactive and it is to avoid being seen to be excessively legalistic and/or bureaucratic. In this regard, the G100 indicated some concern about the current legislative requirements under which the ICAA and the ASCPA nominated two of the three members of the CALDB and questioned whether, under this arrangement, members of the public may not consider the aim of clear independence to be realised.

847. To overcome the problems it envisages, the G100 proposes that the Board's membership should comprise people with legal knowledge, auditing skills, business skills and business accounting skills. The Working party notes that members of the Board, as currently constituted, have legal knowledge and auditing skills. Whether Board members have business skills and business accounting skills depends entirely on the professional backgrounds of the nominees of the ICAA and the ASCPA.

848. The Working Party, after consideration of these issues, concluded that there is some merit in formally expanding the range of skills that CALDB members could bring to the Board's deliberations. The Working Party also concluded that the most appropriate way of achieving this objective would be to invite additional peak professional and business bodies to nominate persons for appointment to the Board. Although the Working Party did not reach a decision on which bodies should be invited to make nominations for appointment to the Board, it notes that the following bodies are indicative of the type that should be invited to nominate:

- (a) each authorised accounting body;
- (b) Law Council of Australia;
- (c) Insolvency Practitioners Association of Australia;
- (d) Business Council of Australia;
- (e) Australian Institute of Company Directors; and
- (f) Australian Shareholders Association.

849. The Working Party considers that, in conjunction with changes to the skills of CALDB members and the bodies that may make nominations for appointment to the Board, it may be appropriate to revise the rules for the operation of the Board. Changes that should be made include:

- (a) appointing a Deputy Chairperson;
- (b) permitting the Board to sit in more than one Division simultaneously; and
- (c) having each Division of the Board constituted by a member nominated by an authorised accounting body, a legal practitioner and one other person.

### **Recommendation 8.3**

The ASC Act should be amended to provide for the appointment of a deputy chairperson for the CALDB

### **Recommendation 8.4**

The ASC Act should be amended to allow the CALDB to sit in more than one Division simultaneously.

### **Recommendation 8.5**

The ASC Act should be amended to provide that a Division of the CALDB is constituted by a member nominated by an authorised accounting body, a legal practitioner and one other person.

### **Recommendation 8.6**

The requirement that the chairperson of the CALDB be a legal practitioner should be repealed.

### **Recommendation 8.7**

The ASC Act should be amended to provide that the membership of the CALDB is to be constituted as follows:

- each authorised accounting body is to submit a panel of four names, with one person being appointed from each panel of names;
- two persons selected from a panel of five names submitted by the Law Council of Australia; and
- (c) two persons selected from panels of names submitted by business and professional organisations that are invited by the Minister to make nominations.

## **DISCIPLINARY MATTERS**

850. The matters that may currently be referred to the CALDB by the ASC can be divided into two broad categories:

- (a) administrative matters; and
- (b) conduct matters.

## Administrative Matters

851. The Working Party views the following matters as being of an administrative nature:

- (a) under paragraph 1292(1)(a), the failure of an auditor to lodge a triennial or other statement;
- (b) under paragraph 1292(7)(a) when an auditor is bankrupt; and
- (c) an auditor who is subject to a section 229 prohibition, a section 230 order, a section 599 order, a section 600 notice or a civil penalty disqualification.

852. It could also be argued that where an RCA is incapable, because of mental infirmity, of managing his or her own affairs, the matter should be treated as being of an administrative nature. However, where notice is given that such a matter will be contested, it may be more appropriate for it to be dealt with as a conduct matter.

853. At present the CALDB deals with a significant number of administrative matters, mainly in respect of failures to lodge triennial statements. There would seem little justification for using the disciplinary body's resources on such matters. A more appropriate procedure would be for the body responsible for the registration and supervision of RCAs ('the registering body') to deal with those matters.

854. This could be achieved by requiring the registering body to deal with administrative matters in accordance with guidelines approved by the ASC. These guidelines could be expected to cover matters such as:

- (a) the procedures for giving notice of the registering body's intention to deal with a matter;
- (b) allowing the RCA who is the subject of the action to be heard; and
- (c) the publication of the registering body's decision in the *Gazette* and, where the registering body is an authorised accounting body performing the registration function under delegation from the ASC, the body's journal.

855. The person whose registration was dealt with by the registering body would be entitled to appeal the registering body's decision. If the registering body is the ASC or another statutory body, the appeal would be to the AAT. However, if the ASC has delegated the registration function to an authorised accounting body, an appeal should be capable of being lodged with the ASC. In accordance with the Law, a decision of the ASC may be the subject of an appeal to the AAT.

856. The Working Party considers that disciplinary procedures would be more effective if disciplinary matters of an administrative nature could be dealt with by the registering body, thus leaving the disciplinary body to concentrate on conduct matters.

### **Recommendation 8.8**

Disciplinary matters of an administrative nature (as defined in paragraph 851) are to be dealt with by the registering body.

### **Recommendation 8.9**

Where the registration function has been delegated to an authorised accounting body, guidelines approved by the ASC should cover such matters as:

- the procedures for giving notice of the registering body's intention to deal with a matter;
- allowing the RCA who is the subject of the action to be heard; and
- the publication of the registering body's decision.

### **Recommendation 8.10**

Where the registration function has been delegated to an authorised accounting body, a person whose registration is cancelled by the registering body may lodge an appeal against that body's decision with the ASC.

### **Recommendation 8.11**

A decision made by the ASC in respect of an administrative matter may be the subject of an appeal to the AAT.

## **Conduct Matters**

857. Conduct matters are essentially matters concerned either with the manner in which an RCA performed his or her duties as an auditor or with the professional behaviour of the RCA.

858. The following matters are considered by the Working Party to be conduct matters:

- (a) the failure of an auditor to adequately and properly carry out or perform the duties of an auditor;

- (b) the failure of an auditor to adequately and properly carry out or perform any duties or functions required by an Australian law to be carried out or performed by a registered company auditor; and
- (c) that (in the opinion of the ASC) a person is not a fit and proper person to remain registered as an auditor.

859. In the opinion of the Working Party such matters should continue to be dealt with by the disciplinary body at a formal hearing and the disciplinary body should observe the rules of natural justice at and in connection with the hearing.

860. The Working Party also concluded that there should be no barrier to the CALDB hearing administrative matters where they arise in conjunction with conduct matters.

861. It was noted, however, that there may be some relatively minor conduct matters that could be dealt with more efficiently within the disciplinary procedures of the authorised accounting bodies than by referring them to the CALDB. The MOU between the ASC and the authorised accounting bodies could set out which matters may be dealt with by the bodies and which must be referred to the CALDB.

862. The Working Party also noted that the initiation of either civil or criminal proceedings against an auditor could significantly delay the commencement or finalisation of any disciplinary proceedings in respect of conduct matters for that person. Such a delay enables a person to continue in public practice and creates a perception that the disciplinary procedures are ineffective.

863. The Working Party understands that in some overseas jurisdictions, such as Canada, disciplinary matters can proceed or be continued, notwithstanding the existence of either civil or criminal proceedings arising out of the matter that gave rise to the disciplinary proceedings. Under the Canadian system, evidence given for the disciplinary proceedings is quarantined and cannot be used for the civil or criminal proceedings.

864. There would appear to be some merit in amending the Law to allow disciplinary proceedings to take place concurrently with civil or criminal proceedings. As in Canada, some safeguards would appear to be desirable.

### **Recommendation 8.12**

The CALDB should only deal with cases involving conduct matters or combined conduct and administrative matters.

### **Recommendation 8.13**

Where the ASC has delegated the registration function to authorised accounting bodies, those bodies may, subject to the approval of the Commission, deal with specified types of conduct matter within their own disciplinary systems.

### **Recommendation 8.14**

Where civil or criminal proceedings have been commenced against a person, such proceedings are not to act as a bar to disciplinary proceedings against the same person and arising out of the same matter being commenced or continued by an authorised accounting body, the ASC or the CALDB.

## **PENALTIES**

865. As noted above, the penalties that may be imposed by the CALDB are the cancellation of an auditor's registration or the suspension of that registration for a specified period of time. The CALDB may also deal with a person by admonishing or reprimanding the person, by requiring the person to give an undertaking that he or she will not engage in specified conduct; or by requiring the person to give an undertaking that he or she will not engage in specified conduct except under certain conditions.

866. It would seem desirable for the disciplinary body to have greater flexibility in the range of penalties that may be imposed, particularly as far the imposition of fines is concerned. In this regard, the Working Party considers that the CALDB should be permitted to impose fines of up to \$100,000.

867. It would also seem desirable for the disciplinary body to be able to use mediation and/or arbitration and to be able to enforce orders made during the pre-hearing period.

868. The Working Party considers that disciplinary procedures would be more effective if the disciplinary body had greater flexibility in the range of penalties that it could impose.

### **Recommendation 8.15**

The CALDB should be permitted to impose fines up to a limit of \$100,000. Consideration should also be given to amending the Law to enable the CALDB to enforce orders made during the pre-hearing period, to use mediation and to use arbitration.

## **RELEASE OF INFORMATION**

869. Section 1296 of the Law provides that the CALDB will give a person who has appeared before it a notice in writing setting out the decision and the reasons for it. The CALDB is also required to provide a copy of the notice to the ASC.

870. In addition, disciplinary orders made by the CALDB under section 1292 must be published in the *Gazette* within 14 days after the Board has made its decision. However, unlike the notice given to the ASC and the person who appeared before the Board, the *Gazette* notice gives no indication of the nature of the matter dealt with or the reasons for the decision.

871. Section 216 of the ASC Act provides that, unless an auditor requests that a hearing take place in public, the CALDB must hold its hearings in private. Further, section 213 of the ASC Act requires the CALDB to take all reasonable measures to protect information given to it in confidence or in connection with the performance of its functions from unauthorised use or disclosure. Such information cannot be disclosed by the CALDB except in limited circumstances.<sup>6</sup>

872. The ASC has expressed the view that, because of sections 213 and 216 of the ASC Act, the extent to which it can publicise completed CALDB matters is unclear. The ASC has also indicated that there is doubt about the usefulness of incurring the costs associated with taking a matter to the CALDB if the deterrent effect of publicity associated with a successful outcome is not available.

873. In contrast, if a CALDB decision is appealed to the AAT, the AAT's reasons for its decision are available to the public even if the AAT had ordered the proceedings to be held in private.

874. Similarly, although both the ICAA and the ASCPA hold their disciplinary proceedings in private, they publish the findings in their professional journals.

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<sup>6</sup> Apart from disclosures permitted by the Law, the CALDB may only disclose information to assist an authority or person in a State or Territory or another country to perform or exercise a function or power that corresponds to any of the CALDB's or the ASC's powers or functions.

875. The Working Party notes that if greater publicity was given to disciplinary matters, including the publication of reasons for all decisions, the disciplinary process may have a greater deterrent effect than it has at present. In addition, giving the CALDB the authority to provide information to the investigation and disciplinary committees of the accounting bodies could facilitate the disciplinary procedures of those bodies.

876. The Working Party considers that disciplinary procedures would be more effective if the disciplinary body made the nature of the matter and the reasons for its decision public.

877. The Working Party also considers that disciplinary procedures would be more effective if the disciplinary body was authorised to provide information to the investigation and disciplinary committees of the accounting bodies for the purpose of facilitating the disciplinary procedures of those bodies.

#### **Recommendation 8.16**

The nature of the matter, the decision in respect of each disciplinary proceeding and the reasons for the decision should be published.

#### **Recommendation 8.17**

The CALDB should be permitted to provide information obtained by it during the course of a disciplinary proceeding to the investigation and disciplinary committees of the authorised accounting bodies to facilitate the disciplinary procedures of those bodies.

