



PRACTICE NOTE 1

PN1- GUIDANCE FOR PARTIES INVOLVED IN CADB DISCIPLINARY PROCEEDINGS ON CASE PREPARATION, HEARING AND DECISION PROCEDURES

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GLOSSARY

Expression	Description
AAT	Administrative Appeals Tribunal
Corporations Act	Corporations Act 2001
Administrative Matter	An Application to CADB with respect to an administrative complaint (see paragraph 4.5 hereof)
Applicant	The body (either ASIC or APRA) applying to CADB under s1292 of the Corporations Act
Application	An application made to CADB under s1292 Corporations Act
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ASIC Act	Australian Securities and Investments Commission Act (Cth) 2001 (as amended).
ASIC Regulations	Australian Securities and Investments Commission Regulations (Cth) 2001 (as amended).
CADB	Companies Auditors Disciplinary Board
CADB Proceedings	The course of an Application to CADB to its conclusion
Conduct Matter	An Application regarding a conduct complaint (see paragraph 4.6 hereto)
CADB Hearing	The hearing by a CADB Panel relating to an Application.
CADB Panel	A Panel convened in accordance with Section 210A ASIC Act.
Determination	A CADB Panel's written findings outlining the reasons for deciding whether the matters alleged in the Application have been established.
Final Decision	The CADB Panel's decision incorporating orders on sanctions delivered following a Determination .
Pre-hearing Conference	A conference held by the Chairperson under s1294A of the Corporations Act
Registered Auditor	An Auditor registered by ASIC pursuant to S1280 Corporations Act
Registrar	The Registrar of CADB.
Respondent	The Registered Auditor the subject of an Application to CADB.

1. INTRODUCTION

- 1.1. This practice note is a guide for parties involved in Proceedings before CADB. It covers the essential aspects of commencing, preparing and conducting a disciplinary hearing before a CADB Panel.
- 1.2. This practice note:
- (a) Takes effect from the date it is issued and to the extent practicable applies to proceedings whether filed before, or after that date.
 - (b) Is to be interpreted having regard to the legislative requirements governing CADB's operation.¹
 - (c) Aims to set out a principles-based practice guide for parties involved in CADB proceedings, and is not intended to be inflexibly applied.
 - (d) Is to be read as subject to any overriding requirements of applicable legislation and the general law.

2. PREAMBLE - CADB'S ROLE AND ITS FUNCTIONS, POWERS AND OBLIGATIONS

Corporations Act Scheme applying to Registered Auditors

- 2.1 CADB's role as a disciplinary decision maker arises within the scheme established by the Corporations Act for regulating Registered Auditors in Australia (the Scheme).² The effect of the Scheme is that:
- (a) Only those auditors who satisfy prescribed requirements, including being fit and proper to become registered as an auditor may be registered by ASIC³, and:
 - (b) Auditors on whom ASIC confers registration **must** continuously comply with the relevant requirements of the Corporations Act,⁴ which includes continuously maintaining proper professional standards when performing audit duties and functions, and maintaining fitness and propriety at all times, in order to retain their registered status.
- 2.2 The public may have trust and confidence in the efficacy of the Scheme because, to the extent a Registered Auditor does not adequately meet relevant professional standards, or any of the requirements prescribed by the Scheme, ASIC or APRA make invoke CADB's jurisdiction to cancel or suspend registration under the Scheme by Application to CADB.
- 2.3 This practice note sets out guidelines to parties on the process CADB follows when such an Application is made.

¹ Pt. 9.2 Division 3 Corporations Act and Pt.11 ASIC Act

² Part 9.2 Corporations Act

³ Sub-section 1280 (2)(c) Corporations Act

⁴ Section 1292 Corporations Act

- 2.4 The approach reflected in these guidelines must be viewed within the context of the Scheme's objectives and requirements. In particular, the responsibilities that attach to the parties' special regulatory relationship created by an auditor's registration under the Scheme is an important consideration that informs CADB's expectations of the manner in which parties are to conduct themselves during Proceedings. For example, an adversarial approach is difficult to reconcile with key aspects of the obligations assumed by Registered Auditors under the Scheme framework to which they have subscribed in order to obtain the benefits conferred by registration. CADB expects parties to be cognisant of this context and to approach Proceedings cooperatively and in a manner that appropriately reflects the standards of professionalism and integrity contemplated by the requirements of the Scheme.

CADB's Role and Functions within the Scheme

- 2.5 CADB's key function is to be an administrative decision-making body with respect to auditors registered under the Scheme. CADB's primary powers arise from Part 9.2 Division 3 of the Corporations Act and it has ancillary powers conferred on it by the ASIC Act.⁵
- 2.6 CADB's role within the Scheme, when ASIC or APRA apply to it, is to perform the role of an independent, transparent, impartial fair and efficient decision maker and if necessary, to make orders under Section 1292 of the Act with respect to a Registered Auditor.
- 2.7 When matters are referred to CADB for hearing and decision, CADB's objective is to uphold public confidence in the efficacy of the Scheme by:
- (a) Ensuring each party has a fair opportunity to place evidence and submissions before CADB at a hearing before making our decision.
 - (b) Using the sanctions power⁶ conferred to protect the public from any future threat of improper conduct by a Registered Auditor if necessary.
 - (c) Delivering outcomes that:
 - (i) Recognise and uphold the importance of the proper discharge of audit duties and functions to maintaining the integrity and stability of Australia's financial system by the imposition of appropriate sanctions when necessary.
 - (ii) Reflect community expectations for high standards of conduct, including professionalism, competence, integrity and fitness and propriety, amongst those entrusted with the duties and responsibilities of a Registered Auditor.

⁵ Part 11 ASIC Act.

⁶ Sub-Sections 1292(1) and 1292(9) Corporations Act

- (iii) By the publication of reasons for our decisions, ensure transparency and accountability of CADB as an independent and impartial decision-maker.

CADB's obligations

- 2.8 CADB's obligations under the Scheme are to conduct hearings with as little formality and technicality and as much expedition as a proper consideration of the matters presented and the legislative requirements permit⁷.
- 2.9 We are not bound by the rules of evidence when conducting CADB Hearings.⁸
- 2.10 When exercising our discretionary power to make orders with regard to a Registered Auditor, an important consideration is protecting the public, but the educative and awareness-raising utility of our decisions and the broader general deterrence a sanction in a specific matter may achieve, may also be important considerations.
- 2.11 We must give parties reasons in writing for our decisions.⁹
- 2.12 We must provide a Respondent with a proper opportunity to prepare his case and appear at a hearing before CADB. These guidelines set out the framework by which the parties may achieve this.

3. CADB'S EXPECTATIONS OF PARTIES AND LEGAL REPRESENTATIVES INVOLVED IN CADB PROCEEDINGS.

- 3.1 In order to enable CADB to meet its obligation to be as expeditious as it can be, and to ensure a Respondent is fairly informed of the complaint, CADB expects an **Applicant** to be succinct and specific about the basis for its **Application** and to be responsive to any communication from a Respondent during preparation for a CADB Hearing to ensure as far as possible there is clarity about the issues in dispute about which a CADB Panel will be asked to make a Determination.
- 3.2 The **Response** to an **Application** should be aimed at promptly identifying the real issues in dispute about the allegations made and parties are expected to pay particular attention to those issues during preparation for a CADB Hearing, including how those issues might be most efficiently dealt with at a CADB Hearing.
- 3.3 CADB expects both parties to approach preparation for a CADB Hearing cooperatively flexibly, efficiently and cost effectively. Undue focus by a Respondent on technicalities and/or the use in Proceedings of tactics designed to delay a CADB Hearing are further examples of matters that

⁷ See s218 (1)(a) and s218 (2) ASIC Act and s1294 Corporations Act for CADB's obligations with regard to conducting hearings of Applications. Also see: *ML v ASIC & Anor* (2013) 300 ALR 764; [2013] NSWCA 109 at [18]; *Fiorentino v Companies Auditors and Liquidators Disciplinary Board* [2014] FCA 641 at [79]-[82].

⁸ Sub-section 218(1)(b) ASIC Act

⁹ Section 1296 (1)(a) Corporations Act

CADB regards as inconsistent with the rights and responsibilities attaching to the parties' regulatory relationship under the Scheme.

- 3.4 This practice note places significant emphasis on **the parties' responsibility** to undertake preparation for the CADB Hearing with due regard for their existing regulatory relationship, and to best enable CADB to deliver a prompt and efficient outcome.
- 3.5 CADB expects a Respondent to appropriately utilise the timeframes provided in these guidelines to prepare for a CADB Hearing should he/she wish to avail himself/herself of the opportunity to appear at a CADB Hearing. CADB's policy to proceed with a CADB Hearing, once a date has been fixed will be adhered to in order to meet its statutory obligations, unless there are exceptional circumstances.

4. APPLICATION TYPE - CONDUCT OR ADMINISTRATIVE

- 4.1 CADB categorises disciplinary matters within its jurisdiction as either **Conduct Matters** or **Administrative Matters**.
- 4.2 Certain sub-sections of section 1292 of the Corporations Act do not involve the exercise of CADB's discretion and/or will usually only require documentary evidence to prove that the relevant conduct occurred. Such matters are usually more straightforward and therefore less time consuming in terms of case preparation, hearing and decision. CADB categorises these as **Administrative Matters** (see paragraph 4.5).
- 4.3 On the other hand, matters which involve those sub-sections of section 1292 that require a subjective evaluation by a CADB Panel of the Registered Auditor's conduct and/or in which witness evidence will usually be required tend to involve more case preparation and a longer hearing time. The decision making/writing process therefore generally also involves more time, depending particularly on the number of allegations made. CADB categorises these matters as **Conduct Matters** (see definition paragraph 4.6).
- 4.4 Whether a matter is an **Administrative Matter** or a **Conduct Matter** is to be identified in the **Application**.

Administrative Matters under Section 1292 - definition

- 4.5 CADB deals with Applications as an **Administrative Matter** when the allegations made relate to a Registered Auditor who:
- (a) Has failed to lodge an annual statement required by s1287A of the Corporations Act¹⁰ or;
 - (b) Has ceased to be resident in Australia¹¹ or;

¹⁰ Ss1292 (1)(a)(i)

¹¹ Ss1292 (1)(a)(ii)

- (c) Is disqualified from managing corporations under Part 2D.6 of the Corporations Act¹² or;
- (d) Is incapable, because of mental infirmity, of managing his/her own affairs.¹³

Conduct Matters under Section 1292 – definition

4.6 CADB deals with Applications as a **Conduct Matter** when the allegations made relate to any of the following conduct of a Registered Auditor:

- (a) Has contravened the individual rotation requirements and performed a significant role in an audit without being eligible to do so;¹⁴
- (b) Failed to comply with a condition of registration as an auditor;¹⁵
- (c) Did not perform any (or any significant) audit work for five years and as a result has ceased to have the necessary practical experience;¹⁶
- (d) Either:
 - (i) Failed to carry out or perform adequately and properly the duties of an auditor; or
 - (ii) Failed 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; or
 - (iii) Is otherwise not a fit and proper person to remain registered.¹⁷

4.7 The statutory framework for dealing with an Application made to CADB, whether with respect to an **Administrative Matter** or a **Conduct Matter** is the same, and the overarching framework for the preparation and hearing of both types of Applications is the same. However, the reasonable time needed to prepare and hear an **Administrative Matter** will usually be less and is taken into account in the timeframes and guidelines outlined in this practice note.

5. CASE PREPARATION AND HEARING – SUMMARY OVERVIEW

5.1 Detailed steps for conducting Proceedings when an Application is filed are set out from paragraph **6** of this practice note. An overview of the usual steps involved in Proceedings is as follows:

¹² Ss1292 (7)(a)

¹³ Ss1292 (7)(b)

¹⁴ Ss1292 (1)(a)(ia) (*first*)

¹⁵ Ss1292 (1)(a)(ia) (*second*)

¹⁶ Ss 1292(1)(b)

¹⁷ Ss 1292(1)(d)

- (a) The first pre-hearing conference between CADB and the parties will usually be fixed, in the case of an **Administrative Matter**, within **4** weeks of the **Application**, and in the case of a **Conduct Matter**, within **6-8** weeks of the **Application**. CADB's usual practice is to fix a date for the CADB Hearing at the first **pre-hearing conference**.
- (b) Before a CADB Hearing takes place, parties will be given time to respond to allegations made and prepare evidence and submissions for consideration by the CADB Panel. The CADB Hearing of an **Administrative Matter** usually takes less than one day and occurs within **8-10** weeks of the **Application** being filed and the hearing of a **Conduct Matter** usually occurs within **12-16** weeks of the **Application** being filed. The length of a Hearing is significantly influenced by the number of allegations made by an Applicant, the evidence to be adduced at hearing and the extent to which parties have undertaken pre-hearing preparation that minimises the time necessary to properly present the issues to a CADB Panel for its Determination such as scoping issues/issues in dispute, agreeing facts not in dispute, Mediation and the like.
- (c) After hearing the parties' evidence and submissions at a CADB Hearing, the CADB Panel will:
 - (i) In an **Administrative matter**, usually deliver an oral decision at the conclusion of the Hearing, and provide a written decision with brief reasons shortly after the Hearing.

If the Panel makes a decision adverse to the Respondent, the Panel will also announce what, if any, orders it considers would be appropriate (such as suspension or cancellation of registration) and reconvene after a short period to hear submissions from each party on sanction and costs and publicity.
 - (ii) In a **Conduct Matter**, usually adjourn and prepare a Determination. CADB endeavours to finalise its **Determination** as promptly as possible having regard to the number of issues, and the extent of the evidence. The parties may facilitate a more expeditious outcome to the extent they refine the issues in contest between them as encouraged by the case preparation guidelines in this practice note.
 - (iii) Depending on the view formed by the CADB Panel after the initial hearing in a **Conduct Matter**, the following will occur:
 - I. If CADB is **satisfied** that some or all grounds of the Application were established, the **Determination** will be provided to the parties and a date fixed to reconvene the CADB Hearing to provide the parties with an opportunity to make further submissions and/or adduce evidence relevant to the questions of **sanction, costs and publicity** before

final orders are made. The hearing will usually be fixed within 2-3 weeks of the CADB Panel delivering its **Determination**, and usually takes no more than half a day. The CADB Panel will then formulate its **Final Decision** and deliver it to the parties. Details of the **Final Decision** will be published in the Government Gazette within 14 days and on CADB's website.¹⁸ At the same time the CADB Panel will deliver a separate written decision to the parties on costs and publicity. CADB does not publish its decisions on costs and publicity.

- II. If a CADB is **not satisfied** there are grounds established by the Application for the exercise of its powers, a **Final Decision** setting out reasons, will be provided to the parties. The CADB Hearing may be reconvened within 1-2 weeks to provide the parties with an opportunity to address the CADB Panel with respect to appropriate costs order/s if either party so requests. Otherwise, this may be done by written submissions from each party being filed via the Registrar within seven days.

6. COMMENCING PROCEEDINGS - INITIAL STEPS

Preamble - Outline of Concise Outline/Concise Response process to be used in CADB proceedings

- 6.1 CADB requires any **Application** filed with CADB to be accompanied by a **Concise Outline**.¹⁹ The **Respondent** has an opportunity to respond to the **Concise Outline** with a **Concise Response**.²⁰
- 6.2 The **Concise Outline/Concise Response** process for the commencement of Proceedings is:
 - (a) Intended to ensure that a **Respondent** has sufficient information to understand the basis of the allegations made as well the orders sought, putting him/her in a position at the outset of Proceedings to identify any key areas of disagreement.
 - (b) Designed to inform each party at the commencement of Proceedings of the detail of the other's position without imposing prescriptive requirements to prepare legal pleadings, or provide all of the evidentiary material that may ultimately be necessary to prove the **Applicant's** allegations, recognising the context given by the pre-existing regulatory relationship between the parties and CADB's role in the scheme as an independent administrative decision maker.

¹⁸ Ss1296 (1)(c) Corporations Act

¹⁹ See Annexure A for guidance

²⁰ See Annexure F for guidance

- (c) Facilitates the identification and delineation of the issues in dispute between the parties **before** the first Pre-hearing Conference in order to:
 - (i) Provide a framework for parties' hearing preparation by reference to those issues identified as in dispute - particularly in **Conduct Matters**, which usually involve more complexity, and:
 - (ii) Put parties in a sufficiently informed position to formulate and seek appropriate case preparation directions (including document requests of the other party if necessary), at the Pre-hearing Conference, and:
 - (iii) Utilise CADB's time efficiently and cost-effectively.

Application and Concise Outline to be filed to commence proceedings

- 6.3 ASIC or APRA may commence a Proceeding by filing with the Registrar (by email registrar@cadb.gov.au):
- (a) An Application in the form of **Annexure A (Application)** that specifies whether a matter is a **Conduct Matter** or an **Administrative Matter** and specifies the orders sought and:
 - (b) A **Concise Outline**.
- 6.4 A **Concise Outline** is a document that succinctly and concisely:
- (a) Outlines the conduct alleged to have occurred.
 - (b) Describes the evidence proposed to be relied upon to prove the allegations at a CADB Hearing, and/or annexes key documentation:
 - (c) Identifies the grounds in Section 1292 enlivening CADB's jurisdiction.
- 6.5 A **Concise Outline** must be succinct and specific and include sufficient detail to enable a Respondent to understand the matters being alleged. See **Guidance on Preparing Concise Outline** in **Annexure A** hereto.
- 6.6 Proceedings will be commenced on the day CADB receives an **Application** and a **Concise Outline**. **Annexure B** is pro-Forma template for an **Application**.
- 6.7 The form of the **Concise Outline** is a matter for the **Applicant** depending on the nature and scope of the relevant allegations.
- 6.8 CADB requests PDF **and** Word versions of each document for working purposes.

Service of proceedings on Respondent by the Applicant

- 6.9 When an **Application** and **Concise Outline** are filed, CADB will allocate a matter number to be used on all subsequent documents to be filed in the Proceedings. The **Application** and **Concise Outline** will be stamped by CADB for verification and two copies returned to the Applicant (either by express post or courier).
- 6.10 The Applicant must forthwith arrange **personal service** of the stamped **Application** and **Concise Outline** on the **Respondent**, together with a **copy of this practice note** and a covering letter in the form of **Annexure C**.
- 6.11 The Applicant must notify the CADB Registrar by email with appropriate verification once the Respondent has been **served** in accordance with paragraph 6.10.

CADB notifies parties of initial directions and time for Response

- 6.12 Once CADB is notified that a Respondent has been served with Proceedings in accordance with paragraph 6.10, the Registrar will, after **5 working days**, send a **Notice to Respondent to file Concise Response and Notice to Parties of pre-hearing Conference (Annexure D hereto) (Notice)**. The **Notice** specifies:
- (a) The date by which the Respondent may file **Concise Response** to the **Concise Outline**. In an **Administrative Matter** this date will be **10 business days** from the date of the **Notice**. In a **Conduct Matter**, (subject to paragraph 7.7 below), this will be **15 business days** from the date of the **Notice**.
 - (b) The date and time fixed for a Pre-hearing Conference, which will, in an **Administrative Matter** be **5 business days** following the due date for filing the **Concise Response** and in a **Conduct Matter**, **between 8 and 10 business days** following the due date for filing the **Concise Response**.
- 6.13 CADB intentionally waits 5 business days before serving the **Notice** referred to in paragraph 6.12 to allow a Respondent just served with Proceedings the opportunity to:
- (a) Review the **Application** and **Concise Outline**.
 - (b) Review the procedures that will apply to the conduct of the Proceedings as set out in this practice note.
 - (c) Decide on how to conduct his/her response to the Application. For example, whether he/she wishes to appear in person at a CADB Hearing or make written submissions to the CADB Panel beforehand.

- (d) Make arrangements to prepare for and attend a CADB Hearing within the timeframes outlined herein. Depending on the type of Application, this may include arranging legal representation if desired or putting in place business arrangements in order to undertake hearing preparation on his/her own account. Should a Respondent decide to retain a lawyer, this should be done promptly given the timeframe within which CADB Hearings occur. The **Respondent** is responsible for ensuring that any legal representative they may retain is aware of and will commit to observing the timeframes referred to in this practice note punctually, can start promptly on preparing a **Concise Response** and is available for a CADB Hearing within the timeframes stipulated.

7. THE CONCISE RESPONSE PROCESS

Respondent to prepare Concise Response

- 7.1 The next phase of the hearing preparation is the time provided to a Respondent to set forth an outline of their position. This may be done by means of a **Concise Response**. The primary purpose of a **Concise Response** is to provide the Respondent with an opportunity to identify which matters alleged in the **Concise Outline** are disputed, to identify why they are disputed and to advance any other matters potentially relevant to CADB's decision on the Application, having regard to its jurisdiction.
- 7.2 A **Concise Response** must:
- (a) Be directed to responding to the matters alleged in the **Concise Outline**.
 - (b) Include sufficient detail to enable the Applicant to understand which matters alleged in the **Concise Outline** the Respondent disputes and why they are disputed.
 - (c) Be succinct and specific.
- 7.3 See *Guidance on Preparing Concise Response* in **Annexure F** hereto and template for Concise Response at **Annexure E** hereto.

Filing and Serving Concise Response

- 7.4 The **Concise Response** must be signed and dated by a Respondent or his legal representative and may be filed with CADB by emailing a signed and dated PDF copy and a Word copy (for working purposes) to registrar@cadb.gov.au.
- 7.5 CADB will stamp the **Concise Response** for verification and serve it on the Applicant by email to the email address specified in the Application.

- 7.6 In an **Administrative Matter**, the **Notice (Annexure E)** will provide a Respondent with **10** business days to file a **Concise Response**.
- 7.7 In a **Conduct Matter** the **Notice (Annexure E)** will provide a Respondent with **15** business days to file a **Concise Response**. **One** automatic extension of 5 business days for filing a Concise Response is available in **Conduct Matters** by invoking the process set out in **Annexure G**. The automatic extension will only be granted if the Respondent communicates the information set out in **Annexure G** to the CADB Registrar by email registrar@cadb.gov.au in the timeframe outlined. If CADB provides the **automatic extension** the Registrar will notify the parties and provide a revised timetable for filing the **Concise Response** and a revised date for the pre-hearing conference.
- 7.8 The time provided to prepare the Response in a **Conduct Matter** (which may be up to 25 business days following service of the Application if an automatic extension is provided) takes into account the importance to the efficient conduct of the Proceedings of time for a Respondent to properly formulate the **Response**, to ensure that the timetable set takes all necessary pre-hearing steps into account and that subsequent hearing preparation by the parties is appropriately directed to the issues in dispute.
- 7.9 Other than the procedure set out in paragraph 7.7, CADB **will not otherwise entertain** extensions of time for filing a **Concise Response** in any proceedings unless there are extenuating circumstances. In that case those circumstances must promptly be notified by email to the CADB Registrar (and copied to the Applicant) at least **10 working days** before the **Response** is due to be filed, and appropriate third-party verification of the relevant matters relied on must be provided, for consideration by the CADB Chair. In those circumstances an extension of no more than **5 further working** days will be provided.

No response or appearance by Respondent to CADB proceedings.

- 7.10 A Respondent may choose not to attend a CADB Hearing or the Pre-hearing Conference. They may instead make written submissions to the CADB Panel²¹ before the CADB Hearing attaching any documents or other material that they wish the CADB Panel to consider. If a Respondent adopts this approach the documents and material they wish the CADB Panel to consider must be provided to the Registrar before the date fixed for the hearing.
- 7.11 As a general matter, if either party needs or wishes to communicate with CADB once proceedings commence, this may be done by email to the Registrar registrar@cadb.gov.au and any such communications **must** be copied to the other party.

²¹ Ss 216 (9) ASIC Act

8. FURTHER STEPS EXPECTED OF PARTIES PRIOR TO PRE-HEARING CONFERENCE

Guidance on Matters for discussion by parties regarding hearing preparation

- 8.1 As soon as Proceedings commence CADB expects parties to communicate cooperatively to facilitate completion of the pre-hearing steps outlined in this practice note within the timeframes contemplated.
- 8.2 Subject to opting for a Mediation conference as described in paragraphs 8.1-8.7 below, in which case the timeframes set out in those paragraphs will apply, the parties **must**, within **5** business days of filing a Concise Response, confer for the purpose of identifying and delineating the issues in dispute and exploring and formulating case preparation steps that will facilitate an efficient hearing, and to formulate a draft timetable.
- 8.3 A **summary** of the issues in dispute formulated by the parties (**Issues Summary**) must be provided to CADB at the Pre-hearing conference, together with a draft timetable for case preparation directions.
- 8.4 Guidance on the range of matters that it may be necessary for the parties to discuss in order to properly formulate a draft timetable prior to the Pre-Hearing Conference, depending on the type of matter and its complexity and size, are set out in **Annexure H**.
- 8.5 Before conferring, parties **are expected to read and consider** the guidance set out in **Annexure H** and ensure that all hearing preparation matters are identified before the Pre-hearing Conference to ensure an efficient and effective use of CADB's time and that the draft timetable submitted meets the timeframes set out in this practice note.

CADB facilitated Mediation available in Conduct Matters as a tool for efficient hearing preparation

- 8.1 CADB **encourages** parties to a **Conduct Matter** to consider the benefits of the more structured environment that a Mediation conference presided over by a CADB Member may provide as the forum for exploring both those matters relevant to hearing preparation identified above and the possibility of reaching consensus on agreed proposed orders for submitting to a CADB Panel.
- 8.2 Parties are referred to **CADB Practice Note 2 – Guidelines for Mediation (PN2)** for further guidance on CADB conducted mediations available to be utilised by parties to Proceedings on the terms outlined.
- 8.3 The range of potential benefits of Mediation to the efficient and timely conduct of Proceedings may include:
- (a) Isolating and/or refining those facts and/or allegations identified by the **Concise Outline/Concise Response** process that either party disputes.

- (b) Isolating and/or refining those facts and/or allegations identified by the **Concise Outline/Concise Response** process about which there is consensus.
 - (c) Developing an agreed statement of facts.
 - (d) Reaching agreement on ways to resolve outstanding factual differences that may reduce hearing time.
 - (e) Formulating a list of agreed matters and/or of disputed issues requiring determination by CADB.
 - (f) Reaching agreement on all matters in which case the parties may submit draft proposed orders for consideration by a CADB Panel (see also paragraph 12).
- 8.4 Mediation, if the parties agree to participate, **must** occur as soon as practicable after the **Concise Response** is served and in CADB's view should usually occur prior to a **pre-hearing conference**. To facilitate this, CADB will extend the date fixed for a **pre-hearing conference** by up to **15** business days to allow Mediation to occur on application by the parties to the Registrar.
- 8.5 Should parties opt to participate in **Mediation**, they should promptly notify the Registrar, no later than **7** business days after the Response is filed, in writing of at least 3 dates on which both parties may be available to attend a **Mediation** within the **following 15** business days. If parties have opted for Mediation within the CADB framework as provided for in PN2, the Chair will make arrangements to appoint a CADB Member to act as Mediator and fix a date and a venue for Mediation; usually this will be in the capital city of the State in which the Respondent resides. The Pre-hearing Conference will be adjourned accordingly.
- 8.6 To the extent **Mediation** between the parties may lead to any of the outcomes referred to in paragraph **8.3**, the CADB hearing will be streamlined, with attendant cost and efficiency benefits for all involved. Parties are also referred to paragraph **12** below, which provides information on the role of the CADB Panel with respect to **Agreed Facts** and/or **Proposed Consent Orders** submitted by the parties.
- 8.7 To ensure that case preparation remains on track to achieve the steps outlined in these guidelines, and to avoid the need for convening a further meeting in the event Mediation does not result in a consensus position between the parties, the parties should allow additional time after the Mediation concludes to consult (between themselves) on formulating an **Issues Summary and** a draft timetable for the CADB Hearing to be submitted at the Pre-Hearing Conference, having regard to the scope of the outstanding matters for determination following Mediation and relevant guidance in **Annexure H**.

9. PRE-HEARING CONFERENCE

Procedural information

- 9.1 Pre-hearing Conferences are usually fixed at 10.30 am and CADB expects that parties and any counsel and/or legal advisers to be involved in a hearing are present and have their diaries available so that dates for a hearing can be fixed.
- 9.2 Usually, a Pre-hearing Conference is conducted by teleconference but may be convened in person if there is good reason. Parties should allow 30 minutes for attendance at the time specified
- 9.3 The attendees at a Pre-hearing Conference are such persons as the Chairperson allows.²² Usually this is a representative of the parties and/or their lawyers.
- 9.4 As a Pre-hearing Conference usually deals with procedural issues a transcript is not prepared.

Purpose and Objectives of the Pre-Hearing Conference

- 9.5 The primary purposes of the Pre-hearing conference are, by reference to the matters that are in dispute (that parties are expected to have identified and summarised in the **Issues Summary**), to:
- (a) Discuss the steps for hearing preparation identified by the parties, including if necessary, their utility/objective.
 - (b) Finalise the draft timetable.
 - (c) Discuss the likely time necessary for the CADB Hearing and fix a date/s for hearing.
- 9.6 CADB expects any participant representing a party to be fully prepared to discuss the above matters and to have considered how much time is reasonably required for the hearing, based on the number of witnesses to be called by each party, the matters in dispute, the time that may be required for cross-examination and the submissions to be made, and to have their diaries (and if relevant, those of counsel) available so that the Chair may fix the date/s for hearing.
- 9.7 CADB's usual practice is to convene the hearing in the capital city of the Respondent's home State. Should either party wish to propose that the hearing occur elsewhere they may raise it for discussion at the Pre-hearing Conference.
- 9.8 Generally, parties may expect that a CADB Hearing will be fixed as soon as the earliest date by which the parties, acting expeditiously and in accordance with the timetable set, can reasonably be ready to proceed. As a guide, the

²² Ss 1294A(2) Corporations Act

CADB Hearing of an **Administrative Matter** usually occurs within 4-6 weeks of the Pre-Hearing Conference, and the CADB Hearing of a Conduct Matter usually occurs within 4-10 weeks of the Pre-hearing Conference.

- 9.9 The CADB Registrar will confirm the timetable set (and any other directions made) at the pre-hearing conference by subsequent email to the parties.
- 9.10 Parties are expected to comply punctually with the timetable set.

Changes to timetable set or directions made

- 9.11 Amendments to the timetable set by the Chairperson at the **Pre-hearing Conference** may be varied by agreement between the parties **only** if the proposed amendment/s do not impact either parties' readiness to proceed on the date/s fixed for hearing. In such circumstances details of the **agreed** changes may be emailed to the Registrar for the record.
- 9.12 Any other changes to the timetable must be approved by the CADB Chair and a request should be made via the Registrar for consideration and include details of why the variation has become necessary.
- 9.13 Requests for extensions of time to the timetable fixed or for further directions should not be necessary and are not generally given.
- 9.14 Any non-compliance with a timetable that is shown to prejudice the other party at the CADB Hearing will be a matter that the CADB Panel may take into account in considering what evidence to admit at the hearing, and may also be a matter relevant to the CADB Panel's consideration as to sanction, if relevant and/or in relation to an order as to costs.

One Pre-hearing Conference usually sufficient

- 9.15 One Pre-hearing Conference should be sufficient before a CADB Hearing takes place however, if in CADB's view a subsequent Pre-hearing Conference/s is/are necessary to facilitate a timely hearing, the parties will be notified of arrangements by the Registrar and informed about the matters to be addressed.²³
- 9.16 The CADB Chair may also adjourn any Pre-hearing Conference held, and reconvene on 24 hours notice if he/she forms the view that to do so would facilitate the parties' case preparation in accordance with the timetable set.

10. STEPS FOLLOWING PRE-HEARING CONFERENCE

CADB gives Notice of hearing

- 10.1 Following the pre-hearing conference, the Chair will convene a CADB Panel of members to hear and determine the Application and will send to the

²³ Under section 1294A of the Corporations Act, the Chairperson of the Board must give written notice of a conference to the Applicant at least 14 days before the proposed date of the conference. ASIC or APRA may waive this requirement and may be asked to do so in order to progress proceedings expeditiously.

parties a **Notice of CADB Hearing** to the effect set out in Annexure I hereto. This Notice will specify a timeframe for the filing of copies of each party's documents for the hearing, to be provided to the CADB Panel members. The Notice usually requires **4** additional copies of documents to be filed 14 days before the date fixed for hearing.

CADB's power to summons persons to give evidence at the Hearing

- 10.2 The Chair of the CADB Panel or a member of the CADB Panel has the power to compel a person to appear at the hearing to give evidence and produce documents (**Summons**).²⁴ This power may be invoked either by CADB on its own motion or upon the application of either party to the proceedings in accordance with paragraph 10.6.
- 10.3 A person served with a Summons must not, without reasonable excuse, fail to attend a CADB Hearing or fail to produce documents or fail to answer questions.²⁵

Process for a party to request CADB to issue a witness summons

- 10.4 Either party may request CADB to issue a Summons if that party intends to call the person summonsed to give evidence at the hearing. Applications requesting CADB to issue a **Summons** are to be made within the guidelines set out in paragraphs **10.5-10.11** below and, to the extent documents are sought by the **Summons**, those documents must be adequately identified in the application for **Summons**.
- 10.5 Parties are expected to have considered whether any **Summons** will be required before the Pre-hearing Conference in accordance with **Annexure H paragraph (e)** and to have sought appropriate directions having regard to the process for issuing a **Summons** set out here, if so.
- 10.6 If there are no directions in place in proceedings with respect to the issue of a **Summons**, because for example, other potential witness evidence emerges following the Pre-hearing Conference and a party considers that a **Summons** will be required, that party may apply to CADB (copied to the other party) to issue a **Summons** to the third party to give evidence at the hearing fixed by CADB by providing to the Registrar in writing, not less than **21 days prior to the date fixed for hearing** (copied to the other party), the following information:
- (a) Details of the person/s to be summonsed and their contact details together with an outline of the nature of the evidence it is expected they can provide, including details of appropriately identified documents or categories of documents being sought for production at the CADB Hearing, bearing in mind that such requests must be reasonable; and

²⁴ S217 ASIC Act

²⁵ Ss219 ASIC Act

- (b) A draft **Summons** electronically, in "Word" format, in the form specified in the ASIC Regulations.²⁶
- 10.7 CADB endeavours to deal with an application for a **Summons** promptly and will not expressly invite objections from the other party, however if the other party does object, the Registrar should be notified promptly in writing of the basis of the objection.
- 10.8 When deciding whether it is appropriate to exercise CADB's power to issue a **Summons**, the Chair (or member of the CADB Panel) needs to be satisfied, at a minimum, that it is likely that the person can give relevant evidence and, if documents are also sought, that the nominated documents are likely to be relevant. Details of the likely evidence should be provided at the Pre-hearing Conference or when an application for the issue of a **Summons** is otherwise made. The Chair or member of the CADB Panel will take into account the relevance of the evidence sought and whether the **Summons** could involve oppression to the recipient by, for example providing short notice or involving the production of numerous documents, or documents that are insufficiently identified.
- 10.9 The party requesting the issue of a **Summons** must pay the fees and allowances for the witness's expenses.²⁷
- 10.10 CADB's view is that it does not have power to issue a **Summons** for the production of documents only.²⁸
- 10.11 The other party will have a right to cross-examine any witness summonsed by the other party, should they give evidence at the CADB Hearing, in the usual course.

Parties to file Case Summary before CADB Hearing.

- 10.12 The Notice of CADB Hearing specifies that each party submit a **Case Summary for CADB Hearing** in the form of **Annexure J** hereto no later than **14 days** before the date fixed for commencement of the CADB Hearing.
- 10.13 The purpose of the **Case Summary for CADB Hearing** is to provide the parties with a tool to outline and draw together all of the material they wish to rely on at the CADB Hearing, including commencing documents (e.g. **the Application and Concise Outline** in the case of the Applicant and the **Concise Response** in the case of a Respondent), the outlines of evidence or statements filed, any statement of agreed facts or chronology and/or reference to any indexed bundles of documents filed and to confirm that all such documents have been provided to CADB and the other party.

²⁶ ASIC regulations 2001: reg 11 Sch One Form 3

²⁷ ASIC regulations 2001: reg 11 Schedule 2

²⁸ *Deveson and ors v Australian Broadcasting Tribunal* (1991) 32 FCR 124; *Audio-Visual Copyright Society Ltd v Foxtel Management Pty Ltd & Ors* (2004) 59 IPR 361, and compare the power of the Takeovers CADB Panel in s192(1)(a) of the ASIC Act.

- 10.14 If either party fails to utilise this step, it will not prevent the CADB Hearing proceeding, but may be matter relevant to a consideration of any costs order to be made.

Submissions

- 10.15 The pre-hearing process set out in this practice note is aimed at identifying early the key issues in dispute between the parties and directing case preparation, particularly as to the organisation of relevant evidence and how it may be most effectively presented at the CADB Hearing. While the circumstances of each case will differ, the parties are asked to consider whether, prior to commencement of the CADB Hearing, there would be merit in filing written submissions to the CADB Panel on any of the issues identified in case preparation, that may assist in further contributing to an efficient hearing.

11. INFORMATION FOR PARTIES ON CONDUCT OF CADB HEARINGS

Representation at hearing and who may attend

- 11.1 Representation at a CADB Hearing is regulated by s218(3) of the ASIC Act and parties are asked to refer to that section. In outline, it provides that a Respondent may attend in person and/or may be represented by a lawyer and ASIC (or APRA) may be represented by a staff member, a member or acting member of ASIC (or APRA), a person authorised by ASIC (or APRA) or by a lawyer.
- 11.2 A CADB Panel may give directions as to other persons who may be present at a hearing to take place in private.²⁹ Parties are asked to notify the Registrar in writing of any such request as soon as possible after the Notice of Hearing has been issued. The request should include the names of those persons whose attendance at the hearing is requested by a party, the relationship of those persons to that party and why that person's attendance is necessary.

CADB Hearings generally in private

- 11.3 Subject to paragraph 11.4, all CADB Hearings must take place in private.³⁰
- 11.4 If a Respondent requests a public CADB Hearing, then, subject to any directions of the CADB Panel, that must occur. The CADB Panel may, if it is satisfied that it is desirable to do so, by reason of the confidential nature of any evidence or matter, or in order to protect the interests of any other person, direct that part of the CADB Hearing take place in private and give directions as to who may be present, or give directions preventing or restricting the publication of evidence given before the CADB Panel or

²⁹ Ss216 (4) ASIC Act

³⁰ Ss216 (2) ASIC Act

matters contained in documents lodged with, or produced to the CADB Panel.³¹

11.5 The Applicant cannot request a public CADB Hearing.³²

Witnesses

11.6 Any witness called by either party to give oral evidence will be allowed to be present at the CADB Hearing while they give that evidence, but not otherwise except with the leave of the CADB Panel. The CADB Panel will usually give leave for an expert (if retained) to remain in the hearing room while other relevant evidence is being given.

11.7 If a party calls a witness, the other party will generally be entitled to cross-examine that witness. Therefore, in matters where a party files a witness statement/s in advance of the hearing, that party must arrange for the witness to be available at the CADB Hearing for cross-examination, if required by the other party.

11.8 Before providing oral evidence at a CADB Hearing, a witness must take an oath or an affirmation³³.

11.9 With respect to any witnesses summonsed to attend the CADB Hearing, parties are expected to be in a position to inform the CADB Panel when the hearing commences of the likely time that such witness will be required so that the Registrar can contact the witness and coordinate appropriate arrangements.

Usual Format for hearings

11.10 It is open to parties to propose a format for proceedings based on their specific circumstances. This matter may be addressed at the commencement of the hearing. Otherwise, a hearing is usually conducted as set out in Annexure K, which the parties are expected to read and consider.

12. CONSENT ORDERS AND AGREED FACTS – ROLE OF CADB PANEL

12.1 Parties are actively encouraged (either by Mediation or otherwise) to explore prior to the CADB Hearing the possibility of, reaching agreement on orders to be proposed based on agreed facts (**Proposed Consent Orders**), and or agreed facts (**Agreed Facts**) for tender at the CADB Hearing or utilising any other case management tools that may assist a CADB Panel to conduct an expeditious CADB Hearing.

³¹ Ss216 (3) ASIC Act

³² Ibid footnote 31

³³ Ss217 (2) ASIC Act

Process if parties reach agreement on Proposed Orders

- 12.2 If, before a CADB Hearing commences parties reach agreement on proposed orders about an outcome with respect to the **Application** that each is prepared to propose to a CADB Panel for its consideration (**Proposed Orders**), the parties should jointly notify the Registrar that they consent to proceeding to a CADB Hearing on the basis of **Proposed Orders** and provide details of the draft orders and the **Agreed Facts** on which they are based, to the Registrar.
- 12.3 Although the resolution of matters is desirable and CADB actively encourages a pro-active and cooperative approach by the parties, CADB's jurisdiction to make orders nevertheless depends upon it being "*satisfied*" of the relevant matters referred to in Section 1292 and there are established principles that govern CADB's power to make **Proposed Orders** on the basis of **Agreed Facts**.
- 12.4 Specifically, the **CADB Panel** must be satisfied that the **Proposed Orders** are appropriate in the circumstances. If the facts involved are complex, CADB may, in order to be satisfied, need to evaluate aspects of the evidence supporting a statement of **Agreed Facts**, for example and will notify parties and allocate hearing time accordingly.
- 12.5 If the parties submit **Proposed Orders** on the basis of **Agreed Facts**, the Chair will notify the parties as to how the CADB Panel will proceed. Usually, a brief CADB Hearing will be convened in order for the CADB Panel to hear submissions in support of the Proposed Orders and to the extent there are matters not covered by the Proposed Orders, to deal with those issues. The CADB Panel will then prepare a Final Decision and publish it in the normal course in accordance with paragraph 16.³⁴
- 12.6 CADB recognises that if the parties join in proposing a discretionary order by consent that fact is a matter weighing significantly in favour of the CADB Panel being satisfied that the **Proposed Orders** reflect an appropriate sanction in the proceedings, particularly given the **Applicant's** role as guardian of the public interest.
- 12.7 **Proposed Orders** may include a proposed order as to costs. If they do not a **CADB Panel** will deal with the issue of costs based on the parties' submissions.

13. PROCESS FOR CONCLUDING AN ADMINISTRATIVE MATTER FOLLOWING CADB HEARING

- 13.1 Following presentation by each party of its case in an **Administrative Matter**, CADB may either deliver an oral decision at the conclusion of the

³⁴ For examples of published decisions CADB has issued on the basis of agreed facts and proposed orders see CALDB's decisions in **Wessels** in which the proposed orders were negotiated during a CADB facilitated mediation and **Triannides** where the parties conducted negotiations directly.

Hearing, and provide a written decision with brief reasons shortly thereafter or adjourn to formulate and prepare brief written reasons to provide to the parties when delivering its findings (**Determination**).

- 13.2 If CADB's **Determination** is adverse to the Respondent, the CADB Panel will include details of the orders it proposes to make with regard to sanction, costs and publicity and the parties will be provided with a period of **7 business** days to make submissions with respect to the orders proposed.
- 13.3 CADB will consider any submissions made by either party before finalising its view and issuing its final written decision that includes its orders as to sanction (**Final Decision**) together with a brief separate decision on costs and publicity in order to **conclude** the proceedings.

14. PROCESS FOR CONCLUDING A CONDUCT MATTER FOLLOWING CADB HEARING

- 14.1 Following presentation by each party of its case in a **Conduct Matter** at a CADB Hearing, proceedings will be adjourned pending the CADB Panel formulating its conclusion on the relevant issues and preparing a **Determination** setting out its reasons.
- 14.2 If CADB finds that **no** grounds have been established, the **determination** will be provided to the parties but not otherwise published. Usually the Panel will identify in the **Determination** its proposed costs order and parties will be invited to make any written submissions on the proposed costs order within a period of **5 business** days.
- 14.3 CADB will consider any submissions made by either party before finalising its view and providing making a costs order, in order to **conclude** the proceedings.
- 14.4 If the Panel concludes it **is** satisfied that all or any of the grounds alleged against the Respondent have been established, a **Determination** will be provided to the parties and the hearing reconvened to hear submissions on sanction, publicity and costs, as detailed in paragraph **15** below.

15. HEARING RECONVENED FOR PARTIES' SUBMISSIONS ON SANCTION COSTS AND PUBLICITY IF GROUNDS OF CONDUCT APPLICATION ESTABLISHED.

- 15.1 When CADB's **Determination** in a **Conduct matter** is adverse to a Respondent, it is likely that the sanction imposed will be more serious than in an **Administrative** matter. A Respondent in a **Conduct matter** will therefore be given a further opportunity to appear in person before the CADB Panel to make submissions as to sanction before the Panel makes its Final Decision.
- 15.2 The usual process is to reconvene the CADB Hearing on a date fixed by the CADB Panel in consultation with the parties in order to hear the parties on

what orders are appropriate in relation to sanctioning the registered auditor, paying the costs of the Applicant, and publicising CADB's decision.

- 15.3 The CADB Hearing will be convened as soon as possible after a **Determination** is provided to the parties and in any case within **three weeks** and is an opportunity for the parties to make oral submissions and present evidence, such as **character evidence** or evidence on costs incurred, as the case may be, for the CADB Panel to consider before making its final orders.
- 15.4 The CADB Panel usually invites written submissions and evidence by way of written signed statements from the parties on the questions of sanctions and costs and publicity in advance of the reconvened CADB Hearing. Usual directions in this regard are that an Applicant has 5 business days to file and serve written submissions and any statements of evidence (if relevant) and the Respondent must do so within a further 5 business days. Parties are asked to provide written submissions in electronic format, in "*Word*" version and any other documentation in scanned electronic form. The Registrar may ask for parties also to submit 4 hard copies prior to the date fixed for hearing.
- 15.5 The reconvened **CADB Hearing** usually takes between 2 and 5 hours and will be fixed for a maximum of **one** day.
- 15.6 As to costs, parties are referred to the Cost Practice Note (PN3). In summary, CADB's powers to order costs include a power to order the unsuccessful party to pay the other party's costs **and** power to order the unsuccessful party to pay all or part of **CADB's costs** of and incidental to the CADB Hearing.
- 15.7 A CADB Panel will usually seek to deal with costs by making a quantified costs order. It is usual for parties to make submissions on matters relevant to the quantum of costs to be ordered both in respect of costs as between parties and costs payable in respect of CADB's costs.
- 15.8 As to publicity, if CADB decides to exercise its powers under Section 1292 of the Act then, as well as publishing its orders in the Commonwealth of Australia Gazette, CADB may take such steps, as it considers reasonable and appropriate to publicise the decision and the reasons for the decision.³⁵ This usually includes making the Final Decision available via the CADB website and issuing a press release summarising CADB's orders and findings. Parties may make submissions concerning what steps it would be reasonable and appropriate for CADB to take to publicise the decision and the reasons at the reconvened CADB Hearing.

16. FINAL DECISION OF CADB PANEL

- 16.1 Following the **Sanctions Hearing**, a CADB Panel will make a decision as to whether and what sanction is appropriate and will issue a Final Decision at which time the proceedings conclude.

³⁵ Ss1296(1B) Corporations Act

- 16.2 CADB delivers a separate written decision on costs and publicity at the same time. CADB does not publish its decisions on costs and publicity.
- 16.3 Details of the Final Decision must be published in the Government Gazette³⁶ within 14 days and on CADB's website.
- 16.4 CADB aims to deliver both decisions within 2 weeks of the conclusion of the reconvened hearing.
- 16.5 Parties are directed to **Annexure L** that sets out details of the documentation prescribed with respect to CADB decisions.

17. APPEAL/REVIEW OF CADB'S DECISION

- 17.1 Either party may apply to the **AAT** for a review of the Final Decision. Either party may also have a right of review before the Federal Court of Australia under the Administrative Decisions (Judicial Review) Act. CADB provides a party with details of its rights to review a Final Decision when providing its Final Decision.

18. OTHER MATTERS

No response or appearance by Respondent to CADB Proceedings

- 18.1 If a Respondent who is served with an Application does **not** file a **Concise Response** or attend the Pre-hearing Conference in accordance with the **Notice (Annexure E)** CADB will make any necessary directions for the Applicant's further preparation for a CADB Hearing and will fix a date for that hearing to proceed and be determined as set out in this practice note.
- 18.2 Following the Pre-hearing Conference, the Registrar will notify the Respondent of the directions made by CADB and the date fixed for the CADB Hearing by sending that information to the Respondent at the address recorded on the Respondent's most recent Annual Statement lodged with ASIC in accordance with Section 1287A Corporations Act. The Applicant must provide a copy of that statement to the CADB Chair at the **Pre-hearing Conference**.
- 18.3 The CADB Hearing will proceed on the date fixed at the Pre-hearing Conference and a Notice of Hearing will be sent to both parties in accordance with paragraph 10.1 hereof.
- 18.4 To the extent an Applicant seeks to rely on documents at A CADB Hearing at which a Respondent does not appear, it must show those documents have been provided to the Respondent. This may be satisfied by including in the **Case Summary for Hearing (Annexure J)**, evidence of the manner in which and the date that relevant documents were sent to the Respondent.

³⁶ Ss1296(1)(c) Corporations Act

- 18.5 Evidence that such documents were provided to the Respondent at the address recorded on the Respondent's most recent Annual Statement lodged with ASIC in accordance with Section 1287A Corporations Act, will usually be a satisfactory evidence that the Respondent has received the relevant documents.
- 18.6 If a Respondent chooses not to attend a CADB Hearing, they may nonetheless make written submissions to a CADB Panel³⁷ beforehand attaching any documents or other material they may wish a CADB Panel to consider (see paragraph 7.10 hereof).

**MARIA MCCROSSIN
CADB CHAIRPERSON
JULY 2019**

³⁷ Ibid footnote 21

PN 1 ANNEXURE A - Guidance on Preparing Concise Outline

With respect to each allegation of relevant conduct made in a **Concise Outline**, the following information must be included:

- (a) The **key facts** and **circumstances** that, if established by the evidence support a finding that the conduct occurred.
- (b) The relevant sub-section of the Corporations Act grounding the allegation [e.g.: 1292(1)(d)(i)]

While the precise form of the **Concise Outline** is a matter for the Applicant depending on the extent of the allegations included and the supporting facts, its primary purpose is to bring to the attention of the respondent (and CADB) succinctly and promptly the key allegations and supporting facts said to enliven CADB's jurisdiction is the guiding principle.

CADB intends that the Applicant's **Concise Outline**, if prepared as outlined above will comprise succinct narrative describing the relevant facts and issues, include document references and attach copies of **key** documents and describe the witness evidence proposed to be adduced sufficient to enable the Respondent to understand the factual basis of each allegation that the Applicant will be asking the CADB Panel to consider at the hearing and the specific basis under s1292 to which each of the allegation/s are directed.

However a **Concise Outline** is organised, it must clearly identify in respect of each allegation/s made, the facts alleged to be relevant and describe briefly the evidence to be adduced e.g. outline/s of witness evidence; description of key documentary evidence.

CADB does not intend, nor is it necessary to achieve the purpose of the **Concise Outline**, for every relevant document to be attached to a **Concise Outline**. However, documents that the Applicant alleges are **key** to demonstrating the basis of each of the Applicant's allegations may be included if those documents are third party documents of which the Respondent may not be aware.

Documents that provide relevant context and explanation may be referred to in narrative form in order to provide such context, but do not need to be annexed at the outset of proceedings.

If a CADB Panel is to be asked to infer dishonesty or wrongdoing by the Respondent the facts from which such inference is to be drawn must be fully and separately set in the SOFAC, and not pleaded in the alternative to a less serious allegation such as negligence.³⁸ If an alternative non-dishonesty case is to be maintained, a SOFAC must clearly and separately articulate and particularise that alternative case.³⁹

³⁸ *ASIC v Joubert* CALDB decision 11 May 2016 at paragraphs 10-46

³⁹ *ASIC v Fiorentino* CALDB decision 24 June 2014 at [954]-[958]

PN 1 ANNEXURE B - Pro-forma Application - Disciplinary Matter

Companies Auditors Disciplinary Board

APPLICATION

Applicant [Set out name of Applicant]
Applicant contact details [Include name address direct telephone number and email address]
Respondent [Set out name business, residential and email address and telephone contact details]
Application date: [Set out date on which Application is filed]
Location: [Set out State in which Respondent practises and details of accounting firm if any at which registered auditor is employed or otherwise practises]
Matter Type: [Insert *Conduct/Administrative**] Disciplinary Matter
CADB Matter # [To be inserted by Registrar]

1. The Applicant applies to the Board for orders under s 1292 of the Corporations Act 2001 with respect to [full name] [registered auditor #] who has been registered as an auditor since [insert date of first auditor registration] and who practises as [insert employment status] at [insert name and address of accountancy practice if relevant]. Include details of any current conditions on registration, if relevant.
2. The Applicant asserts that the Respondent...[Set out each element in s 1292 relied upon and cross-reference allegations in Concise Outline e.g.: "(a) has failed to carry out or perform adequately and properly the duties of an auditor within s 1292(1)(d)(1) [cross refer allegations in support from Concise Outline] and/or (b) has failed to carry out or perform adequately and properly duties or functions required by an Australian law to be carried out or performed by a registered company auditor within s 1292(1)(d)(ii)[cross refer allegations in support from Concise Outline] and/or (c) is otherwise not a fit and proper person to remain registered as an auditor within s 1292(1)(d)".]
3. The Applicant seeks the following order(s): [Set out orders sought e.g.: "(a) An order that CADB cancel the registration of the Respondent, or in the alternative (b) An order that the CADB suspend the registration of the Respondent for one year alternatively such period as CADB determines (c) Costs".]

.....

Signature of authorised officer of Applicant

Date:

PN 1 ANNEXURE C - Pro-Forma letter Applicant to Respondent

(To be provided to registered auditor with Application and Concise Outline).

Dear [*name of registered auditor*],

[Proceedings Name/Number]

We enclose by way of service **Application** and **Concise Outline** in proceedings [*insert CADB proceedings #*] commenced by ASIC on xx date with the Companies Auditors Disciplinary Board (**CADB**).

For your information, **CADB** is an independent statutory body with powers conferred under the Corporations Act to hear and determine disciplinary matters with respect to registered auditors and impose sanctions if necessary. Further information on CADB and its functions and powers may be found at <https://www.cadb.gov.au/>

The attached application seeks orders from CADB that [*insert details of orders being sought*] based on the matters outlined in the **Concise Outline**, also attached.

CADB has issued guidance to parties on its process for dealing with applications made to it by ASIC or APRA (**PN1**). A copy of **PN1** is located on CADB's website and a copy is attached for your convenient reference. We note CADB has a statutory obligation to deal with disciplinary matters fairly and expeditiously. **PN1** sets out CADB's usual process. This Application is with respect to (*specify an/a Administrative or Conduct Matter*) as defined in Paragraph [*insert 4.5/4.6* of PN1 as case may be*]. We draw your attention to **Part 6** of PN1 which outlines the steps CADB will now take with respect to this Application and to the timeframes set out in **Part 7** of PN1 for you to lodge a Response if you wish to.

Finally, we draw your attention to **Part 8** of PN1. To the extent there are matters you, or lawyers retained by you, may wish to discuss with regard to the Application or if you have any questions, please contact [*insert name/telephone/email of applicant contact*].

We hope to work constructively with you to prepare this matter for hearing in accordance with the objectives and guidelines outlined in **PN1** and will contact you as soon as we receive your Response to arrange a date to confer in relation to the matters set out in **Part 8** of PN1.

Yours Faithfully

PN 1 ANNEXURE D - Notice to Parties of Application and Initial pre-hearing directions

Companies Auditors Disciplinary Board

NOTICE OF APPLICATION AND INITIAL PRE-HEARING DIRECTIONS

Proceedings:

Applicant:

Respondent:

1. On *[insert date]* an Application was lodged with the Companies Auditors Disciplinary Board (**CADB**) by *[ASIC/APRA]* (**Applicant**) concerning *[name of Respondent]* of *[address]* (**Respondent**) pursuant to s 1292 of the Corporations Act. That Application seeks *[specify orders sought against Respondent]*.
2. **Section 1294** of the **Corporations Act 2001** requires **CADB** to give the **Respondent** an opportunity to appear at a hearing, to make submissions and to adduce evidence in relation to the **Application** before making any orders. The parties are asked to read carefully the relevant sections of the Corporations Act, 2001 (particularly Part 9.2, Div.3) and of the Australian Securities and Investments Commission Act, 2001 (particularly Part 11) which set out the rights of both parties regarding the hearing and details of the sanctions **CADB** may order. Parties are asked to read and follow **PN1 (insert link to PN1)** in relation to case preparation and for information on the conduct of hearings by **CADB**. In particular parties are asked to note that **CADB** must deal with matters referred to it expeditiously, and given the usual timeframes, steps for responding to the **Application**, such as obtaining legal advice, must be implemented promptly. The parties should expect the hearing date to be fixed within *(insert timeframe for either Administrative or Conduct Matter)* of the date the Application is filed.
3. Parties are also referred to CADB's practice notes on **Mediation (PN2)** and **Costs (PN3)** *(insert website links)*.

CADB now makes the following pre-hearing directions:

1. **The Respondent is directed to file and serve either;**
 - (a) **A Concise Response and Appearance to the Concise Outline served with the Application, on or before *[insert date]*.** The Respondent is referred to PN1 (insert Para ref) for procedure and guidelines for preparing **Concise Response**. Or;
 - (b) If the Respondent does not wish to respond to the **Application**, a **Notice of Appearance** on or before *[insert date]*.

2. To assist with the efficient conduct of the hearing of this matter, the Chairperson has fixed a **Pre-hearing Conference to be held with the parties and/or their authorised representatives by teleconference on [date] at [time]**.

Further information to parties on pre-hearing conference preparation and procedure

- A. The Respondent is referred to Part 7 PN1 for guidelines on preparing a Concise Response.
- B. Parties are referred to Part 8 PN1 for guidelines on preparing for the pre-hearing conference. In particular, CADB notes that the parties are expected to consult prior to the Pre-hearing Conference and to agree on a proposed draft timetable for discussion at the pre-hearing conference and consider other matters relevant to the preparation of the matter may require discussion with the Chairperson at the pre-hearing conference. Parties are asked to follow the guidelines in Part 8 PN1.
- C. The parties must send to the Board, no later than 48 hours before the Pre-hearing Conference;
 - (a) The proposed timetable and draft directions or, to the extent agreement has not been reached, each party's proposal.
 - (b) A List of disputed issues identified via the Concise Outline/Concise Response process. This may be an agreed list or, to the extent agreement has not been reached, each party's list.
- D. The parties are asked to advise the Registrar no later than [date] details of the participants in the Pre-hearing Conference and the telephone number on which each participant may be contacted. The Registrar must be notified of changes to these details promptly by email.
- E. If the Respondent does not wish to appear at the hearing (or otherwise take part in) the Application, the Respondent is asked to inform the Registrar by email as soon as possible. CADB will notify the Respondent of the hearing date when fixed and the Respondent may nonetheless lodge submissions with CADB to be considered at the hearing, as provided for in Section 216 ASIC Act 2001.

PN 1 ANNEXURE E - Pro forma Appearance and Concise Response

Notice of Appearance

Companies Auditors Disciplinary Board

NOTICE OF APPEARANCE AND CONCISE RESPONSE

Applicant: *[Insert details as for Application]*

Respondent:

Application date:

Profession: Auditor

Location:

Matter Number:

ASIC/APRA

Contact:

The Respondent *[insert full name of Respondent]* appears.

The Respondent has received a copy of the Application and Concise Outline dated *[insert date]*.

The Respondent's contact details for the purposes of all communications during the course of this matter are as follows:

Name of legal representative: *[If applicable]*

Phone:

Email:

Address:

*[Insert Respondent's telephone number, email address and address at which documents may be served **or if the Respondent wishes contact to take place through his or her legal representative insert name of legal representative, and the representative's telephone number, email address and address at which documents may be served**].*

The RESPONDENT'S CONCISE RESPONSE is attached. *[Delete if not relevant]* See Annexure G PN 1 for guidance on preparing Concise Response]

.....
Signature of the Respondent

.....
Date

PN 1 ANNEXURE F - Guidance on preparing Concise Response

The primary purpose of a **Concise Response** is to allow the Respondent to identify which matters alleged in the **Concise Outline** are disputed and why they are disputed and to set forth any other facts or matters that he/she asserts is relevant to determination of the Application.

By reference to each disputed allegation a Concise Response must therefore:

- (a) Identify each fact alleged in the **Concise Outline** that the Respondent disputes;
- (b) Specify why the fact is disputed;
- (c) Describe any additional facts the Respondent alleges are relevant to CADB's consideration of the allegation and specify:
 - i. Why the fact is relevant; and
 - ii. What evidence the Respondent intends to rely on to prove each fact e.g.: a brief description/outline of the relevant documents and/or proposed witness evidence.

Identify in the **Concise Response** any other matter/s or basis/es the Respondent asserts is relevant to determination of the Application and briefly describe why and how the matter is relevant to CADB's determination of the Application, including if relevant a précis of any legal arguments the Respondent wishes to advance.

To the extent facts are not disputed it will be assumed those facts are not in issue between the parties.

The Respondent should attach key documentary evidence upon which the Respondent will seek to rely at the hearing.

PN 1 ANNEXURE G - Process for applying for automatic extension of 5 business days to file Concise Response in Conduct Matters

1. This process is only available in A **Conduct Matter**.

2. If a Respondent to an **Application** regarding a Conduct Matter wishes to take advantage of the opportunity to appear at the hearing of the Application, but there are circumstances that the Respondent anticipates will prevent service of a **Concise Response** within the usual timeframe, one **automatic extension** of 5 business days is available, on application to CADB.

3. An **automatic extension** will be granted if, within 8 business days of the Respondent being served with the **Application and Concise Outline**, the Respondent contacts the Registrar by email, with a copy to the Applicant, and
 - (a) Provides/confirms current contact details including email address, mobile telephone number and postal address and current employment; and
 - (b) Specifies whether legal representation has been retained, or is to be retained and if relevant provides relevant contact details of the legal representative; and
 - (c) Confirms whether the Respondent wishes to appear at a hearing of the matter; and
 - (d) Outlines the relevant circumstances causing the need for a further 5 business days to file a **Concise Response**.

PN 1 ANNEXURE H - Examples and guidance on matters CADB expects it will be necessary for the parties to discuss prior to the pre-hearing conference.

Evidence and best method for adducing evidence:

- (a) The most appropriate method for leading evidence at the CADB Hearing. In this regard, parties must bear in mind the overriding consideration that each party is entitled to know, with sufficient notice and clarity, the evidence on which the other intends to rely, having regard to the objectives of necessity, practicality, effectiveness and cost efficiency. Depending on the nature of the witness evidence, it may be most practical, effective and cost efficient to proceed on the basis of exchanging (sufficiently detailed) outlines of evidence before the CADB Hearing on the basis that oral evidence from those witnesses under oath or affirmation will be led at the hearing. In CADB's view this method is preferable in cases of contested oral evidence or contested state of mind evidence.
- (b) In terms of written evidence, the parties are asked to consider carefully the relevance of evidence proposed and eliminate unnecessary or prolix statements. If the parties provide unsworn outlines of evidence to show the case to be met, CADB expects they would not be tendered at the CADB Hearing, or cross-examined upon.
- (c) Different approaches may be utilised for different evidence in the same proceedings, for example relatively uncontentious evidence is usually better adduced in writing.

The proper choice of what evidence to lead and the best way to do that is a key responsibility of the parties and their legal representatives. Both parties:

- (d) Must allow appropriate time to clearly formulate their respective views, and consult and identify areas of dispute and consensus before the Pre-hearing Conference. The number of witnesses should be limited to the minimum necessary to prove or disprove the issues truly in dispute consistent with the objectives of a just and quick disposal of proceedings.
- (e) Are asked to bear in mind when preparing evidence that CADB considers evidence probative to the extent it relates to a witnesses' own observations of relevant fact (rather than statements involving hearsay, comment or argument) or, where appropriate, the witnesses' own beliefs or opinions. If either party foresees the need to
- (f) Must apply to **CADB** to issue a **Summons** to a person to attend to give evidence at the hearing if necessary. Ideally, whether any Summons are required should be identified to the Chair at the Pre-hearing Conference. The process for applying to CADB to issue a Summons is set out in paragraphs **10.6-10.10** of this practice note.
- (g) Must utilise pre-hearing time to collaborate on tools for the presentation of the evidence to facilitate a streamlined CADB Hearing. For example:

- i. Cross-party statements of agreed facts or an agreed chronology.
- ii. An agreed index of documents relevant to each matter in contest.
- iii. Making appropriate admissions in relation to facts and matters that are not seriously in dispute before the hearing commences.
- iv. Agreeing on the time to be allocated for the hearing and how it may be divided (e.g.: a “chess-clock” approach).
- v. Agreeing in advance a cap on the quantum of costs recoverable by either party should CADB make orders.
- vi. Considering the use of and timing for any alternative dispute resolution such as Mediation within the usual time for case preparation as a means by which either to reach consensus on draft orders to be proposed to a CADB Panel for its consideration, or to attempt to further narrow the issues in dispute.⁴⁰

With respect to any evidence of a **technical nature** identified within the matters in dispute between the parties, parties must:

- (h) Bear in mind that CADB is a specialist tribunal, which is acquainted with the expectations of the accounting and business communities, and is informed, by experience, with the practices of those communities. In making its determinations, CADB has regard to, among other things, generally accepted professional standards, evidence of which it is relevant for either party to identify and lead in the proceedings. The need to call expert evidence is in CADB’s view therefore limited and is a matter that needs careful consideration particularly given its cost and potential to create delay.
 - i. If a party nevertheless considers it appropriate to seek to adduce expert opinion that party is expected to diligently and collaboratively advance appropriate arrangements for that evidence to be adduced at the hearing from an appropriately qualified, and impartial expert and consult with the other party in the course of its preparation to ensure that the issues identified for expert opinion are directly relevant to the matters identified as in dispute.
 - ii. Should one party wish to adduce expert evidence, but the parties cannot agree on parameters to include in the draft timetable, the party wishing to adduce that evidence must,

⁴⁰ See CALDB decision in *Wessels* for an outline of how mediation may be used in practice.

not less than **5 business days** before the Pre-hearing Conference, notify CADB that a direction for expert evidence will be sought at the pre-hearing conference and provide the following details:

- a. The precise issue or issues in respect of which a direction to adduce expert evidence is being sought;
 - b. Why it is required;
 - c. From whom it will be obtained and their availability, credentials and impartiality;
- iii. Parties will be invited to make submissions on the utility of the evidence proposed at the Pre-hearing Conference on the basis of the information provided.
- iv. A direction for expert evidence will only be made in circumstances where the Chair is satisfied it will not add unduly to the cost and time needed to hear the matter and will provide evidence of a technical nature that is directly relevant to the issues identified by the parties as in dispute from an impartial and appropriately qualified expert.

Document requests

- (i) Parties may seek directions at the Pre-hearing Conference for the production of documents or categories of documents if necessary (i.e. in the unlikely the parties have not been able to obtain them from each other by request) and there is a basis for needing them. CADB expects that directions for the production of documents between the parties will usually be unnecessary. It is each party's responsibility to ensure that the other can accurately identify and has appropriate access to documents on which the allegations in the Concise Outline or matters relevant to the Concise Response, are based. The Chair may strike out allegations at the Pre-Hearing Conference to the extent they are based on documentary evidence that has not been sufficiently identified.
- (j) All documents relevant to the CADB Panel's consideration of the matters in dispute must be identified by each party in a **bundle of documents** exchanged and/or agreed before the hearing. The bundle/s of documents must be indexed and cross-referenced to the Concise Outline/Concise Response.

PN 1 ANNEXURE I - Pro forma Notice of Hearing

Notice of CADB Hearing – issued by CADB 14 days before date fixed for hearing

COMPANIES AUDITORS DISCIPLINARY BOARD (CADB)

NOTICE OF HEARING

Corporations Act 2001, s1294

Australian Securities and Investments Commission Act, 2001 s216

Applicant

Respondent

Location and venue

Matter Number ASIC/APRA Contract

Respondent Contact

CADB notifies the above-named parties about the following matters with respect to the forthcoming hearing of the Application (*insert details*):

1. Section 210A(2) of the ASIC Act, 2001, the Chairperson of CADB has determined that the following Board members are to constitute the CADB Panel to hear the above matter: [*insert names of Board members to constitute Panel*].
2. The CADB Panel has determined that a hearing with respect to the above matter will take place at [**address**] **commencing at 10:00am on [date] and expected to conclude at [period]**.
3. Both parties are entitled to appear at the hearing and to make submissions to and adduce evidence before the Board in relation to the matter in accordance with the provisions of the Corporations Act 2001 and the Australian Securities and Investments Commission Act, 2001. If a party does not wish to appear at the hearing, that party may **before the day of the hearing** lodge with the Board in writing any submission that [*he/she/it*] wishes the Board to take into account in relation to the matter.
4. If the Respondent does not appear at the hearing and does not lodge any submission, the Board may proceed to make a decision in [*his/her*] absence on the facts presented at the hearing without further notice to [*him/her*].
5. A Panel of CADB Panel has power (under section 223 ASIC Act) to make an order for costs against the unsuccessful party in the proceedings. The relevant procedures are set out in PN2 <https://www.cadb.gov.au/>
6. Attached is a **Case Summary for Hearing**. Parties are asked to complete and return the Certificate by email to the Registrar by close of business on [*date*]

[Registrar CADB]

[Insert date]

PN 1 ANNEXURE J - Parties Case Summary for Hearing

Companies Auditors and Liquidators Disciplinary Board

[APPLICANT/RESPONDENT*] CASE SUMMARY FOR HEARING

Applicant:

Respondent:

Application date:

Profession:

Location:

Matter Number:

ASIC/APRA Contact:

Respondent Contact:

1. List of documents filed by the [Applicant/Respondent*] on which the [Applicant/Respondent*] intends to rely at the Hearing including:

[List by reference to filing date if relevant: Application/Concise Outline or Concise Response, each witness statement or outline of evidence, any agreed Bundle of documents (including index), any agreed statement of issues and/or agreed statement of facts]
2. Names of witness(es) proposed to be called by the [Applicant/Respondent*]:
3. Having regard to oral evidence and submissions, the [Applicant/Respondent*] provides the following estimate of the length of [its/his/her*] case:
4. Names of the person(s) who will represent the [Applicant/Respondent*] at the Hearing (see s 218(3) of the ASIC Act):
5. Names of any other person(s) whom the [Applicant/Respondent*] seeks to have present at the Hearing (see s 216(4) of the ASIC Act):
6. The [Applicant/Respondent*] is ready for hearing now. As at the date hereof, all documents upon which the [Applicant/Respondent*] intends to rely at the Hearing have been filed and served and the number of copies notified by the Registrar have been filed.

.....
Signature of [Applicant/Respondent or Representative*]

.....
Name (please print)

.....
Date
[* Delete where inapplicable]

PN 1 ANNEXURE K - Usual Format For CADB Hearings

1. Usual hearing hours are between 10am - 1pm and 2pm - 4pm on each sitting day. However, CADB Panel's are usually flexible and will, in consultation with the parties, decide the most efficient hearing hours in individual cases.
2. After an introduction by the Panel Chair, and any submission from the parties as to the format for the hearing, the Applicant is usually invited to give a general opening statement, which focuses on the key areas of dispute and presents an outline of proposed case presentation including the expected timing for the evidence to be adduced.
3. The Respondent then has an opportunity to provide a similar introduction and overview with a particular focus on the key issues for the CADB Panel's determination.
4. Subject to any issues for discussion that may arise from the matters identified in the Parties' opening statements, either as to specific issues for determination or with regard to the approach to the hearing, the Applicant will proceed with its case. This usually commences with the formal tender of the Application and **Concise Outline** and the Applicant's documents, including any witness statements, (but not outlines of evidence if evidence is to be adduced orally at the hearing). Subject to dealing with any objections by the Respondent as to any of this material, they will be marked as exhibits in the proceedings for the record. The Applicant may then call witnesses who, following their evidence in chief, may be cross-examined by the Respondent. The Applicant may re-examine any witness following cross-examination;
5. The Respondent will then present his or her case, following a similar format.
6. The CADB Panel may ask its own questions of any witness called by either party.
7. Documentary evidence relied on should be formally tendered at the hearing so that it may be marked as an exhibit in the proceedings for the record. The other party may object, but the procedures set out herein are designed to ensure that each party is already familiar with documentary evidence to be tendered at the hearing. Documentary evidence tendered must include a copy for the other party and a total of six (or four) copies for CADB.
8. A transcription of the hearing is prepared by an independent transcription service retained by CADB for each hearing. It is CADB's usual practice to arrange for a copy of the transcript to be emailed to the parties at the end of each day. Parties' may submit transcript corrections for the record at the start of each hearing day.
9. When each party has concluded presenting their evidence, the Applicant and the Respondent may make final oral submissions. The CADB Panel may allocate times for these submissions if necessary. The CADB Panel will allow the parties to file written submissions. CADB expects written submissions to be prepared prior to the commencement of oral submissions. Adjournments for the purpose of preparing final submissions are unlikely to be given. The parties are asked to provide any written submissions in both PDF and Word form

PN 1 ANNEXURE L - Prescribed Documentation for CADB Decisions

1. Notice of the CADB Panel's decision and reasons will be served on the Respondent in writing after the final hearing (section 1296(1)(a) and section 1296(2)(a)). Notices will include general information on parties' rights to review. Where the Board decides to exercise any of its powers, it must, within 14 days, cause to be published in the *Commonwealth of Australia Gazette* a notice of the decision (section 1296(1)(c)). If the Board refuses to exercise any of its powers, there is no gazettal.
2. In the case of a decision by CADB to exercise its powers under section 1292 of the Corporations Act a copy of the decision is lodged with ASIC under section 1296(1)(b) of the Corporations Act and is available for public inspection.
3. A decision by CADB to refuse to exercise its powers under section 1292 of the Corporations Act is also lodged with ASIC pursuant to 1296(2)(b). Documents lodged with ASIC under section 1296(2)(b) are not available for public inspection (section 1274(2)(a)(iii)).
4. CADB's decisions on costs and publicity are provided to the parties. There is no statutory requirement to lodge these decisions with ASIC.