

**Before the ANZASW Board Appeal Panel**

IN THE MATTER OF: a complaint against **Member A**  
and an appeal to the Governance  
Board against the decision of the  
Complaints Resolution Panel  
dated 21 December 2012

BETWEEN: **ANZASW CONVENOR**  
Appellant

AND: **Member A**  
Respondent

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**DECISION OF APPEAL PANEL**

**Dated 18 June 2013**

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1. Following the decision of the Complaints Resolution Panel (“the Panel”) in this matter dated 17 December 2012, the Convenor has appealed under clause 5.24 of the Association’s Standing Orders against that part of the decision regarding orders suspending Member A’s membership of the Association for six months.
2. A has also appealed against that part of the decision ordering that Member A’s name be published in the decision.
3. At a teleconference on 2 May 2013, Counsel for both the Convenor and Member A confirmed that no issues were taken with the delegation of the appeal to this Appeal Panel. Counsel for the Convenor confirmed there were no conflicts of interest preventing the individual panel members appointed to the Appeal Panel from participating as decision makers on the appeal. Counsel for Member A confirmed by email dated 1 May 2013 that from Member A’s point of view there were no conflicts of interest preventing the individual panel members appointed to the Appeal Panel from participating as decision makers on the appeal.

## Panel Decision

4. The Panel's decision related to two charges against Member A arising from an incident that occurred on 29 July 2011. The charges were as follows:
  - (a) That on or about 29 July 2011, Member A breached a suppression order (made by a Complaints Resolution Panel as part of a decision in relation to a complaint against X, a Social Worker, issued on 9 November 2009) by disclosing the practitioner's suppressed name to a member of the public, which conduct amounted to serious professional misconduct.
  - (b) That on or about 29 July 2011, A said of X:
    - That X was not trustworthy;
    - That X had taken advantage of disabled clients;
    - That X had used the position of being in charge of people's money to buy them things they did not need, or had not asked for, and that X had charged a percentage of the value of those things;
    - That X was a shady operator;
    - That X had been named and shamed in the ANZASW newsletter;in a conversation with a member of the public, which conduct amounted to professional misconduct.
5. Member A accepted that her conduct under charge 1 amounted to professional misconduct but did not accept that it amounted to serious professional misconduct. Member A admitted the second charge of professional misconduct.
6. Having considered the agreed statement of facts and the submissions as filed by both parties, the Panel found that the first charge of serious professional misconduct was established. Taking that into account and Member A's admission in relation to the second charge, the Panel made the following decisions:
  - (a) Charge 1 – Member A's membership of the Association is to be suspended for a period of six months.
  - (b) Charge 2 – Member A was formally censured and ordered to pay the sum of \$1,000.00 to X.
  - (c) The Panel did not find any grounds or any reasons why a non publication order of Member A's name should be made.
  - (d) Costs of \$2,500.00 were ordered to be paid by Member A.
7. Member A has since confirmed that whilst an appeal has been with regard to the Panel's order in respect of non publication, Member A only sought a determination of that appeal in the event that the Convenor's appeal was successful. As such, that

issue only needs to be considered by us if we find that the Convenor's appeal in relation to revocation is successful.

### **Nature of the Appeal Panel's Function**

8. Clause 5.26 of the Standing Orders provides that in relation to an appeal:

*"The Governance Board shall have the power to confirm, modify, or reverse the decision or order against which the appeal has been lodged, and shall have the power to order any party to the appeal to pay such sum if any towards the costs of and incidental to this appeal."*

9. That would appear to give us a very wide power to reconsider matters in an appeal. In this case however, we have limited our consideration to the following matters:
- a. Did the Panel make the correct decision in deciding to suspend Member A's membership, rather than revoking it?
  - b. If not, what (if any) orders should we as an appeal panel make?
  - c. If we as a panel find that revocation rather than suspension would be appropriate, should we also make an order for non-publication of A's name and particulars.

### **Decision as to Revocation or Suspension**

10. In making its decision, the Panel stated as follows:

*Revocation of membership is a very significant step which would (as the Panel understands it) have far reaching effects on [Member A] and would mean that [Member A] would perhaps have even [...] livelihood undermined by the making of such an Order. An effect would be that [Member A's] valuable contributions [...] made so far to social work practice would be seriously affected. We have considered whether in those circumstances the revocation of membership would be out of proportion to the gravity of the offending. To some extent the Panel has also taken into account the personal circumstances of Member A (in a limited way) but more particularly to the agreed Statement of Fact which in effect was a partial admission of the first charge and an unreserved admission of the second charge. This made the Panel's task considerably more straightforward. The result therefore is that the Panel have determined that [Member A's] membership of ANZASW is to be suspended for a period of six months. The Panel has considered whether [Member A] should be directed to a form of training or recertification but came to the view that those training issues or the like would not be of any significant value. (Paragraph 26).*

11. In considering this issue, we were concerned at one particular aspect of Member A's conduct. That is the fact that the suppression order that was breached by the

Member was an order that was actually made by the Member herself as part of the relevant panel concerned.

12. This fact was referred to by Counsel for the Convenor in submissions. Counsel acknowledged that revocation is the “ultimate weapon/sanction in the Association’s disciplinary basket” and that it should be used sparingly. In this case however, Counsel suggested that the barrier of expectations for the conduct of members who act on disciplinary panels as Member A had should be set at its highest. Accordingly, Counsel submitted that revocation, while the remedy or outcome of last resort, was appropriate and necessary in this particular case.
13. We agree that this was a serious breach on the part of Member A (and this was clearly recognised by the Panel in its finding of serious professional misconduct), and that revocation was a possible outcome in relation to this misconduct, but we do not agree that revocation is the appropriate outcome in this particular situation. In reaching that conclusion, we considered the following:
  - (a) While Member A's conduct was serious, it was not the most serious conduct that could be considered in relation to a Member’s professional obligations. Member A's conduct was not as serious as physical or sexual abuse, or taking advantage of a client's vulnerability for example.
  - (b) There was an immediate recognition of the mistake by Member A herself in this situation. Following the breach concerned, Member A rang the person Member A had made the disclosures to after the weekend and attempted to remedy the breach. There was in our view an immediate recognition of the mistake on Member A's part and an insight into the breach.
  - (c) As referred to in the submissions on Member A's behalf, the misconduct involved appears to have been a one-off breach on the part of Member A in the context of an otherwise successful career in social work.
  - (d) The Panel decided not to direct Member A to any form of training or recertification. We also considered this possibility, but agree with the Panel’s finding that this would be unlikely to be of any significant value. We do believe however that allowing Member A to maintain membership in the Association after serving a period of suspension would be of benefit to not only Member A but also to the Association as a whole, as it will allow for a greater level of professional accountability on the part of Member A.
  - (e) As was taken into account by the Panel in its decision, A's difficult personal circumstances should also be considered. While we note that the Panel did not give great weight to this factor in its decision because many professional people and social workers facing such difficulties adhere to their professional level of conduct, the reality is that such difficulties affect different people and their professional practices in many different ways. Not to take this into account in this situation would in our view be grossly unfair to Member A,

particularly given the fact that prior to this incident Member A's career had been successful and valuable.

14. We believe that the matters as set out in paragraph 12 of submissions by Counsel for the Convenor, particularly in relation to protection of the public and maintaining confidence and integrity in the ANZASW disciplinary process, can be met by an order for suspension rather than revocation of Member A's membership.
15. We have also taken into consideration the matters as outlined in paragraphs 2.4 to 2.13 of the submissions on behalf of Member A. As stated above, we agree that this would appear to be a one-off instance of misconduct by Member A in the context of what has to date been a successful and valuable career in social work.
16. Even taking into account the seriousness of the breach by Member A, the serious and significant on-going effects on Member A as outlined in paragraph 2.14 of the submissions on Member A's behalf justify a decision of suspension rather than revocation. While we take Counsel for the Convenor's point that there is a difference between the respective roles of ANZASW and the Social Workers Registration Board, we remain of the view that revocation as opposed to suspension would have a serious impact on Member A which is not in our view justified in this particular situation.
17. As a result, we do not believe that the Panel was incorrect in its decision to suspend Member A for six months rather than revoke of her membership.
18. Accordingly, the Convenor's appeal is dismissed.

#### **Member's Appeal in Relation to Publication**

19. Given this outcome, and given Member A's position that a determination of Member A's appeal is only required in the event that the Convenor's appeal is successful, we are not required to deal with this matter.

#### **Further Matters**

20. As outlined above, one aspect of this matter that was of particular concern to us was the fact that the suppression order that was breached by Member A was an order that was actually made by Member A herself as part of the Panel concerned.
21. If we had had the power to do so, we would also have made an order that A not be appointed to any such panel in the future. There is however no such power available to us under the Standing Orders.
22. We would be surprised if Member A was appointed to any future disciplinary panels, but we recommend to the Governance Board that it consider amendments to the Standing Orders to confirm the requirement that Members appointed to Complaints Review Panels in the future should not themselves have been found guilty of misconduct at any time in the past.

23. Finally, while we have dismissed the Convenor's appeal, we do wish to point out to Member A that in our view the misconduct was extremely serious. We did seriously consider the possibility of revoking her membership as a result. In the end, we came to the conclusion that revocation would not be appropriate, but this was by no means a clear cut decision. We can only hope that Member A does learn from this experience and is more mindful of [...] conduct in the future.

### **Conclusion**

24. The Convenor's appeal is dismissed. Given this decision, we are not required to determine Member A's appeal.

### **Costs**

25. Pursuant to clause 5.26 of the Standing Orders, we have the power to order any party to the appeal to pay such sum if any towards the costs of and incidental to the appeal.
26. We would hope that the parties may be able to resolve this issue themselves. In the absence of such resolution being notified to us within fourteen (14) days however, the parties shall have a further fourteen (14) days to make submissions to us in writing on the issue of costs.