

(April 2006)

# **Explanatory Statement**

## ***ASA 508 Enquiry Regarding Litigation and Claims***

Issued by the **Auditing and Assurance Standards Board**



**Australian Government**

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**Auditing and Assurance Standards Board**

## **Explanatory Statement**

### **Reasons for Issuing ASA 508 *Enquiry Regarding Litigation and Claims***

The Auditing and Assurance Standards Board (AUASB) issues Auditing Standard ASA 508 *Enquiry Regarding Litigation and Claims* due to the requirements of the legislative provisions explained below.

The *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004* established the AUASB as an independent statutory body under section 227A of the *Australian Securities and Investments Commission Act 2001*, as from 1 July 2004. Under section 336 of the *Corporations Act 2001*, the AUASB may make Auditing Standards for the purposes of the corporations legislation. These Auditing Standards are legislative instruments under the *Legislative Instruments Act 2003*.

### **Process of making Auditing Standards**

Section 1455 of the *Corporations Act 2001* and *Corporations Regulation 10.5.01* gave interim legal endorsement from 1 July 2004 to the majority of Auditing Standards made by the former Auditing & Assurance Standards Board of the Australian Accounting Research Foundation. The AUASB has reviewed the Auditing Standards and has proceeded to make them as legally enforceable Auditing Standards under the *Corporations Act 2001*.

The Auditing Standards have been made also in accordance with the Financial Reporting Council's Strategic Direction to the AUASB dated 6 April 2005, pursuant to section 225 of the *ASIC Act*.

The Strategic Direction, *inter alia*, provides that the AUASB develops Auditing Standards that:

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- have a clear public interest focus and are of the highest quality;
- use the International Standards on Auditing (ISAs) of the International Auditing and Assurance Standards Board (IAASB) as a base;
- conform with the Australian regulatory environment; and
- are capable of enforcement.

In implementing the Strategic Direction, the AUASB has undertaken a process of thorough review and revision that has:

- addressed the enforceability of mandatory requirements;
- clarified auditors' obligations under the Auditing Standards;
- provided for sector neutrality in the Auditing Standards; and
- included other amendments as necessary.

### **Purpose of Auditing Standard ASA 508 *Enquiry Regarding Litigation and Claims***

The purpose of Auditing Standard ASA 508 is to establish mandatory requirements and provide explanatory guidance on obtaining sufficient appropriate audit evidence regarding legal matters affecting the entity. In particular, this Auditing Standard identifies the appropriate method of communication with the entity's lawyers in connection with litigation by or against the entity.

Auditing Standard ASA 508 is to be read in conjunction with the *Preamble to AUASB Standards*, which sets out the intentions of the AUASB on how the Auditing Standards are to be understood, interpreted and applied.

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The AUASB is aware that due to recent legal developments the disclosure of certain information by the entity's lawyers to the auditor in a representation letter may in some situations impinge on legal professional privilege between the entity and its lawyers. The AUASB intends to develop separate audit guidance on this matter at a later date.

### **Operative Date**

This Auditing Standard is operative for financial reporting periods commencing on or after 1 July 2006.

### **Main changes from Auditing Standard AUS 508 (July 2002) *Enquiry Regarding Litigation and Claims***

The main differences between ASA 508 and AUS 508 are that in ASA 508:

1. The word 'shall', in the **bold-type** paragraphs, is the terminology used to describe an auditor's mandatory requirements, whereas an auditor's degree of responsibility is described in AUS 508 by the word 'should'.
2. The explanatory guidance paragraphs provide guidance and illustrative examples to assist the auditor in fulfilling the mandatory requirements, whereas in AUS 508 some obligations are implied within certain explanatory paragraphs. Accordingly, these paragraphs have been amended to clarify that these matters form part of the explanatory guidance.
3. This Auditing Standard includes explanatory guidance, not included in AUS 508, regarding circumstances when it may be difficult to either obtain a representation letter or be provided with information about legal matters from the entity's lawyers, and alternative audit procedures that the auditor may consider in such circumstances (paragraphs 27 and 28).

## **Consultation prior to issuing this Auditing Standard**

The AUASB has consulted publicly as part of its due process in developing this Auditing Standard. Exposure Draft ED 27/05 *Proposed Auditing Standard: Enquiry Regarding Litigation and Claims (Re-issuance of AUS 508)* was issued on 9 December 2005 with a 45 day comment period. Submissions were received by the AUASB and it has considered these submissions as part of the development and finalisation of this Auditing Standard.