



Disciplinary Tribunal of Chartered Accountants Australia and New Zealand (CA ANZ)

Written decision dated 11 November 2019

- Case Number:** D-1209
- Member:** Peter Moltoni CA of the United Kingdom, formerly of WA
- Hearing Date:** 24 October 2019
- Tribunal:** David Fairlie (Chair and lay member of the Tribunal)
Simon Wallace-Smith FCA
Anita Hargreaves CA
- Representation:** Michael Bradley for the Professional Conduct Committee (PCC)
The Member neither appeared nor was represented
- Decisions:**
1. The Tribunal determined that the Member had breached the By-Laws by virtue of:
 - (a) the Tax Practitioners Board termination of the Member's registration as a tax agent and imposition of a ban to reapplying for registration until after 10 June 2024;
 - (b) becoming bankrupt; and
 - (c) his conduct in relation to allegation 1 bringing discredit upon him, CA ANZ and the profession of accountancy.
 2. The Tribunal determined to terminate the Member's membership and remove the Member's name from the Registers on which it appears.
 3. The Tribunal imposed a cost sanction in the sum of \$5,560 for the full costs and expenses of the proceedings.
 4. The Tribunal made the following directions regarding the conduct of the hearing and the publication of its reasons for decision:
 - (a) its decision with reasons, mentioning the Member's name and locality, be published on the CA ANZ website (the **Published Decision**);
 - (b) a notice mentioning the Member's name and locality with a web address for the Published Decision be published in the CA ANZ digital and print magazine "Acuity";
 - (c) the Tax Practitioners Board be notified of this decision;
 - (d) except for the content of the Disciplinary Tribunal written decision with reasons, all written and oral evidence and

submissions related to this determination are to remain confidential;

- (e) the decision regarding confidentiality takes effect immediately; ie 24 October 2019.

The date of effect of this decision is 3 December 2019.



1. Introduction

- (a) In around June 2019 CA ANZ became aware that the Tax Practitioners Board (TPB) had issued a media release on 12 June 2019 titled *“Bankrupt tax agent with \$36 million debt has registration terminated by Tax Practitioners Board”* (the **TPB media release**) which included the following information:
- (i) on 9 May 2019 the TPB terminated the tax agent registration of the Member and banned him from reapplying for registration for the maximum five years;
 - (ii) litigation in the Virgin Islands had linked the Member *“to what appears to be a shell company holding US \$21 million”*;
 - (iii) in August 2018 the Supreme Court of Western Australia dismissed an application by the Member for a stay of recovery action instituted by the Deputy Commissioner of Taxation;
 - (iv) an audit of the Member by the Australian Taxation Office (ATO) resulted in the issuing of an amended assessment against him for an amount over \$33 million;
 - (v) the Member became bankrupt in October 2018 with debts exceeding \$36 million; and
 - (vi) in *“addition to these serious breaches, [the Member] failed to disclose to the Board his adverse circumstances, in breach of his requirements under the Tax Agent Services Act 2009”*;

and the PCC initiated complaints pursuant to the powers conferred by By-Laws 40(4.1) and 40(5.1) (the **Complaints**).

- (b) After investigating the Complaints, the PCC referred the Member to the Tribunal by way of Notice of Disciplinary Action which alleged that:
1. on 9 May 2019 the TPB terminated the Member’s registration as a tax agent and banned him from re-applying until after 10 June 2024, for no longer meeting the registration requirement that the Member be a fit and proper person, and in those circumstances he had a restriction imposed on a professional registration in his name;
 2. on 11 October 2018 the Member became bankrupt; and
 3. the Member’s conduct, as set out in paragraph 1 above, brings or may bring discredit upon him, CA ANZ or the profession of accountancy.

2. The issues for determination

- (a) Should the hearing proceed in the absence of the Member?
- (b) Did the TPB:
- (i) terminate the Member’s registration as a tax agent; and
 - (ii) ban the Member for five years from reapplying for registration;

and, if yes, did this amount to an imposition, condition or restriction on a professional membership, registration or licence in the Member’s name, in breach of By-Law 40(2.1)(g)? (allegation 1)

- (c) Did the Member become bankrupt? (allegation 2)

- (d) Did the TPB's termination and ban on the Member bring, or potentially bring, discredit upon him, CA ANZ or the profession of accountancy? (allegation 3)
- (e) If the answer to (b), (c) or (d) was yes, what sanctions should be imposed on the Member?
- (f) Should the Member be required to pay costs and if so, in what amount?
- (g) Should other parties be notified of the Tribunal's decision?
- (h) Should any confidentiality orders be made?

3. Should the hearing proceed in the absence of the Member?

- (a) The Member did not attend the hearing of the Disciplinary Tribunal.
- (b) The PCC informed the Member that he had been referred directly to the Disciplinary Tribunal without convening a Case Conference, and provided its reasons for that referral, by letters dated 16 August 2019 sent to the Member's email address recorded on the General Register and from which he had been communicating as recently as 22 July 2019 (the **Member's email address**). No other current contact details were recorded by the Member in his record on the General Register.
- (c) The Member was subsequently served via the Member's email address:
 - (i) on 13 September 2019 with the Notice of Disciplinary Action (and notified of the hearing date, time and location); and
 - (ii) on 17 September with an Amended Disciplinary Tribunal Notice of Disciplinary Action dated 16 September 2019 (the **NDA**).
- (d) By letter dated 11 October 2019 sent to the Member's email address, the PCC informed the Member that, if the Disciplinary Tribunal found that he had breached the By-Laws, it would ask the Tribunal to terminate his membership.
- (e) On 4 and 23 October 2019 the Tribunal Secretary contacted the Member via the Member's email address in relation to the hearing scheduled for 24 October 2019.
- (f) The Member did not respond to any of the communication listed in 3(b) to (e) above.
- (g) The Tribunal was satisfied that the Member had notice of the hearing and that the Tribunal would be considering the allegations in the NDA and, if established, whether to impose sanctions on the Member on 24 October 2019. Accordingly the Tribunal determined that the hearing should proceed in the absence of the Member.
- (h) In making this decision the Tribunal noted:
 - (i) the Member's email of 22 July 2019 in which he stated "*I have resigned my membership ... with effect from [2 July 2019]. I note the Institute's response and notwithstanding the response affirm my resignation*";
 - (ii) the Member had sought to resign his CA ANZ membership after being informed of the Complaints that were being investigated however the Member was notified by CA ANZ that his resignation had been declined pursuant to By-Law 21 (then By-Law 19) which states:

Any Member may resign his or her Membership by sending his or her resignation in writing together with all moneys owing by him or her to CA ANZ, whether for subscription, fee or other amount, to the CEO:

- (a) Provided that no resignation shall take effect unless and until it has been accepted by the Board. The Board may decline to accept the resignation of a Member who is the subject of disciplinary action or professional conduct proceedings by either CA ANZ or NZICA...

4. Did the TPB terminate the Member's registration and ban him for five years from reapplying for registration and did this constitute a breach of By-Law 40(2.1)(g)? (allegation 1)

4.1 PCC submissions

- (a) The PCC submitted that:
 - (i) the evidence in the casefile established that the Member had a condition or restriction imposed on him in relation to a professional registration held by him;
 - (ii) this constituted a breach of By-Law 40(2.1)(g).
- (b) In making this submission, the PCC referred to the following evidence:
 - (i) an extract taken from the TPB's register dated 10 June 2019 which stated that the Member's registration had been terminated from that date as the individual no longer met registration requirements and that he may not reapply for registration until 10 June 2024;
 - (ii) the TPB media release which the PCC submitted could be considered as good evidence of the matters the TPB had taken into account when making its decision.

4.2 Member submissions

Although the Member did not respond to the allegations in the NDA, the Tribunal was provided with a copy of an email he sent to the PCC on 2 July 2019 in which the Member stated "*I ... want to place on record that my registration as a tax agent was not terminated - I resigned in December [2018]. Please see email attached*". That email included:

- (a) a communication from the TPB to the Member dated 14 December 2018 which stated "*Please find attached our notification of investigation into your conduct as a tax agent...*"; and
- (b) the Member's reply to the TPB's communication in which he wrote on 23 December 2018 "*I am no longer practising as a tax agent and therefore request the Tax Practitioners Board cancel my registration as a tax agent*".

4.3 Tribunal decision and reasons

- (a) The Tribunal determined that the allegation was established.
- (b) A member is liable to disciplinary sanctions pursuant to By-Law 40(2.1)(g) if that member:
 - has agreed to, or has had imposed, any condition or restriction on any professional membership, registration or licence in that Member's name
- (c) The TPB register recorded the following information for the Member:
 - "Registration type: *Individual Tax Agent*"
 - "Disqualification: *Period of Effect: 10/06/2019 to 10/06/2024*
Reason: 40-25 Period during which you may not apply for registration"

and this constitutes a condition or restriction on a professional registration in the Member's name, in breach of By-Law 40(2.1)(g).

5. Did the Member become bankrupt, in breach of By-Law 40(2.1)(j)? (allegation 2)

5.1 PCC submissions

- (a) The PCC submitted that the Member's bankruptcy constituted a breach of By-Law 40(2.1)(j).
- (b) In support of this submission, the PCC provided an extract from the National Personal Insolvency Index which stated that the Member became bankrupt on his petition on 11 October 2018 and that he was an undischarged bankrupt as at 12 June 2019.

5.2 Member submissions

Although the Member did not respond to the allegations in the NDA, the Tribunal was provided with copies of emails he sent to the PCC on 2 and 22 July 2019 in response to the Complaints, in which the Member stated respectively *"I am bankrupt"* and *"... do not have any assets"*.

5.3 Tribunal decision and reasons

- (a) The Tribunal determined that the allegation was established.
- (b) A member is liable to disciplinary sanctions pursuant to By-Law 40(2.1)(j) if that member:
 - suffers an Insolvency Event
 - and By-Law 39(m)(i)(3) defines Insolvency Event in relation to a natural person as meaning that person:
 - presenting (as a debtor) a declaration to the Official Receiver under section 54A of the Bankruptcy Act of that person's intention to present a debtor's petition or that person's presentation (as a debtor) of such a petition under section 55 of that Act
- (c) The extract from the Australian Financial Security Authority's National Personal Insolvency Index provided to the Tribunal recorded the following information for the Member:
 - "Type BANKRUPTCY - Debtors Petition"*
 - "Date of Bankruptcy 11-Oct-2018"*
 - "Summary This individual is an undischarged bankrupt"*
 and this confirmed that the Member had suffered an Insolvency Event, in breach of By-Law 40(2.1)(j).

6. Did the TPB's termination and ban on the Member bring, or potentially bring, discredit upon him, CA ANZ or the profession of accountancy, in breach of By-Law 40(2.1)(k)? (allegation 3)

6.1 PCC submissions

- (a) The PCC submitted that the Member's conduct, which had been widely reported in the public domain, brought discredit to him, CA ANZ and the profession of accountancy.

- (b) In making this submission, the PCC referred to the following evidence:
- (i) the public TPB register in which termination of the Member's registration and ban from reapplying were recorded. The PCC submitted that it was safe for the Tribunal to infer from the TPB's decision that it had terminated the Member's registration for the reason that he was not a fit and proper person pursuant to the registration eligibility criteria in section 20-5(1)(a) of the *Tax Agents Services Act 2009*;
 - (ii) the Virgin Islands High Court of Justice decision *Maruti Holdings Pte Ltd v Sinclair Strategies Ltd et al* BVI HC (Com) 2012/0130 which contained serious allegations involving the Member;
 - (iii) the TPB media release which stated the quantum of the Member's debts was \$36 million, of which approximately \$34.5 million was owing to the ATO;
 - (iv) media reports and a court case which dealt with these issues:
 - (1) *'Undermines trust': Tax agent struck off after \$36m debt*, Sydney Morning Herald 12 June 2019;
 - (2) *Perth tax agent deregistered*, Business News WA 12 June 2019;
 - (3) *A bankrupt tax agent has been banned from being able to renew his registration by the Tax Practitioners Board, after declaring bankruptcy with debts of \$36 million*, MyBusiness 13 June 2019;
 - (4) *TPB sends warning with rego termination*, Accountancy Daily 13 June 2019;
 - (5) *Tax agent struck off after \$36m debt*, Public Accountant 13 June 2019;
 - (6) *The accountant who lost it all*, Australian Financial Review 28 June 2019; and
 - (7) *Deputy Commissioner of Taxation v Moltoni* [2018] WASC 259.

6.2 Member submissions

The Tribunal did not have the benefit of submissions from the Member.

6.3 Tribunal decision and reasons

- (a) The Tribunal determined that the allegation was established because:
- (i) the Member's conduct appeared to involve offshore tax evasion arrangements;
 - (ii) this conduct as noted by the TPB Chair in the TPB media release had the result that "tax practitioners involved in offshore tax avoidance or evasion fail their legal and ethical responsibilities";
 - (iii) the very large tax debt that the Member had incurred as a result of his involvement in these offshore tax activities; and
 - (iv) the Member's failure to pay the debt which led to his bankruptcy;
- and that these matters had brought discredit on the Member, CA ANZ and the profession of accountancy.

7. What sanctions should be imposed on the Member?

- (a) Regulation 8.11, *Guidelines for the imposition of sanctions (Guidelines)* sets out the matters that may be considered by the Tribunal in deciding what sanctions to impose. In this regard the Guidelines refer to:
- (a) ... (i) the seriousness of the conduct;
 - (ii) whether the conduct has occurred before and, if so, the nature, extent and frequency of the conduct;
 - (iii) the Member's responsibility and accountability for the conduct in the context of that Member's Practice Entity ...;
 - (iv) whether the Member has failed to comply with any undertaking or agreement to remedy the conduct;
 - (v) any aggravating or mitigating factors raised which are relevant to the conduct in question;
 - (vi) the personal circumstances of the Member to the extent they are raised and relevant to the conduct;
 - (vii) any character and/or other references provided in writing in support of the good standing of the Member;
 - (viii) the maintenance of public confidence in the profession;
 - (ix) the maintenance of proper standards of professional conduct;
 - (x) deterrence; and
 - (xi) any other circumstances relevant to the practice of the Member and the profession.
- (b) However, the Guidelines are not an exhaustive list of the matters that may be considered when deciding what sanction to impose and the Tribunal may have regard to any other relevant matters that are before it.
- (c) The PCC submitted that the Member's membership should be terminated. In support of this submission the PCC stated that the Tribunal should have regard to the following matters:
- (i) this was a serious case of misconduct;
 - (ii) the case was widely reported in the media and was relatively notorious. The PCC submitted that no other sanction would be appropriate in the face of the Tribunal's findings in relation to the NDA;
 - (iii) it was appropriate that CA ANZ send a strong message to its members and to the public that it does not condone conduct of this nature and that it does not wish to be associated with practitioners who engage in this conduct.
- (d) Although the Member did not respond to the allegations in the NDA, the Tribunal was provided with a copy of an email he sent to the PCC on 22 July 2019 in which the Member stated:
- "For your information I reside in the United Kingdom and do not and will not practice in Australia...*
- For completeness I provide the following undertaking:*
- 1. I am not practicing and will not practice in Australia.*
 - 2. I do not hold myself out as a Chartered Accountant and will not do so..."*
- (e) The Tribunal determined that the Member's membership should be terminated and his name removed from the Registers on which it appears because:
- (i) it accepted that this was a serious case of misconduct warranting termination;
 - (ii) it would undermine public confidence in the profession of accountancy if any lesser sanction were imposed;

- (iii) the Tribunal was provided with no evidence that the Member had complied with his obligation to notify CA ANZ of his bankruptcy within seven days.

The Tribunal noted the Member did not wish to continue to practice as a chartered accountant in any event, as he had sought to resign from membership on 2 July 2019 and later claimed to affirm that resignation after it had been declined.

8. Should the Member be required to pay costs and if so, in what amount?

- (a) Regulation CR8.12, *Costs awards (CR8.12)* states that when determining whether or not to require a Member to pay Costs, and the amount of such Costs, the Tribunal:

...must require the Member to pay all of the Costs claimed by CA ANZ unless it determines that, having regard to the following matters, it is appropriate that the Member be required to pay only part or none of the claimed Costs:

- (a) whether and to what extent the complaint against the Member is found to have merit and whether or not there is ultimately a finding in favour of the Member;

- (b) the substance or seriousness of the complaint;

- (c) the conduct of the Member in relation to the investigation and disciplinary process, including whether the Member was open, honest and timely in the Member's dealings with the Professional Conduct Committee, Disciplinary Tribunal or Appeals Tribunal in relation to the complaint and whether the Member complied with the provisions of Section 5 of the By-Laws and any applicable Regulations during the conduct of the disciplinary process;

- (d) the extent to which the final sanctions determined differ from those that the Professional Conduct Committee or Disciplinary Tribunal gave the Member the opportunity to agree by consent;

- (e) whether to do so is reasonable in the circumstances;

- (f) the amount of the Costs incurred by CA ANZ in the conduct of the investigation and proceedings;

- (g) whether and to what extent the Member has previously been required to pay Costs to CA ANZ in respect of the complaint, its investigation, hearing and determination; and

- (h) whether the amount is reasonable in the circumstances.

- (b) The PCC submitted that the Tribunal was required to order that the Member pay all of the costs unless it was appropriate that a different order be made having regard to the subparagraphs of CR8.12. The PCC submitted that there was no basis for departing from the starting position that the Member pay all of the costs because:

- (i) the Member's conduct was serious; and

- (ii) no communication had been received from the Member since 22 July 2019 in relation to the Complaints or the hearing.

- (c) Although the Member did not respond to the allegations in the Notice of Disciplinary Action or provide any submissions with respect to costs, the Tribunal was provided with copies of emails he sent to the PCC on 2 and 22 July 2019 in which the Member stated respectively "*I am unable to meet any costs of an investigation as I am bankrupt*" and "*I ... do not have any assets*".

- (d) The Tribunal determined that the Member should bear the full costs of the proceedings because:

- (i) Regulation CR8.12 states that the Member must pay the full costs unless any of the matters set out in subparagraphs (a) to (h) justified a lesser cost payment;

- (ii) none of the factors set out in subparagraphs (a) to (h) provided any reason for the Tribunal to not require the Member to pay the full costs. Relevantly:
 - (1) the complaint against the Member was established in full;
 - (2) the Member's conduct underlying the complaint was very serious;
 - (3) the Member had not cooperated with the CA ANZ investigation and disciplinary process;
 - (4) it was reasonable that the full costs be borne by the Member;
 - (5) the costs were incurred properly and the quantum was reasonable.

9. Should other parties be notified of the Tribunal decision?

- (a) By-Law 40(10.16) states:

The Disciplinary Tribunal may notify interested parties including other professional bodies, regulatory authorities, the Member's current and/or former employers, partners, clients of the Member or the Member's Practice Entity who are or may be affected by the Member's conduct to which the disciplinary action relates, of so much of a decision ..., the reasons for it and/or the sanctions imposed, as it thinks fit ...

- (b) The PCC submitted to the Tribunal that the TPB should be notified of its decision. The Tribunal accepted that the TPB was an interested party and determined to notify the TPB of its written decision.

10. Should any details be kept confidential?

- (a) By-Law 40(13.12) states:

(d) The Disciplinary Tribunal ... may require, including as a condition of admission to a hearing, any person present to undertake to keep all or any part of a hearing, the evidence adduced at it or other information disclosed (including the identity of any persons present at or otherwise connected with the hearing) confidential on such terms as it determines.

- (b) The Tribunal directed that, except for the content of the Disciplinary Tribunal written decision with reasons, all written and oral evidence and submissions related to this determination are to remain confidential.

11. RIGHTS OF APPEAL

The Member may, within 21 days after the notification of the written decision with reasons to the Member of this Tribunal's decision, appeal in writing to the CA ANZ Appeals Tribunal against the decision (By-Law 40(11.1)).

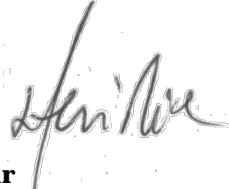
The PCC may, within 21 days after notification of the written decision with reasons to the PCC of this Tribunal's decision, appeal in writing to the CA ANZ Appeals Tribunal against the decision (By-Law 40(11.2)).

While the parties remain entitled to appeal or while any such appeal awaits determination by the Appeals Tribunal, the following decisions shall not take effect:

- (a) breach of the By-Laws
- (b) sanction

- (c) costs sanction
- (d) publication
- (e) notification.

The Tribunal's decision as to confidentiality took effect immediately.



Chair
Disciplinary Tribunal

SCHEDULE 1: THE PCC'S ALLEGATIONS

It is alleged that while a member of Chartered Accountants Australia and New Zealand (CA ANZ) the Member is liable to disciplinary action in accordance with:

1. By-law 40(2.1)(g) in that on 9 May 2019 the Tax Practitioners Board terminated the Member's registration as a tax agent and banned him from re-applying until after 10 June 2024, for no longer meeting the registration requirement that the Member be a fit and proper person, and in those circumstances he had imposed a restriction on a professional registration in his name;
2. By-Law 40(2.1)(j) in that on 11 October 2018 the Member became bankrupt; and
3. By-Law 40(2.1)(k), in that the Member's conduct, as set out in paragraph 1 above, brings or may bring discredit upon him, CA ANZ or the profession of accountancy.

SCHEDULE 2: RELEVANT BY-LAWS

Section 2 - Membership

...

Resignation

- 21.** Any Member may resign his or her Membership by sending his or her resignation in writing together with all moneys owing by him or her to CA ANZ, whether for subscription, fee or other amount, to the CEO:
- (a) Provided that no resignation shall take effect unless and until it has been accepted by the Board. The Board may decline to accept the resignation of a Member who is the subject of disciplinary action or professional conduct proceedings by either CA ANZ or NZICA or whose conduct, in the opinion of the Board, by virtue of matters brought to the attention of CA ANZ, may become the subject of professional conduct proceedings or who has been requested to provide information, given notice of or is undergoing a review or any follow up process arising from a review, investigation or professional conduct proceedings.

...

Section 5 - Professional Conduct

...

- 40.** Except as provided by By-Law 41, the By-Laws in this Section 5, including the following paragraphs of this By-Law 40, do not apply to Members who are also members of NZICA in respect of disciplinary matters over which NZICA has jurisdiction and which relate to the practice of the profession of accountancy by NZICA's members in New Zealand. Nothing in this By-Law 40 excludes from the operation of this Section 5, conduct of a Member:
- (a) who was, but is no longer, a member of NZICA; or
- (b) who has subsequently also become a member of NZICA.

Except as provided by By-Law 41, no Member shall be sanctioned under both this Section 5 and NZICA Rule 13 in respect of the same conduct.

...

40(2) Disciplinary action

40(2.1) A Member is liable to disciplinary sanctions under these By-Laws if (whether before or after the date of adoption of this By-Law) that Member:

...

- (g) has agreed to, or has had imposed, any condition or restriction on any professional membership, registration or licence in that Member's name;

...

- (j) suffers an Insolvency Event;

- (k) has committed any act, omission or default which, in the opinion of the Professional Conduct Committee, Disciplinary Tribunal or Appeals Tribunal brings, or may bring, discredit upon that Member, CA ANZ or the profession of accountancy;

...

40(10) Disciplinary Tribunal

...

40(10.12) If the Disciplinary Tribunal determines that the complaint contained in the Notice of Disciplinary Action or any part thereof is established it may, subject to By-Law 40(9.3)(c), and having given the Member a reasonable opportunity of being heard on the question of sanctions, impose any one or more of the sanctions in the table below identified as applicable to that class of Member:

...

(a) terminate that Member's Membership and remove the Member's name from the Registers on which it appears

...

(k) require the Member to pay to CA ANZ all or any portion of the Costs incurred by or on behalf of CA ANZ (including by or on behalf of the Professional Conduct Committee) in investigating and dealing with the original complaint and the matters the subject of the Notice of Disciplinary Action as the Disciplinary Tribunal determines

...

40(10.16) The Disciplinary Tribunal may notify interested parties including other professional bodies, regulatory authorities, the Member's current and/or former employers, partners, clients of the Member or the Member's Practice Entity who are or may be affected by the Member's conduct to which the disciplinary action relates, of so much of a decision (including a decision to suspend on an interim basis), the reasons for it and/or the sanctions imposed, as it thinks fit. The Disciplinary Tribunal will not do so until the day following the last date on which an appeal may be notified in accordance with paragraph 11.1. If an appeal is notified in accordance with paragraphs 11.1 or 11.2, the Disciplinary Tribunal will not make such a notification until that appeal is heard or otherwise determined.

40(11) Appeals Tribunal

40(11.1) Any Member in respect of whom any determination has been made by the Disciplinary Tribunal or upon whom any sanction has been imposed by the Disciplinary Tribunal may, subject to By-Law 40(9.4), within 21 days after notice of the written reasons for such determination or sanction is given to that Member, give notice of appeal in the form prescribed by the Regulations to the Appeals Tribunal against any such determination or sanction or both. At the discretion of the Appeals Tribunal later notice may be accepted.

40(11.2) The Professional Conduct Committee, may, subject to By-Law 40(9.4), within 21 days after notice of the written reasons for the determination or sanction imposed by the Disciplinary Tribunal against a Member is given to it, give notice of appeal in the form prescribed by the Regulations to the Appeals Tribunal against any such determination or sanction or both. At the discretion of the Appeals Tribunal later notice may be accepted.

40(12) Publication of investigations and decisions

...

40(12.3) Where the Disciplinary Tribunal or Appeals Tribunal determines that a complaint is established, imposes a sanction adverse to the Member (including one with the consent of a Member or a written undertaking under By-Law 40(13.8)) or decides to suspend a Member on an interim basis, it must direct that a notice be published by CA ANZ of its decision and the sanctions imposed (if any). Any such publication must disclose the name and location of the relevant Member unless the Disciplinary Tribunal or Appeals Tribunal (as applicable) considers that there are exceptional circumstances for not doing so.

40(12.4) Publication under By-Laws 40(12.1) or 40(12.3) may be in such form and publication as the Professional Conduct Committee, Disciplinary Tribunal or Appeals Tribunal (as applicable) considers appropriate, including in CA ANZ's official publication, on CA ANZ's website or in any other manner that it may in its discretion direct.

...

SCHEDULE 3: REGULATION CR8 - DISCIPLINARY PROCEDURES

Issued 8 October 2019

8.1 Purpose

This Regulation supplements the professional conduct and disciplinary process provisions of Section 5 of the By-Laws.

8.2 Definitions

Unless expressly defined in this Regulation, capitalised terms used in this Regulation are defined in By-Law 2 and Section 5 of the By-Laws. The definitions in By-Law 39 shall prevail to the extent of any inconsistency between this Regulation and the By-Laws or between By-Law 2 and By-Law 39.

8.3 By-Laws

Refer to Section 5 of the By-Laws for provisions relating to Professional Conduct.

8.4 Charter

- (a) For the implementation of the procedures referred to in Section 5 of the By-Laws the Board has approved Charters for:
 - (i) the Professional Conduct Oversight Committee;
 - (ii) the Professional Conduct Committee;
 - (iii) the Disciplinary Tribunal; and
 - (iv) the Appeals Tribunal.
- (b) The Charter for each may be found [here](#).

8.5 Disclosure Events (By-Laws 40(3.1) and 40(3.2))

- (a) It is a Member's responsibility to give notice to the Professional Conduct Committee within 7 days of the occurrence of a Disclosure Event.
- (b) When required, such notice should be in writing in the [form prescribed](#).
- (c) Within 21 days of a Disclosure Event, a Member is also required to send a statement to the Professional Conduct Committee setting out the reasons why that Member considers that the Member's membership should not be affected, including suspended (whether or not on an interim basis) or terminated and that Member's name removed from the Registers. The time period is longer for the statement than the notice to allow a Member to gather evidence, including from referees, to explain any mitigating or extenuating circumstances.

8.6 Notification Event (By-Laws 40(3.3) and 40(3.4))

- (a) It is a Member's responsibility to give notice to the Professional Conduct Committee within 7 days of the occurrence of a Notification Event.
- (b) When required, such notice should be in writing in the [form prescribed](#).

8.7 Form of complaints (By-Law 40(4.1(a)))

- (a) Complaints made about a Member to CA ANZ pursuant to By-Law 40(4.1)(a) should be made using, and in the manner prescribed by, the [Complaint Form](#).

- (b) Anonymous complaints, or those made without adequately disclosing the identity of the person(s) making the complaint, will not be processed by CA ANZ.

8.8 Applications to the Professional Conduct Committee for legal representation (By-Laws 40(5.4) and 40(7.2))

Applications for the consent of the Professional Conduct Committee for legal representation should be made using, and in the manner prescribed by, the [Consent Form](#).

8.9 Application to the Reviewer (By-Law 40(8))

- (a) An application made to CA ANZ to request the review of a Final Decision in accordance with By-Law 40(8.2) can be made by the original complainant or the relevant Member and must be made:
 - (i) within 21 days of notification of the Final Decision;
 - (ii) using and in the manner prescribed by the [Final Decision Review Form](#); and
 - (iii) accompanied by:
 - A. payment of the Application Fee (which is AU\$500) in a manner prescribed by the Final Decision Review Form; and
 - B. the [Costs Agreement](#) duly executed by the applicant.
- (b) Every Reviewer appointed will be an independent Australian legal practitioner.
- (c) When lodged, the Final Decision Review Form must include all matters the complainant wishes to be considered by the Reviewer.
- (d) The Application Fee is non-refundable, but the Reviewer may recommend that CA ANZ refund the Application Fee to the applicant, where the Reviewer considers this to be appropriate.

8.10 Appeals Tribunal (By-Law 40(11))

- (a) An appeal of a determination of the Disciplinary Tribunal may be made by the Member the subject of the determination or the Professional Conduct Committee in accordance with By-Law 40(11.1).
- (b) Notice of appeal should be given using, and in the manner prescribed by, the [Appeal Form](#) and must detail all grounds of appeal.
- (c) Pursuant to By-Law 40(11.4) the Appeals Tribunal has a discretion to require the Member to pay to CA ANZ such amount as it determines as security against the anticipated Costs which CA ANZ may incur in the conduct and hearing of the appeal.

8.11 Guidelines for the imposition of sanctions (By-Law 40(13.6))

- (a) When the Professional Conduct Committee, Disciplinary Tribunal or Appeals Tribunal determines that it is appropriate to sanction a Member, in deciding what sanction(s) to impose and without limiting the matters it may consider, it may consider the following matters:
 - (i) the seriousness of the conduct;
 - (ii) whether the conduct has occurred before and, if so, the nature, extent and frequency of the conduct;

- (iii) the Member's responsibility and accountability for the conduct in the context of that Member's Practice Entity, including without limitation:
 - A. whether the conduct was systemic;
 - B. whether the Practice Entity's leadership were aware of or complicit in the conduct;
 - C. whether it forms part of a pattern of conduct; and
 - D. the Member's role, position and seniority in the Practice Entity;
 - (iv) whether the Member has failed to comply with any undertaking or agreement to remedy the conduct;
 - (v) any aggravating or mitigating factors raised which are relevant to the conduct in question;
 - (vi) the personal circumstances of the Member to the extent they are raised and relevant to the conduct;
 - (vii) any character and/or other references provided in writing in support of the good standing of the Member;
 - (viii) the maintenance of public confidence in the profession;
 - (ix) the maintenance of proper standards of professional conduct;
 - (x) deterrence; and
 - (xi) any other circumstances relevant to the practice of the Member and the profession.
- (b) The Professional Conduct Committee, the Disciplinary Tribunal and the Appeals Tribunal must balance the interests of the Member against the public interest, the reputation of CA ANZ, and the need to support the integrity of the profession of accounting and those of CA ANZ in determining what are appropriate and sufficient sanctions.

8.12 Costs awards (By-Law 40(13.7))

When the Professional Conduct Committee, Disciplinary Tribunal or Appeals Tribunal determines whether or not to require a Member to pay Costs under Section 5 of the By-Laws, and the amount of such Costs a Member is required to pay, it must require the Member to pay all of the Costs claimed by CA ANZ unless it determines that, having regard to the following matters, it is appropriate that the Member be required to pay only part or none of the claimed Costs:

- (a) whether and to what extent the complaint against the Member is found to have merit and whether or not there is ultimately a finding in favour of the Member;
- (b) the substance or seriousness of the complaint;
- (c) the conduct of the Member in relation to the investigation and disciplinary process, including whether the Member was open, honest and timely in the Member's dealings with the Professional Conduct Committee, Disciplinary Tribunal or Appeals Tribunal in relation to the complaint and whether the Member complied with the provisions of Section 5 of the By-Laws and any applicable Regulations during the conduct of the disciplinary process;
- (d) the extent to which the final sanctions determined differ from those that the Professional Conduct Committee or Disciplinary Tribunal gave the Member the opportunity to agree by consent;

- (e) whether to do so is reasonable in the circumstances;
- (f) the amount of the Costs incurred by CA ANZ in the conduct of the investigation and proceedings;
- (g) whether and to what extent the Member has previously been required to pay Costs to CA ANZ in respect of the complaint, its investigation, hearing and determination; and
- (h) whether the amount is reasonable in the circumstances.

8.13 Former Professional Conduct By-Laws (By-Law 42)

- (a) A copy of the By-Laws as at 28 July 2016 may be found here.
- (b) A copy of the By-Laws as at 26 November 2014 may be found [here](#).

8.14 Confidentiality Obligations

- (a) Members must comply with the requirements set out in subparagraphs (b) – (d) below to ensure that any complaints made, investigations, reviews and disciplinary hearings carried out pursuant to Section 5 of the By-Laws are confidential;
- (b) Subject to subparagraph (c) below:
 - (i) all information, correspondence and other documentation sent and/or received by CA ANZ or disclosed or made available to you in connection with a complaint, its investigation and outcome, any review of that outcome (including the Reviewer's report, recommendation and/or any directions) and any disciplinary hearing (including disciplinary decisions) is confidential (Confidential Information);
 - (ii) Members must:
 - A. keep the Confidential Information confidential;
 - B. securely store and not disclose or permit disclosure of the Confidential Information;
 - C. comply with CA ANZ's directions regarding the Confidential Information;
 - D. do all other things prudent or desirable to safeguard the confidentiality of the Confidential Information; and
 - E. not publish or make a public announcement or statement in relation to the Confidential Information;
 - (iii) this clause does not apply to:
 - A. information that is already in the public domain (unless it is in the public domain because of a breach of this Regulation); or
 - B. details of complaints, investigations and/or decisions that CA ANZ has published or made available to the public in accordance with the By-Laws and Regulations;
- (c) The obligations contained in subparagraph (b) above do not prevent the disclosure of Confidential Information:
 - (i) that is required to be disclosed to comply with applicable law;

- (ii) to the Member's advisers and/or representatives (including business partners and staff of those advisers and/or representatives) for the provision of advice in relation to the complaint, its investigation, any review and any disciplinary hearings;
 - (iii) to the Member's current employer and business partners, including staff of the Member and/or that employer, to assist with responding to the complaint and any disciplinary hearings and/or to comply with any disclosure obligations;
 - (iv) to the Member's insurer or the insurer of the Member's current and/or former employer, to comply with any disclosure obligations; or
 - (v) if required, and with the consent of CA ANZ, for the purpose of the complaint, investigation and any disciplinary hearings pursuant to Section 5 of the By-Laws.
- (d) Any disclosure of Confidential Information pursuant to subparagraphs (c)(ii) – (v) above can only be made by Members if the person to whom disclosure is made is subject to the same confidentiality obligations as Members set out in this paragraph 8.14.

Commentary

The obligations set out above are in addition to the obligations of confidentiality contained in APES 110, Code of Ethics for Professional Accountants. More details about managing your confidentiality obligations are available as part of the complaint process and on request.