

# Notice of Member Vote



CHARTERED  
ACCOUNTANTS  
AUSTRALIA • NEW ZEALAND



# Notice of Member Vote

Dear Fellow Members

The reputation of our profession has never been more important. Robust, fair and efficient professional conduct and discipline rules and procedures are key to upholding the standards of ethical behaviour for which Chartered Accountants are known and to further build trust in our profession.

The Board of Chartered Accountants Australia and New Zealand (**CA ANZ**) is seeking your support to update and amend certain sections of CA ANZ's By-Laws and the New Zealand Institute of Chartered Accountants (**NZICA**) Rules by conducting a member vote by electronic and postal ballot.

**The member vote will open on 25 September 2023 and will close at 5:00pm AEDT on 20 October 2023, being the date of CA ANZ's 2023 AGM.**

The proposed amendments are across three topic areas - Conduct Rules, eligibility to be elected to Regional Council and editorial amendments - which will be addressed by 9 resolutions for approval to amend the CA ANZ By-Laws and 5 resolutions to amend the NZICA Rules.

## Background – Conduct Rules

In July 2022, the Board announced the Professional Conduct Framework Review (**the Review**). The purpose of the Review was to ensure that CA ANZ's conduct and discipline rules and arrangements (**the Disciplinary Framework**) continue to uphold the trust in, and integrity of our profession and respond effectively to challenges.

The Review was led by CA ANZ's Professional Conduct Framework Review Committee (**the Committee**), jointly chaired by the Chair of the CA ANZ Board and the CA ANZ Chief Executive Officer, and comprising the President, and the Chairs of the Board's Audit and Risk Committee and the People and Remuneration Committee, the Professional Conduct Oversight Committee and the NZICA Regulatory Board.

The Review found that the Disciplinary Framework met or exceeded International Federation of Accountants (**IFAC**) requirements and compared favourably with similar professional organisations worldwide but also found areas that could be strengthened, putting forward 28 recommendations for change.

The Committee's recommendations were independently assessed by former Federal Court Justice, the Hon. Dennis Cowdroy AO KC to provide an additional level of review and consideration, and the independent review resulted in an additional 9 recommendations for change.

The 37 consolidated recommendations of the Review were released in June 2023. 33 of the recommendations are directed to enhancing and aligning CA ANZ's By-Laws and NZICA Rules by:

- giving the CA ANZ and NZICA disciplinary bodies stronger powers to address serious misconduct;
- increasing maximum fines for proven misconduct by Practice Entities (**Firm Events**); and
- including efficiency enhancements and procedural fairness protections for Members,

ensuring our Disciplinary Framework aligns with global standards, and continues to foster trust, ethics and integrity in the profession. A successful vote means we strengthen our independent conduct and disciplinary

framework and extend its ability to address events involving firms, as well as deliver procedural and efficiency improvements.

The proposed amendments to the CA ANZ By-Laws and the NZICA Rules, to give effect to the recommendations arising from the Review, have been endorsed by the CA ANZ Board and the NZICA Regulatory Board and are recommended for Members' approval.

### **Background – eligibility to be elected to Regional Council and editorial amendments**

As part of our continuous improvement approach to By-Law enhancements, the Member Vote also covers proposed amendments to the By-Laws to clarify the eligibility requirements for election to Regional Councils and Overseas Regional Councils, and to make a number of corrective and editorial amendments to the By-Laws and NZICA Rules.

### **The Resolutions**

The 9 resolutions for approval to amend the CA ANZ By-Laws (Resolutions 1 to 9) and 5 resolutions to amend the NZICA Rules (Resolutions 10 to 14) are outlined in more detail below.

### **Conduct Rules**

1. **General amendments to align conduct and discipline rules in the By-Laws and NZICA Rules:** The proposed changes will replace existing Section 5 of the By-Laws and Rule 13 of the NZICA Rules with a single aligned and restructured rule set (the **Conduct Rules**) that incorporates the procedural and efficiency enhancements and additional rights for Members that were recommended by the Review, including: aligned Disclosure, Offence and Sanctions provisions, a conciliation process, express Members' rights to be legally represented at Case Conferences before the Professional Conduct Committee, discretion for the Disciplinary Tribunal to award costs in favour of a Member who is entirely successful in defending proceedings, clearer confidentiality and publication provisions, clearer interim suspension rules and Members' rights to be notified of all complaints (including dismissed complaints), which currently only applies under the NZICA Rules.

The proposed changes also build on the existing provisions that make each Member who is a Principal of a Practice Entity responsible for notifying the Professional Conduct Committee of certain conduct of that Practice Entity (**Firm Events**) and liable for a sanction. The changes propose efficiency enhancements that allow any Member who is a Principal of the relevant Practice Entity, and who is authorised to act on behalf of their fellow Principals, to submit a single notification to the Professional Conduct Committee and to represent their fellow Principals at Case Conferences and throughout the disciplinary process.

The provisions in the new Section 5 of the By-Laws and new NZICA Rule 13 that Members may want to specifically consider and vote on, such as the new provisions in Section 5 which establish jurisdiction over former Members for serious misconduct occurring during membership, are excluded from the general resolution and are subject to separate approval under separate resolutions.

2. **New General Offences for Misconduct and Conduct Unbecoming of a Member (By-Laws only):** The changes seek to align the By-Laws with the NZICA Rules by creating two new general offences of 'Professional Misconduct' and 'Conduct Unbecoming of a Member' which are general descriptors used to distinguish serious from less serious misconduct, respectively.

3. **Stronger investigation powers for the PCC (By-Laws and NZICA Rules):** The changes will give the Professional Conduct Committee power to make a request for information and documents required for an investigation about a Member from any Member and to interview complainants and others relevant to an investigation.
4. **Increased Fines for Members as Principals of Practice Entities (Firm Events), Practice Entity Members and Non-Member Practice Entities (By-Laws) and introduction of these concepts into the NZICA Rules:** The changes will increase the maximum fines that may apply to the Members (collectively) who are the Principals of a Practice Entity that has experienced a Firm Event from \$25,000 at the Professional Conduct Committee to \$100,000 and from \$50,000 at the Disciplinary Tribunal level to \$250,000, to reflect the significant reputational impact that misconduct by Practice Entities can have on our profession. For consistency, the maximum fines for Practice Entity Members and Non-Member Practice Entities are also proposed to be increased. The disciplinary bodies are required to consider the number of Members who are Principals in the Practice Entity, and the size of the Practice Entity Member and Non-Member Practice Entity, when calculating a fair and appropriate fine. The above concepts will also be introduced into the NZICA Rules.
5. **Former Member Jurisdiction (By-Laws only)** The proposed changes seek to align the By-Laws with the NZICA Rules by providing that any Member who has ceased to be a Member will remain subject to the Conduct Rules in respect of serious misconduct occurring whilst in membership.
6. **New Sanction (By-Laws only):** The changes seek to align the By-Laws with the NZICA Rules by enabling the Professional Conduct Committee to propose, and the Disciplinary Tribunal to impose, orders that the Member be required to refund fees paid by a complainant or to waive fees owed by a complainant.
7. **Extending the Board's powers to exclude a Member for failure to comply with disciplinary sanctions (By-Laws and NZICA Rules):** The Board may exclude a Member from membership for the reasons currently set out in By-Law 23. The proposed change will allow the Board to exclude a Member from membership if the Member refuses or fails, without just cause, to comply with a disciplinary sanction imposed under Section 5 of the By-Laws or Rule 13 of the NZICA Rules.
8. **Introducing optional firm membership in New Zealand:** The proposed change introduces the concept of voluntary Practice Entity Membership in New Zealand. It aligns the NZICA Rules with the By-Laws, ensuring that New Zealand Practice Entities have the same membership opportunities as their Australian counterparts.

#### **Eligibility to stand for election to and remain on Regional Council (By-Laws)**

9. **Amendments to clarify the existing provisions relating to eligibility to stand for election and to remain on Regional Council (By-Laws only):** These changes include:
  - (a) removing the reference to 'resident' in By-Law 90 to make it clear that eligibility to stand for election to a Regional Council is not conditional on being a resident in the Region but rather on being validly registered on the Regional Register in accordance with existing By-Laws 142 and 143 which make the place of business or principal place of business the key address for registration on a Regional Register, with residential address being relevant only if the Member has no place of business;
  - (b) deleting provisions that make residing in the Region a condition of an elected Councillor's right to remain on a Council; and
  - (c) inserting new provisions to give Regional Councils the right to resolve to remove a Councillor who materially fails to fulfil their duties as a Regional Councillor.

### Typographical, editorial and minor drafting changes (By-Laws and NZICA Rules)

- 10. Editorial Amendments:** It is proposed that a number of editorial, typographical and clarificatory amendments to other sections of the By-Laws and NZICA Rules be made, including deleting some provisions from the New Zealand Appendix on the basis that they are to be inserted into a new Appendix in the NZICA Rules.

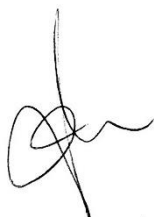
### The Board advocates voting in support of the proposed changes

Voting is voluntary. However, all full financial Members are strongly encouraged to vote so that their voices are heard and their interests as members continue to be represented.

Your Board and the NZICA Regulatory Board have endorsed the proposed changes and believe that supporting these amendments will enable CA ANZ and NZICA to more effectively and efficiently address conduct and disciplinary matters, make sensible changes to support Members' rights to stand for Regional Council election and to otherwise enhance our governance documents. Further details are set out within the Explanatory Memorandum and attached Information Sheet.

### Questions?

We invite you to submit any questions you may have to [governance@charteredaccountantsanz.com](mailto:governance@charteredaccountantsanz.com) and further details of how to submit a question are set out in the attached Information Sheet.



**John Palermo FCA, Chair**

Chartered Accountants Australia and New Zealand

On behalf of the Board of Directors



**Murray Harrington FCA, President**

Chartered Accountants Australia and New Zealand

On behalf of the Board of Directors

# Information Sheet

## What are the key dates to be aware of?

<b>Notice of Member Vote and Explanatory Memorandum available:</b>	Monday, 25 September 2023
<b>Voting opens:</b>	9am AEST/12pm NZDT Monday, 25 September 2023
<b>Voting closes:</b>	5pm AEDT/7pm NZDT Friday, 20 October 2023
<b>AGM:</b>	11am AEDT/1pm NZDT Friday 20 October 2023

## Why are we having a member vote?

We are having a member vote to restructure, clarify and harmonise the professional conduct and discipline sections of our By-Laws and NZICA Rules to bring them up to date with current best practice and to align them to the fullest extent possible, as well as to clarify rules relating to the eligibility to stand for election to Regional Councils and to make editorial and corrective amendments to the By-Laws and NZICA Rules. Changes to the By-Laws and NZICA Rules can only take place by a member vote.

## Who is eligible to vote?

All CA ANZ full financial Members are eligible to vote on proposed changes to the By-Laws. All CA ANZ Members resident in New Zealand (NZICA Members) are eligible to vote on the proposed changes to the NZICA Rules.

## How will voting be conducted electronically and by postal ballot?

We are conducting voting via an independent, external voting provider, electionz.com, who will run the voting process. All full financial Members will be sent either an email or letter (if we do not have a registered/valid email address for you) from electionz.com with instructions on how to vote, which will include a PIN and Password. If you require a hard copy ballot paper, please contact electionz.com.

Please be advised that voting closes at 5:00pm AEDT on Friday, 20 October 2023.

## Do I have to vote in favour of all resolutions?

There are options for voting. You may choose to vote on each resolution individually. You may vote in favour of some resolutions and against others, in favour of all resolutions or against all resolutions. You can also choose to vote on all resolutions at once by selecting a single button to Vote 'FOR' or to Vote 'AGAINST' all of the resolutions.

## How do I ask questions?

A detailed Explanatory Memorandum is included with this Notice which seeks to answer frequently asked questions. Members may also lodge questions in relation to the By-Law amendments or NZICA

Rule amendments prior to the AGM by emailing their questions to CA ANZ at [governance@charteredaccountantsanz.com](mailto:governance@charteredaccountantsanz.com).

Members may also ask questions during the AGM by clicking on the Q&A icon to the right of the webcast window, completing the detail and clicking send. Questions will then be addressed during the AGM and prior to the vote closing.

### **Do I have to attend the AGM to vote?**

No, you may cast your vote at any time via the electronic voting platform from 9:00am AEST/12:00pm NZDT 25 September 2023 until 5:00pm AEDT/7:00pm NZDT on Friday, 20 October 2023 or by postal ballot.

The platform will go live at 9.00am AEST on Monday, 25 September 2023.

If you wish to attend the AGM, please test your login when you receive your details, well in advance of the AGM. This will allow you to determine if you are having any issues and allow enough time to work through them before risking missing meeting details. If you are having issues, please email [support@cmsaustralasia.com](mailto:support@cmsaustralasia.com). If you cannot reach the livestream page please ensure that you have copied the livestream URL correctly into your browser. If this does not solve the issue, try using Google Chrome or Safari to view it. If you need the details resent, please contact [support@cmsaustralasia.com](mailto:support@cmsaustralasia.com).

### **When will the results be released?**

In accordance with By-Law 78 and the NZICA Rules, the results of the member vote will be examined by electionz.com, as independent scrutineer, within 7 days of the vote closing. The results will then be published to our website.

### **What majority is required for a successful vote?**

The proposed recommended amendments to the By-Laws must be approved by a majority of Members who vote. The proposed amendments to the NZICA Rules must be approved by a majority of New Zealand resident members (**NZICA Members**) who vote.

### **What happens if Members vote 'no'?**

Changes to the By-Laws and NZICA Rules cannot be made without a successful member vote.

### **When will the changes come into effect?**

If a successful member vote occurs, the proposed amendments to the By-Laws must then be submitted to the Australian Governor General to receive Royal Assent. This is a legal process and does not involve the Australian Governor General making judgements on the proposed changes. Once Royal Assent has been received, the changes will come into effect immediately.

The process of seeking Royal Assent is anticipated to take between 2 - 4 weeks, unless a Federal Election is called in the intervening period. If a Federal Election is called, the Australian Governor General transitions to caretaker mode and will not receive requests until after the Election is completed. In the event of a successful member vote by NZICA Members, the changes to the NZICA Rules will become effective on the date that the Resolutions are passed by NZICA Members and countersigned by the Chair of the CA ANZ Board.

# Resolutions

In accordance with Article 21 of the Supplemental Royal Charter of Chartered Accountants Australia and New Zealand (CA ANZ), By-Law 78 of the CA ANZ By-Laws, section 6 of the *New Zealand Institute of Chartered Accountants Act 1996* (NZICA Act) and Rule 20 of the Rules of the New Zealand Institute of Chartered Accountants (NZICA) and for all other purposes, Members entitled to vote are asked to vote on, and if thought fit, approve the following resolutions, each of which is unanimously recommended by members of the CA ANZ Board and, in the case of the proposed amendments to the NZICA Rules, also unanimously recommended by the NZICA Regulatory Board:

## By-Laws – For all Members

### Resolution 1 – General alignment and harmonisation of Disciplinary Framework

To consider and, if thought fit, to pass the following resolution as an ordinary resolution:

*“That approval is given to amend the By-Laws by deleting the existing Section 5 of the By-Laws and inserting the proposed new Section 5 in the By-Laws which is consistent with the proposed new Rule 13 of the NZICA Rules, as set out in the marked up extract in Schedule 1 to the accompanying Explanatory Memorandum, other than the provisions set out at By-Laws 40.6 (Former Member jurisdiction), 40.9(a)(i) and (ii)(New general offences of Misconduct and Conduct Unbecoming a Member), 40.12(b)(iii) and (viii)(Stronger investigation powers for the Professional Conduct Committee), 40.16(b)(ii)(B) and 40.21(b)(ii)(D)(Increased fines for Members as Principals of Practice Entities (Firm Events), Practice Entity Members and Non-Member Practice Entities) and 40.16(b)(viii) and 40.21(b)(i)(G) and (ii)(G)(New Sanction-Client Complaints resulting in Fee Refunds and Waivers), which are subject to Members’ approval pursuant to Resolutions 2 to 6.”*

### Resolution 2 – New General Offences of Misconduct and Conduct Unbecoming of a Member

To consider and, if thought fit, to pass the following resolution as an ordinary resolution:

*“That approval is given to include By-Laws 40.9(a)(i) and (ii) and consequential definitions and references in the manner set out in Schedule 1 to the accompanying Explanatory Memorandum in new Section 5 of the By-Laws, to provide two new general offences being ‘Misconduct’ and ‘Conduct Unbecoming of a Member’, subject to Resolution 1 being approved, and in the event that Resolution 1 is not approved, approval is given to provide for these new offences by amending existing By-Laws 39 and 40(2.1) in the manner set out in the relevant section of the accompanying Explanatory Memorandum.”*

### Resolution 3 – Stronger investigation powers for PCC

To consider and, if thought fit, to pass the following resolution as an ordinary resolution:

*“That approval is given to include By-Laws 40.12(b)(iii) and (viii) and consequential references in the manner set out in Schedule 1 to the accompanying Explanatory Memorandum in new Section 5 of the By-Laws, to give the Professional Conduct Committee the power to require any*



*Member to provide documents, things or information which may be relevant to an investigation of another Member and to clarify the Professional Conduct Committee's powers of interview and enquiry, subject to Resolution 1 being approved, and in the event that Resolution 1 is not approved, approval is given to provide for these new powers by amending existing By-Laws 39 and 40(5.2) in the manner set out in the relevant section of the accompanying Explanatory Memorandum."*

#### **Resolution 4 – Increased Fines for Members as Principals of Practice Entities (Firm Events), Practice Entity Members and Non-Member Practice Entities**

To consider and, if thought fit, to pass the following resolution as an ordinary resolution:

*"That approval is given to include By-Laws 40.16(b)(ii)(B) and 40.21(b)(ii)(D) and consequential definitions and references in the manner set out in Schedule 1 to the accompanying Explanatory Memorandum in new Section 5 of the By-Laws, to provide for increased maximum fines that may apply to the Members (collectively) who are or were the Principals of a Practice Entity in respect of the events described in existing By-Law 40(2.1)(I) (**Firm Events**) and to Practice Entity Members and Non-Member Practice Entities for their misconduct, subject to Resolution 1 being approved, and in the event that Resolution 1 is not approved, approval is given to provide for such increased maximum fines by amending By-Laws 39, 40(2.1), 40(6.1), 40(7.3) and 40(10.12) in the manner set out in relevant section of the accompanying Explanatory Memorandum."*

#### **Resolution 5 – Former Member jurisdiction**

To consider and, if thought fit, to pass the following resolution as an ordinary resolution:

*"That approval is given to include By-Law 40.6 and consequential references in the manner set out in Schedule 1 to the accompanying Explanatory Memorandum in new Section 5 of the By-Laws, to provide for the investigation and discipline of former Members in connection with serious misconduct occurring during membership, subject to Resolution 1 being passed by the required majority, and in the event that Resolution 1 is not passed, approval is given to provide for the investigation and discipline of former Members by amending existing By-Laws 39 and 40(1) in the manner set out in the relevant section of the accompanying Explanatory Memorandum."*

#### **Resolution 6 – New Sanction – Client Complaints resulting in Fee Refunds and Waivers**

To consider and, if thought fit, to pass the following resolution as an ordinary resolution:

*"That approval is given to include By-Laws 40.16(b)(viii), 40.21(b)(i)(G) and 40.21(b)(ii)(G) and consequential references in the manner set out in Schedule 1 to the accompanying Explanatory Memorandum in new Section 5 of the By-Laws, to give the Professional Conduct Committee the power to propose, and the disciplinary bodies the power to order, the waiver or refund of fees payable or paid by a complainant, subject to Resolution 1 being passed by the required majority, and in the event that Resolution 1 is not passed, approval is given to provide this sanction by amending existing By-Laws 40(7.3)(g) and 40(10.12) in the manner set out in the relevant section of the accompanying Explanatory Memorandum."*

### **Resolution 7 – Extending the Board’s exclusion powers**

To consider and, if thought fit, to pass the following resolution as an ordinary resolution:

*“That approval is given to amend By-Law 23 by inserting new paragraph (d), to give the Board power to exclude a Member who fails or refuses to comply with a sanction imposed by the Professional Conduct Committee or a disciplinary body, without just cause, under Section 5 of the By-Laws or Rule 13 of the NZICA Rules, in the manner set out in the relevant section of the accompanying Explanatory Memorandum.”*

### **Resolution 8 – Clarifying Eligibility for Election to and to remain on Regional Council or Overseas Regional Council**

To consider and, if thought fit, to pass the following resolution as an ordinary resolution:

*“That approval is given to amend By-Laws 90 and 100 and clauses 7.8 and 8.3 of the New Zealand Appendix to the By-Laws to clarify that residence is not a condition of eligibility to stand for election to, or to remain on, a Regional Council or Overseas Regional Council, or the basis for registration on a Regional Register, in the manner set out in the relevant section of the accompanying Explanatory Memorandum.”*

### **Resolution 9 – Editorial amendments**

To consider and, if thought fit, to pass the following resolution as an ordinary resolution:

*“That approval is given to amend the By-Laws by applying editorial amendments and corrections in the manner set out in the relevant section of the accompanying Explanatory Memorandum.”*

## **NZICA Rules – For New Zealand Resident Members Only**

### **Resolution 10 – General alignment and harmonisation of Disciplinary Framework**

To consider and, if thought fit, to pass the following resolution as an ordinary resolution:

*“That approval is given to amend the NZICA Rules by amending Rule 1 (Definitions) and by deleting the existing NZICA Rule 13 and inserting the proposed new NZICA Rule 13, which is substantively consistent with the proposed new Section 5 of the By-Laws, as set out in Schedule 2 to the accompanying Explanatory Memorandum, and also by including a new NZICA Rule 15 to give the NZICA Regulatory Board the power to exclude a Member who fails or refuses, without just cause, to comply with a sanction imposed by the Professional Conduct Committee or a disciplinary body under Rule 13, other than the amendments to Rule 3, and the proposed new Rules 13.12(b)(iii), (vi) and (viii), 13.16(b)(ii)(B) and 13.21(b)(ii)(E) which are subject to Members’ approval pursuant to Resolutions 11, 12 and 13.”*

### **Resolution 11 – Introducing Voluntary Practice Entity Membership**

To consider and, if thought fit, to pass the following resolution as an ordinary resolution:

*“That approval is given to amend Rule 3 of the NZICA Rules to provide for a category of voluntary Practice Entity Membership in the manner set out in Schedule 2 to the accompanying Explanatory Memorandum.”*

### **Resolution 12 – Increased Fines for Members as Principals of Practice Entities and Practice Entity Members**

To consider, and if thought fit, to pass the following resolution as an ordinary resolution:

*“That approval is given to include Rule 13.16(b)(ii)(B) and 13.21(b)(ii)(E) and consequential definitions and references in the manner set out in Schedule 2 to the accompanying Explanatory Memorandum in new NZICA Rule 13 to provide for increased maximum fines that may apply to the Members (collectively) who are or were the Principals of a Practice Entity in respect of the expanded category of events defined to be **Firm Events** and to Practice Entity Members, subject to Resolution 10 being approved, and in the event that Resolution 10 is not approved, approval is given to provide for increased maximum fines for an expanded category of events qualifying as Firm Events by amending existing NZICA Rules 13.4, 13.13, 13.15, 13.50 and 13.51 in the manner set out in relevant section of the accompanying Explanatory Memorandum.”*

### **Resolution 13 – Stronger investigation powers for PCC**

To consider and, if thought fit, to pass the following resolution as an ordinary resolution:

*“That approval is given to include in NZICA Rule 13 the proposed amendments in NZICA Rule 13.12(b)(iii), (vi) and (viii) set out in Schedule 2 to the accompanying Explanatory Memorandum to give the Professional Conduct Committee the power to require any Member to provide documents, things or information which may be relevant to an investigation of another Member and clarifying the Professional Conduct Committee’s power of interview and enquiry. In the event that Resolution 10 is not passed, approval is given to provide for these new powers by amending existing Rule 13.11 in the manner set out in the relevant section of the accompanying Explanatory Memorandum.”*

### **Resolution 14 – Editorial Amendments**

To consider, and if thought fit, to pass the following resolution as an ordinary resolution:

*“That approval is given to amend the NZICA Rules by applying editorial amendments and corrections set out in the relevant section of the accompanying Explanatory Memorandum.”*

# Explanatory Memorandum

## By-Laws

### Resolution 1 – General alignment and harmonisation of Disciplinary Framework

The proposed changes will replace existing Section 5 of the By-Laws and Rule 13 of the NZICA Rules with a single aligned and restructured rule set that incorporates the procedural and efficiency enhancements and additional rights for Members that were recommended by the Review.

Existing Section 5 of the By-Laws (the **Conduct Rules**) is proposed to be replaced with a new section, which is to be consistent with new Rule 13 of the NZICA Rules.

New Section 5, set out in Schedule 1 to this Explanatory Memorandum, is based on the existing rules but is re-ordered, clarified and updated to reflect the recommendations of the Review. The new Section 5 includes a new purpose provision, disclosure provisions (based on existing Notification Events and Disclosure Events provisions), Offences (based on the existing liability provisions) and Sanctions (based on the existing regime), and a suite of procedural enhancements summarised below.

In clarifying existing provisions and making Members' rights clearer, new Section 5 provides for the following:

- (a) Members to have the right to receive notice of all complaints made about them, including dismissed complaints.
- (b) Members to have the right to legal representation at the Professional Conduct Committee.
- (c) Members and complainants to have rights to use alternative dispute resolution including conciliation in appropriate cases.
- (d) The engagement by the PCC of an experts panel to provide advice on complaints involving complex or technical issues.
- (e) Clarification that an adverse finding about a Member by a Court, tribunal or similar bodies, including in relation to harassment, bullying, sexual harassment, discrimination and vilification, is required to be disclosed to the PCC but will not be regarded as an offence *per se* unless the Member is a party to the proceedings and the determination is binding on them.
- (f) Incorporation of the confidentiality provisions currently set out in the Regulations, and clarification that CA ANZ's and NZICA's powers to publish statements about conduct matters is subject to the decisions about publicity made by the PCC and disciplinary bodies.
- (g) Clearer interim suspension provisions, including an expedited process for cases involving Members charged with Serious Criminal Offences.
- (h) Members' rights to receive draft Reviewer reports (reviewing PCC decisions) for comment before they are finalised.
- (i) Potential costs awards in favour of Members who are entirely successful in defending proceedings at the Disciplinary Tribunal and Appeals Tribunal (which is to be re-named Appeals Council).

- (j) Streamlining the processes for notifying the PCC of Firm Events and subsequent investigations, by allowing the Members who are the Principals of the Practice Entity that is the subject of any of the events listed in the By-Laws (**Firm Events**) to have one Member submit a notification to the PCC on their behalf and to represent them in the investigation process. The changes also clarify the scope of sanctions that apply. The proposal to increase maximum fines that may apply to such Members (collectively) for Firm Events is the subject of a separate resolution for approval.
- (k) Expedited investigation and resolution processes for complaints involving misconduct that is admitted or matters that are not in dispute, to make the disciplinary process more efficient and timely.

The substantive change to the existing Offences regime is the inclusion of two new general offences (*Misconduct* and *Conduct Unbecoming of a Member*) which is the subject of Resolution 2 and the two substantive changes to the existing sanctions regime is the increase in the fines applicable for Firm Events which is the subject of Resolution 4 and a new sanction relating to fee refunds and waivers which is the subject of Resolution 6.

See Schedule 1 for an extract from the By-Laws showing the new Section 5. If Resolution 1 is passed, all the provisions in new Section 5 will be inserted into the By-Laws **other than the provisions which are the subject of Resolutions 2 to 6**, which Members are being asked to separately approve on the basis that they may materially affect Members' obligations.

### **Resolution 2 – New General Offences of *Misconduct* and *Conduct Unbecoming of a Member***

The proposed change to the existing categories of offences in the By-Laws is the inclusion of two new general offences (*Misconduct* and *Conduct Unbecoming of a Member*) which generally describe serious and less serious instances of offences listed in the By-Laws and which are defined and included in By-Law 40.9 in Schedule 1 to this Explanatory Memorandum. The change seeks to align the By-Laws with the existing NZICA Rules.

In the event that Resolution 1 is not passed, and this Resolution 2 is passed, amendments will be applied to existing Section 5 of the By-Laws, to provide for the inclusion of the two new general offences, as follows:

<b>By-Law</b>	<b>Amendment</b>	<b>Rationale</b>
39	Insert a new definition of <i>Conduct Unbecoming of a Member</i> at paragraph (ee):  <b>Conduct Unbecoming a Member</b> includes conduct which: (i) would be regarded by a reasonable and informed third party as unprofessional or unbecoming of a Member; or  (ii) involves a substantial or consistent failure to maintain the proper standard of professionalism, integrity, care, skill, competence or diligence of or in relation to the Member's professional duties and obligations.	The NZICA Rules include general offences of Misconduct and Conduct Unbecoming of a Member, which are general descriptors of serious/aggravated and less serious instances (respectively) of the specific offences listed in the NZICA Rules.  For alignment, it is proposed that these general offences be included in the By-Laws.
39	Insert a new definition of <i>Misconduct</i> at paragraph (nn):	See above.

	<p><b>Misconduct</b> includes conduct which:</p> <p>(i) would be regarded by a reasonable and informed third party as disgraceful, dishonourable or bringing discredit to the profession of accountancy;</p> <p>(ii) involves a wilful or reckless failure to maintain the proper standard of professionalism, integrity, care, skill, competence or diligence of or in relation to the Member's professional duties and obligations;</p> <p>(iii) would justify a finding that the Member is not a fit and proper person to hold Membership; or</p> <p>(iv) otherwise involves a departure from acceptable standards of behaviour for a member of the accounting profession of such a degree as to justify a finding of misconduct;</p>	
40(2.1)	<p>Insert new By-Law 40(2.1)(p) and (q):</p> <p>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:</p> <p>...</p> <p>...</p> <p>(p) has committed any act, omission or default that amounts to Misconduct; or</p> <p>(q) has committed any act, omission or default that amounts to Conduct Unbecoming of a Member.</p>	See above.

### Resolution 3 – Stronger investigation powers for PCC

The changes will give the Professional Conduct Committee clearer powers to make a request for information and documents required for an investigation about a Member from any Member and to interview complainants and others relevant to an investigation.

The proposed inclusion of By-Laws 40.12(b)(iii) and (viii) in new Section 5 and ancillary definitions and references will provide the additional investigation powers to the PCC to enable requests for information and documents to be given to any Member (not just the member subject to the investigation), and also to allow for inquiries and interviews to be conducted with complainants and generally clarify the PCC's powers to interview witnesses and make inquiries.

In the event that Resolution 1 not passed, and this Resolution 3 is passed, existing By-Laws 39 and 40(5.2) will be amended as shown below to provide for stronger PCC investigation and inquiry powers:

By-Law	Amendment	Rationale
39	Insert the definitions of <b>Firm Event</b> and <b>Notifying Principal</b> as shown in the section of the Explanatory Memorandum that relates to Resolution 4.	The definitions of Notifying Principal and Firm Event are required to ensure the references to the PCC's powers of investigation clearly apply to a Member

		who is acting as a representative
40(5.2)	<p>Amend By-Law 40(5.2) as follows:</p> <p>For the purposes of any investigation, the Professional Conduct Committee may:</p> <p>...</p> <p>(b) require any Member <del>or suspended Member</del> to whom the investigation relates to provide the Professional Conduct Committee, <del>or any person engaged or employed by the Professional Conduct Committee, within such period of time as the Professional Conduct Committee specifies in its notification,</del> any documents, things or information that are in the possession or under the control of that Member that may relate to the subject matter of the investigation <del>(including original digital records so that metadata may be assessed) within such period of time as the Professional Conduct Committee or any person engaged or employed by the Professional Conduct Committee specifies;</del></p> <p><del>(b) require any other Member to provide the Professional Conduct Committee, or any person engaged or employed by the Professional Conduct Committee, any documents, things or information that are in the possession or under the control of that Member that may relate to the subject matter of an investigation by the Professional Conduct Committee (including original digital records so that metadata may be assessed), within such period of time as the Professional Conduct Committee or any person engaged or employed by the Professional Conduct Committee, specifies in its notification;</del></p> <p>(c) require the Member <del>to whom the investigation relates,</del> and/or that Member's Practice Entity, <del>or the Notifying Principal's Practice Entity,</del> to submit, at the Member's <del>or the Notifying Principal's</del> cost, to a review or reviews on such matters and on such terms as determined by the Professional Conduct Committee, such terms to include that the results of such reviews are made available to the Professional Conduct Committee;</p> <p>...</p> <p>(e) require the Member or the Notifying Principal <del>at the Member's,</del> at their own cost, to attend an interview before the Professional Conduct Committee, <del>on at least 14 days' notice,</del> or any person engaged or employed by the Professional Conduct Committee, to</p>	<p>The changes will allow the PCC to make inquiries of Members other than those who are directly the subject of an investigation, and require those Members to disclose information, documents or things that may be relevant to a PCC investigation.</p> <p>It will also allow the PCC to interview complainants and other persons.</p> <p>The inclusion of the references to 'Notifying Principal' clarifies the PCC's investigation powers extend to Members who act on behalf of their fellow Principals in notifying the PCC of Disclosure Events and Notification Events and in the investigation of the events.</p>

	<p>answer any questions and/or discuss the complaint or any matter arising from it; <del>and</del></p> <p>(f) request the complainant (where the investigation arises from or relates to a complaint), to <del>appear</del> attend an interview before the Professional Conduct Committee or any person engaged or employed by the Professional Conduct Committee <del>(at the complainant's cost)</del>, to answer any questions and/or discuss the complaint or any matter arising from it or to attend a Case Conference; and</p> <p>(g) make enquiries of, including interview, any other persons or entities which the Professional Conduct Committee considers necessary for its investigation.</p>	
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#### **Resolution 4 – Increased Fines for Members as Principals of Practice Entities, Practice Entity Members and Non-Member Practice Entities**

By-Laws 40.16(b)(ii)(B) and 40.21(b)(ii)(D) in the proposed new Section 5 of the By-Laws and ancillary definitions and references, as set out in Schedule 1 to this Explanatory Memorandum, clarify that any fines that apply to Members who are Principals of Practice Entities in connection with Firm Events are aggregate fines for such Members collectively, not levied on each Member individually, and importantly increase the maximum fine that may be proposed by the Professional Conduct Committee from \$25,000 to \$100,000 and increase the maximum fine that may be imposed by the Disciplinary Tribunal from \$50,000 to \$250,000, to reflect the significant reputational impact that Firm Events can have on our profession.

For consistency, these increased maximum fines also apply to Practice Entity Members and Non-Member Practice Entities.

The disciplinary bodies are required to consider the number of Members who are Principals of the Practice Entity, and the size of the Practice Entity Member and Non-Member Practice Entity when calculating a fair and appropriate fine.

The increase in maximum fines is appropriate to ensure that the deterrent effect of the disciplinary rules in the By-Laws is maintained and to reflect the significant impact of Firm Events and misconduct by Practice Entity Members on the profession as a whole.

These provisions and ancillary definitions and references are to be included in the new Section 5 of the By-Laws if Resolution 1 and Resolution 4 are passed.

In the event that Resolution 4 is passed but Resolution 1 is not passed, existing By-Laws 39 and 40 will be amended as shown in the table below, to include references to Notifying Principals and Firm Events in the investigation provisions, and to reflect the increase in maximum fines.

<b>By-Law</b>	<b>Amendment</b>	<b>Rationale</b>
39	<p>Insert the following new definition:</p> <p><b>(II) Firm Event means any of the following events occurring in relation to a Practice Entity:</b></p>	<p>A definition of Firm Event, which consolidates all the events which are listed in existing By-Law 40(2.1)</p>



By-Law	Amendment	Rationale
	<p><u>(i)</u> the Practice Entity has, before any court of law in any jurisdiction in Australia or elsewhere, pleaded guilty to, or been found guilty of, a criminal offence (with or without conviction) which has not been set aside on appeal;</p> <p><u>(ii)</u> the Practice Entity has admitted to, or been found to have committed, any statutory or other offence (with or without conviction) which has not been set aside on appeal by a court of law, professional body, statutory or other regulatory authority or body, commission or inquiry in any jurisdiction in Australia or elsewhere which may not be a crime but which, in the opinion of the Professional Conduct Committee, the Disciplinary Tribunal or the Appeals Tribunal, brings or may bring discredit upon the Practice Entity, the membership as a whole or the profession of accountancy;</p> <p><u>(iii)</u> the Practice Entity has been found to have acted dishonestly in any binding determination by any body including any court of law, professional body, royal commission, statutory authority, regulatory authority, statutory body, commission or inquiry which is empowered to make such determinations and which has not been set aside on appeal;</p> <p><u>(iv)</u> the Practice Entity has been the subject of any adverse or unfavourable binding determination in relation to its professional or business conduct, competence or integrity (including in relation to direct discrimination, vilification, sexual harassment or bullying in the workplace and/or work-related) by any body including any court of law, professional body, royal commission, statutory authority, regulatory authority, statutory body, commission or inquiry which is empowered by law to make such determinations;</p> <p><u>(v)</u> the Practice Entity has agreed to, or has had imposed, any condition or restriction on any professional membership, registration or licence in the Practice Entity's name other than conditions or restrictions imposed by CA ANZ and/or NZICA; or</p> <p><u>(vi)</u> the Practice Entity suffers an Insolvency Event;</p>	<p>and which engage Members' obligations and liabilities as Principals of Practice Entities, is desirable to simplify drafting and to give effect to provisions to increase the maximum fine that may apply to Members who are Principals of a Practice Entity collectively, in respect of any such event.</p>
39	<p>Insert the following new definition:</p> <p><b>(pp) Notifying Principal</b> means a Member who is Principal of a Practice Entity and who is authorised, from time to time, by all other Members who are Principals of the Practice Entity or were Principals of the Practice Entity at the time of a Firm Event, to represent them for the purposes of the notification, investigation, resolution and determination of investigations generally and proceedings conducted under this Section 5 of the By-Laws in relation to Firm Events.</p>	<p>A new definition of <b>Notifying Principal</b>, which reflects the rights of Principals in a Practice Entity to appoint a Member/Principal to represent them, is desirable to give effect to the provisions which increase maximum fines that may apply to Members who are Principals of a Practice Entity collectively, in respect of any such event.</p>
40(2.1)	<p>Amend By-Law 40(2.1) as follows:</p> <p>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:</p>	<p>Amending the provision to simplify drafting.</p>

By-Law	Amendment	Rationale
	<p>...</p> <p>(l) is or was the Principal of a Practice Entity that has <b>suffered or experienced any Firm Event. <del>done any of the things described in paragraphs (b), (c) or (d), has had an adverse finding made against it as described in paragraph (e), entered into an undertaking of the kind described in paragraph (f), had a condition or restriction imposed on a professional registration or licence as described in paragraph (f) or suffers an Insolvency Event;</del></b></p>	
40(6.1)	<p>Amend By-Law 40(6.1) as follows:</p> <p>During an investigation, the Professional Conduct Committee may decide to:</p> <p>...</p> <p>(d) convene a Case Conference <b>and decide if <del>that</del> the Member or the Notifying Principal is required to attend or if the complainant or any other person should be invited to attend the Case Conference;</b></p> <p>(e) require the Member or the Member's Practice Entity, <b>or the Notifying Principal's Practice Entity,</b> to submit, at the Member's <b>or Notifying Principal's</b> cost, to a review or reviews on such matters and on such terms as determined by the Professional Conduct Committee, such terms to include that the results of such reviews are made available to the Professional Conduct Committee; and/or</p>	<p>The amendments clarify that a reference to a Member includes, in relation to the investigation of a Firm Event, the Notifying Principal who has agreed to represent all the Members who are Principals of the Practice Entity in the PCC investigation and proceedings.</p>
40(7.3)	<p>Amend By-Law 40(7.3) as follows:</p> <p>At <del>the</del> Case Conference the Professional Conduct Committee may, in relation to any complaint about a Member <b>or about Members who are Principals of a Practice Entity in relation to a Firm Event,</b> decide to:</p> <p>...</p> <p>(f) require the Member or the Member's Practice Entity, <b>or the Notifying Principal's Practice Entity,</b> to submit, at the Member's <b>or Notifying Principal's</b> cost, to a review or reviews on such matters and on such terms as determined by the Professional Conduct Committee, such terms to include that the results of such reviews are made available to the Professional Conduct Committee; and/or</p> <p>(g) when it considers a complaint would otherwise warrant being referred to the Disciplinary Tribunal, propose (in accordance with By-Law 40(7.4)(c)) an agreement be made (by way of deed or otherwise) with the Member <b>or, in the case of a complaint relating to a Firm Event, with the Notifying Principal (Consent Agreement)</b> which shall be entered on the Member's record, that the Member:</p> <p>...</p> <p>(iii) must pay to CA ANZ a fine of such sum as the Professional Conduct Committee determines, not to exceed:</p> <p>(A) \$25,000 <b>in the case of any complaint about an Individual Member;</b> and</p> <p>(B) \$100,000 <b>in the case of any complaint against a Notifying Principal on behalf of the Members who are or were the Principals of the relevant Practice Entity in connection with a Firm Event, or against a Practice Entity Member or a Non-Member Practice Entity.</b></p>	<p>In the event that Resolution 1 is <b>not passed</b> but Resolution 4 is passed (signifying members' approval of increased fines for Firm Events and – for consistency - for Practice Entity Members and for Non-Member Practice Entities (firms that agree to be bound by Section 5)), these changes are required to enable the Professional Conduct Committee to propose a fine above the current cap and to enable resolution of complaints about Practice Entity Members, Non-Member Practice Entities and Members in connection with Firm Events.</p>
40(10.12)	<p>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, <b>or the Notifying Principal in the case of any complaint relating to a Firm Event,</b> a reasonable opportunity of being heard on the question of sanctions, impose any one or more of the sanctions in the table below:</p>	<p>In the event that Resolution 1 is <b>not passed</b> but Resolution 4 is passed (signifying members' approval of increased fines for Firm Events and – for</p>

By-Law	Amendment					Rationale	
	No.	Sanction	Provisional Member or Individual Member (not being an Affiliate)	Affiliate	Practice Entity Member	Non-Member Practice Entity	consistency - for Practice Entity Members and for Non-Member Practice Entities (firms that agree to be bound by Section 5)), these changes are required to enable the Disciplinary Tribunal to impose a fine above the current cap.
	(f)	fine that Member an amount not exceeding \$50,000	Yes	Yes	Yes	Yes	
	(ff)	fine that Member an amount not exceeding \$250,000	Yes – for Firm Events Imposed on the Notifying Principal only as a representative of the Principals (including Affiliates) of the relevant Practice Entity.		Yes	Yes	

### Resolution 5 – Former Member Jurisdiction (By-Laws only)

By-Law 40.6 in the proposed new Section 5 of the By-Laws and ancillary definitions and references, as set out in Schedule 1 to this Explanatory Memorandum, seek to align the By-Laws with the existing NZICA Rules by providing that any Member who has ceased to be a Member will remain subject to the Conduct Rules in respect of serious misconduct occurring whilst in membership.

This provision and ancillary definitions and references are to be included in the new Section 5 if Resolution 1 and Resolution 5 are passed.

In the event that Resolution 5 is passed but Resolution 1 is not passed, the changes in the table below will be inserted into the **existing** Section 5 of the By-Laws to give effect to these provisions.

Note that if Resolution 5 is not passed, this does not affect former Member jurisdiction for NZICA members under the NZICA Rules.

By-Law	Amendment
39	<p>Insert a new definition of <b>Former Member</b> at paragraph (nn) as follows:</p> <p><b>Former Member</b> means a person or entity who was at any time previously a Member and who is not a current Member in accordance with these By-Laws, or any other person or entity who has agreed in writing to be, and to remain bound by, Section 5 of these By-Laws;</p>
40	<p>Insert a new sub-clause 40(1.4) as follows:</p> <p>(a) A Member whose membership is interim suspended or suspended under this Section 5 (the <b>Conduct Rules</b>) or any earlier version remains subject to the Conduct Rules and any applicable Regulations during the period of their interim suspension or suspension from Membership.</p> <p>(b) A Former Member remains subject to the Conduct Rules and any applicable Regulations in relation to conduct which occurred while they were a Member and any reference in these Conduct Rules to a Member includes a Former Member and suspended Member unless</p>

By-Law	Amendment
	<p>the context requires otherwise.</p> <p>(c) Where a complaint has been made against a Member, and that Member ceases to be a Member before the complaint has been finally disposed of, that complaint may continue to be considered and determined in accordance with these Conduct Rules in the same manner as a complaint concerning a Former Member, to the extent permitted by the Conduct Rules.</p> <p>(d) All actions, determinations or Sanctions that would have been available to the Professional Conduct Committee, Disciplinary Tribunal and Appeals Tribunal if the Former Member were a Member continue to apply. For the avoidance of doubt, where the Disciplinary Tribunal or Appeals Tribunal finds a Former Member has committed an offence for the purposes of these Conduct Rules it may make a finding that, had the Former Member still been a Member, it would have:</p> <p>(i) terminated that person or entity's Membership; or</p> <p>(ii) suspended that person or entity from Membership for a specified period not exceeding 5 years.</p> <p>(e) A Former Member may not apply for readmission to Membership within 5 years of any finding of the Disciplinary Tribunal or Appeals Tribunal made in accordance with By-Law 40(1.4)(d)(i).</p> <p>(f) A Former Member may not apply for readmission to Membership during the period of any suspension specified by the Disciplinary Tribunal or Appeals Tribunal for the purposes of By-Law 40(1.4)(d)(ii).</p>

### Resolution 6 – New Sanction – Client Complaints resulting in Fee Refunds and Waivers

By-Laws 40.16(b)(viii), 40.21(b)(i)(G) and 40.21(b)(ii)(G) in new Section 5 of the By-Laws as set out in Schedule 1 to this Explanatory Memorandum give the Professional Conduct Committee the power to propose, and the Disciplinary Tribunal the power to order, the waiver or refund of fees payable or paid by a complainant. This proposed change aligns to the practice to the NZICA Rules.

These provisions and ancillary definitions and references are to be included in the new Section 5 if Resolution 1 and Resolution 6 are passed.

In the event that Resolution 6 is passed but Resolution 1 is not passed, the provisions in the table below will be inserted into the existing Section 5 of the By-Laws.

By-Law	Amendment
40(7.3)(g)	<p>Insert a new paragraph 40(7.3)(g)(ix) as follows:</p> <p>(g) when it considers a complaint would otherwise warrant being referred to the Disciplinary Tribunal, propose (in accordance with By-Law 40(7.4)(c)) an agreement be made (by way of deed or otherwise) with the Member <b>or, in the case of a complaint relating to a Firm Event, with the Notifying Principal (Consent Agreement)</b> which shall be entered on the Member's record, that the Member:</p> <p>...</p>

By-Law	Amendment												
	<p>(ix) and/or the Member's Practice Entity shall, where the Member's fees, or the Member's Practice Entity's fees or billing practices have been found to breach the compliance obligations set out in By-Law 38A(a):</p> <p>(A) waive the whole or part of any fee agreed to or invoiced; or</p> <p>(B) return the whole or part of any fee already paid.</p>												
40(10.12)(l)	<p>Insert a new paragraph 40(10.12(l)) as follows:</p> <p>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:</p> <table border="1" data-bbox="367 716 1276 1590"> <thead> <tr> <th data-bbox="373 725 443 882">No.</th> <th data-bbox="450 725 724 882">Sanction</th> <th data-bbox="730 725 903 882">Provisional Member or Individual Member (not being an Affiliate)</th> <th data-bbox="909 725 1018 882">Affiliate</th> <th data-bbox="1024 725 1145 882">Practice Entity Member</th> <th data-bbox="1152 725 1276 882">Non-Member Practice Entity</th> </tr> </thead> <tbody> <tr> <td data-bbox="373 891 443 1581">(l)</td> <td data-bbox="450 891 724 1581"> <p>require the Member and/or the Member's Practice Entity, where the Member's fees or billing practices have been found to breach the compliance obligations set out in By-Law 38A(a), to:</p> <p>(a) waive the whole or part of any fee agreed to or invoiced; and/or</p> <p>(b) return the whole or part of any fee already paid.</p> </td> <td data-bbox="730 891 903 1581">Yes</td> <td data-bbox="909 891 1018 1581">Yes</td> <td data-bbox="1024 891 1145 1581">Yes</td> <td data-bbox="1152 891 1276 1581">Yes</td> </tr> </tbody> </table>	No.	Sanction	Provisional Member or Individual Member (not being an Affiliate)	Affiliate	Practice Entity Member	Non-Member Practice Entity	(l)	<p>require the Member and/or the Member's Practice Entity, where the Member's fees or billing practices have been found to breach the compliance obligations set out in By-Law 38A(a), to:</p> <p>(a) waive the whole or part of any fee agreed to or invoiced; and/or</p> <p>(b) return the whole or part of any fee already paid.</p>	Yes	Yes	Yes	Yes
No.	Sanction	Provisional Member or Individual Member (not being an Affiliate)	Affiliate	Practice Entity Member	Non-Member Practice Entity								
(l)	<p>require the Member and/or the Member's Practice Entity, where the Member's fees or billing practices have been found to breach the compliance obligations set out in By-Law 38A(a), to:</p> <p>(a) waive the whole or part of any fee agreed to or invoiced; and/or</p> <p>(b) return the whole or part of any fee already paid.</p>	Yes	Yes	Yes	Yes								

### Resolution 7 – Extending the Board's exclusion powers

The proposed amendment to By-Law 23 by inserting new paragraph (d) extends the Board's power to exclude from membership any Member who fails, without just cause, to comply with any sanction imposed by the Disciplinary Tribunal or the Appeals Council.

By-Law	Amendment
23	<p>Amend By-Law 23 as follows:</p> <p>The Board may <b>terminate the Membership of a Member, and</b> exclude a person or entity from being a Member if:</p> <p>...</p> <p>(d) <b>he, or she, or it, in the case of a Practice Entity Member, fails, without just cause, to comply with any sanction ordered pursuant to Section 5 of these By-Laws or Rule 13 of the NZICA Rules.</b></p>

### Resolution 8 – Clarifying Eligibility for Regional Council

By-Laws 90 and 100, and clauses 7.8 and 8.3 of the New Zealand Appendix to the By-Laws, are proposed to be changed to make it clear that a Member need not be a 'resident' in a Region or Overseas Region to be eligible to stand for election to Regional Council or Overseas Regional Council. The proposed change will mean that a Member is eligible to be elected as a Regional Councillor or an Overseas Regional Councillor as long as they are validly enrolled on the relevant Regional Register or Overseas Regional Register.

The proposed changes are consistent with existing By-Laws 142 and 143 which make the place of business or principal place of business the key address for registration on a Regional Register, with residential address being relevant only if the Member has no place of business.

To mitigate the risk that Councillors residing outside the region fail to attend to the normal duties of Councillors, the proposed changes to By-Law 100 and to clauses 7.8 and 8.3 of the New Zealand Appendix will enable a member of a Regional Council or Overseas Regional Council to be removed as a Councillor by a special resolution of that Council if they fail to fully discharge their duties as a Councillor without leave of the Council.

See Table for marked up changes to By-Laws 90 and 100, and to clauses 7.8 and 8.3 of the New Zealand Appendix.

By-Law	Amendment
90	<p>Amend By-Law 90(a) as follows:</p> <p>(a) No Member shall be eligible to be elected as a Regional Councillor or Overseas Regional Councillor <del>whilst:</del></p> <p>(i) <b>if he or she is in arrears in payment of any subscription, fee or other amount payable by him or her to CA ANZ; and</b></p> <p>(ii) <b>unless he or she is resident in and</b> enrolled on the Regional Register of that Region or the Overseas Regional Register of that Overseas Region under By-Laws 142 and 143.</p>
100	<p>Amend By-Law 100 to include new paragraph 100(f):</p> <p>The office of a Regional Councillor or Overseas Regional Councillor shall be vacated if he or she:</p> <p>...</p> <p>(e) <del>...;</del> <b>or</b></p> <p>(f) <b>fails to fully discharge his or her duties as a Regional Councillor or an Overseas Regional Councillor (as applicable) without the leave of that council and that council resolves by way of special resolution that his or her office be vacated.</b></p>
New Zealand	Delete existing clause 7.8(d):

By-Law	Amendment
Appendix to the By-Laws Clause 7.8	<p><del>(d) ceases to reside in the region from which he or she was elected;</del></p> <p>Amend clause 7.8 as follows:</p> <p>A Councillor shall immediately cease to hold office if he or she:</p> <p>...<del>(d) fails to fully discharge his or her duty as a Councillor without the leave of the New Zealand Council and that the New Zealand Council resolves by way of special resolution that his or her office be vacated;</del></p>
New Zealand Appendix to the By-Laws Clause 8.3	<p>Amend clause 8.3 as follows:</p> <p>For administrative purposes each member of NZICA shall be allocated to <del>4 of 4</del> <b>one of four</b> Council regions based on where that member <b>has a principal place of business or, if they have no principal place of business, then</b> where that member principally resides according to the New Zealand Register of NZICA Members. The regions are the 4 New Zealand regions comprising the Auckland region, the Wellington Region, the Central North Island Region, and the Southern Region.</p>

### Resolution 9 – Editorial Amendments

Editorial, typographical and clarificatory amendments to the By-Laws are proposed to remove redundant definitions and to correct errors and inconsistencies.

None of these proposed amendments have any substantive effect.

See Table for marked up changes to the By-Laws.

By-Law	Amendment	Rationale
2	<p>Amend By-Law 2 as follows (with existing definitions in By-Laws 2(iii) to 2(zzz) renumbered as required):</p> <p>(a) words and expressions have the same meaning as in the Supplemental Charter and references to Fellows, Chartered Accountants, Associate Chartered Accountants, Accounting Technicians, <b>Affiliates, Provisional Members, members, Overseas Members, Practice Entity Members, Regional members, public accountants</b> and meetings shall be construed as being references to Fellows, Chartered Accountants, Associate Chartered Accountants, Accounting Technicians, <b>Affiliates, Provisional Members, members, Overseas Members, Practice Entity Members, Regional members, public accountants</b> and meetings of CA ANZ;</p> <p>(l) <b>By-Laws</b> means the by-laws of CA ANZ contained in this document, <b>including the New Zealand Appendix</b>, as amended from time to time <b>including the New Zealand Appendix</b>;</p> <p>(o) <b>CA ANZ Entity</b> means CA ANZ and its subsidiaries, registered overseas branches and controlled entities in Australia, New Zealand, Hong Kong, Singapore, Malaysia and the United Kingdom and in any other jurisdictions or regions that the Board establishes or delegates the establishment <b>of</b>, a subsidiary, registered overseas branch or controlled entity;</p>	Editorial and clarification



	<p>(t) <b>Chartered Accountant</b> means a person who has been admitted to <b>Membership of CA ANZ</b> as a chartered accountant in accordance with these By-Laws;</p> <p>(aa) <b>Effective Date</b> means, in respect of the Supplemental Charter, the date on which the tenth Supplemental Charter became effective and, in respect of these By-Laws, the date on which CA ANZ received notice of approval of the By-Laws by the Governor-General of the Commonwealth of Australia; <del>the date on which the tenth supplemental Charter and these By-Laws, became effective;</del></p> <p>(bb) <b>Fellow</b> means a person who has been admitted to <b>Membership of CA ANZ</b> as a Chartered Accountant Fellow, an Associate Chartered Accountant Fellow, or an Accounting Technician Fellow as the case may be;</p> <p>(dd) <b>General Register</b> means the register of Members <del>whose Registered Address is</del> maintained by the CEO under By-Law 142;</p> <p>(ii) <b>Life Member</b> means an Individual Member who is deemed to be an Individual Member for the remainder of their life, pursuant to By-Law 20(a) unless they resign or <del>are excluded from</del> they otherwise cease to be an Individual Member<del>ship</del>;</p> <p>(pp) <b>Non-Member Practice Entity</b> means a Practice Entity which has agreed to be bound by the standards of practice and professional conduct and by the <del>discipline-regulatory or disciplinary jurisdiction</del> of CA ANZ;</p> <p>(ccc) <b>Post</b> means sending by post, facsimile transmission, email or other electronic transmission, <del>or providing by post, email or other electronic transmission means for accessing electronically,</del> and <b>Posted, Posting</b> and <b>Postal</b> have corresponding meanings;</p> <p>(iii) <b>Readmission</b> means readmission pursuant to By-Law 22;</p> <p><del>(mmnnn)</del> <b>Regional meeting</b> means a meeting of the Individual Members and Affiliate Members enrolled on a Regional Register <del>kept under these By-Laws;</del></p> <p>(ppp) <b>Register of Disciplinary Decisions</b> means the online register of decisions made by the CA ANZ or NZICA disciplinary bodies, any publicly available findings of the Professional Conduct Committee and other related data;</p> <p><del>(zzzbbb)</del> unless the context requires otherwise:</p> <p>(i) a reference to a <b>complaint</b> means a complaint or any part of a complaint referred to in <del>By-Law 40(4.1) Section 5 of these By-Laws, and</del> any matter arising from <del>its complaint or any part of a complaint or its investigation</del> any matter arising from an investigation leading to a complaint or any investigation of a complaint in accordance with <b>Section 5</b> of these By-Laws;</p>	
5	<p>Amend By-Law 5 as follows:</p> <p>If, in the opinion of the Board... Due notice of such record shall be given by the Board to Members by publication in <del>CA ANZ's journal</del> <b>CA ANZ's official publication, on CA ANZ's website</b> or otherwise as the Board may determine.</p>	Editorial



7	<p>Amend By-Law 7 as follows:</p> <p>7. Membership of CA ANZ shall consist of:</p> <p>(a) ...</p> <p>(b) ...</p> <p>(c) ...</p> <p>(d) ...</p> <p>(e) ...</p> <p>and, in each case, <b>who have agreed to be bound by the Supplemental Charter, these By-Laws and the Regulations</b> and who have not, in accordance with these By-Laws, subsequently resigned or otherwise ceased to be Members.</p>	Clarification
19	<p>Amend By-Law 19 as follows:</p> <p>19. A Member commencing or resuming practice as a public accountant or entering or re-entering employment with a Member practicing as a public accountant or with a Practice Entity shall <del>forthwith</del> notify the CEO <b>within 30 days of this occurring.</b></p>	Clarification
21	<p>Amend By-Law 21 as follows:</p> <p><b>(a)</b> 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<del>:</del></p> <p><b>(ab)</b> <del>Provided that no</del> No resignation shall take effect unless and until it has been accepted by the Board. The Board may decline to accept the resignation...</p> <p><b>(bc)</b> <del>Provided further that any</del> Any Member whose notice of resignation was not received by the CEO prior to 30 June in any year shall remain liable for any subscription, fee or other amount payable by him or her to CA ANZ in respect of the year ending the following 30 June, save that, in any case, the Board may in its absolute discretion remit the whole or any part of such subscription, fee or other amount.</p> <p><b>(ed)</b> ...</p> <p><b>(e)</b> <b>Nothing in this By-Law 21 affects or limits the application of Section 5 of these By-Laws in general.</b></p>	Editorial and clarification
22	<p>Amend By-Law 22 as follows:</p> <p>The Board may, subject to such terms and conditions as it may think fit to impose:</p> <p>(a) readmit to Membership of CA ANZ any person who has resigned or ceased for any reason to be a Member; and</p> <p>(b) terminate the suspension of any Member whose Membership of CA ANZ was voluntarily suspended<del>;</del>, <b>in each case subject to Section 5 of these By-Laws.</b></p>	Clarification
22B	<p>Amend By-law 22B as follows:</p> <p>If a Member's name was removed from the General Register, Regional Register and/or Overseas Regional Register because such removal was required under Section 5 of these By-Laws, that <del>F</del>former Member must, if required by <del>By-Law 40(13-13)</del> <b>Section 5 of these By-Laws</b>, submit an application to the Disciplinary Tribunal in accordance with <b>Section 5 of these By-Laws</b><del>that By-Law</del>.</p>	Editorial and clarification

33	Amend By-Law 33 as follows: (a) ...  (b) Unless exempted pursuant to the Regulations, every Individual Member shall, upon ceasing to practise as a public accountant, <del>forthwith</del> send to the CEO <b>within 30 days</b> , a notification to this effect.	Clarification
34	Amend By-Law 34 as follows:  <b>(f) Whenever any Member ceases offering public accountancy services as defined by the Board:</b>  <b>(i) the Member must advise CA ANZ that the Member has ceased doing so within 30 days of the date of cessation; and</b>  <b>(ii) CA ANZ may declare the Member's certificate of public practice to have lapsed and may require that the physical certificate issued to the Member be returned to CA ANZ.</b>	Clarification
79(f)	Amend By-Law 79(f) as follows:  Practice <del>e</del> Entity Members shall not be entitled to a vote.	Fix typographical error
144	Amend By-Law 144 as follows:  Every Member of CA ANZ shall <del>forthwith</del> notify the CEO <b>as soon as reasonably practicable</b> of any change required to be made in his or her Registered Address for the purpose of the preceding By-Law.	Aligns with existing By-Law 30
149	Amend By-Law 149(a) as follows:  (a) Any notice ... Where a notice, document or voting paper is sent by post, <b>or the means of accessing a notice and document or voting paper electronically is sent by post</b> , service shall be deemed to be effected by properly addressing and posting an envelope or other package containing the notice, document or voting paper, and to have been made on the day after the date of its posting... Where a notice, document or voting paper is sent by email, <b>or the means of accessing a notice, document or voting paper is provided by email</b> , service shall be deemed to be effected by properly addressing and transmitting the email and to have been made on the day of its transmission (provided the sender has not received an email transmission report which indicates that the email was not transmitted to the email address of the addressee).	Clarification
151	Amend By-Law 151 as follows:  All moneys received on account of CA ANZ by the Board shall be <b>promptly</b> paid <del>forthwith</del> into the bank appointed by the Board to the credit of the account of CA ANZ.	Editorial
New Zealand Appendix to the By-Laws Clause 3	Amend clause 3 of the New Zealand Appendix to the By-Laws as follows:  3.1 The requirements for membership of NZICA, and for use of the designations "Chartered Accountant", "Associate Chartered Accountant" and "Accounting Technician" by NZICA Members, <del>contemplated by NZICA Rules 3.2(c) and 3.7</del> are set out in <del>clauses 3.2 to 3.7</del> Appendix VII of the NZICA Rules.  Delete clauses 3.2 – 3.7 and insert new clause 3.2 as follows: 3.2 <b>The requirements for admission to membership of NZICA either as a "Chartered Accountant", "Associate Chartered Accountant" or "Accounting Technician" shall be consistent with the requirements prescribed by the Board in 'CR1 – Admissions, Readmissions and Membership and Notification Obligations'.</b>	The CA ANZ Regulations prescribe education and experience standards for admission. For consistency, the New Zealand equivalent provisions are to be removed from New Zealand Appendix to the By-Laws and moved to Appendix VII of the NZICA Rules.

## NZICA Rules

### Resolution 10 – General alignment and harmonisation of Disciplinary Framework

Following the Review, Rule 13 of the NZICA Rules (the **Conduct Rules**) is proposed to be replaced with a new section, which is to be consistent with Section 5 of the By-Laws. This includes new definitions to be included in Rule 1 for terms referred to in Rule 13 as set out in Schedule 2.

New Rule 13, set out in Schedule 2 to this Explanatory Memorandum, is based on the existing rules but is re-ordered, clarified and updated to reflect the recommendations of the Review. The new Rule 13 includes clarified disclosure provisions (based on existing Disclosure Events provisions), Offences (based on the existing liability provisions) and Sanctions (based on the existing regime), and a suite of procedural enhancements summarized below. The one substantive change to the existing Sanctions regime is the increase in the fines applicable for Firm Events which is the subject of Resolution 12.

In clarifying existing provisions and making Members rights clearer, new NZICA Rule 13 will provide for the following:

- (a) Members to have the right to legal representation at the Professional Conduct Committee.
- (b) Members and complainants to have rights to use alternative dispute resolution including conciliation in appropriate cases.
- (c) The engagement by the PCC of an experts panel to provide advice on complaints involving complex or technical issues.
- (d) Clarification that an adverse finding about a Member by a Court, tribunal or similar bodies, including in relation to harassment, bullying, sexual harassment, discrimination and vilification, is required to be disclosed to the PCC but will not be regarded as an offence per se unless the Member is a party to the proceedings and the determination is binding on them.
- (e) Incorporation of the confidentiality provisions currently set out in the CA ANZ Regulations, and clarification that CA ANZ's and NZICA's powers to publish statements about conduct matters is subject to the decisions about publicity made by the PCC and disciplinary bodies.
- (f) Clearer interim suspension provisions, including an expedited process for cases involving Members charged with Serious Criminal Offences.
- (g) Potential costs awards in favour of Members who are entirely successful in defending proceedings at the Disciplinary Tribunal and Appeals Council.
- (h) Streamlining the processes for notifying the PCC of Firm Events and subsequent investigations, by allowing the Members who are the Principals of the Practice Entity that is the subject of any of the events listed in the definition of 'Firm Events' to have one Member submit a notification to the PCC on their behalf and to represent them in the investigation process. The changes also clarify the scope of sanctions that apply. The proposal to expand the category of events that qualify as a Firm Event and to increase maximum fines that may apply to Members (collectively) who are the Principals of the Practice Entity that experiences a Firm Event (and Practice Entity Members subject to approval of Resolution 11) is subject of separate Resolution 12 for approval.
- (i) Expedited investigation and resolution processes for complaints involving misconduct that is admitted or matters that are not in dispute, to make the disciplinary process more efficient and timely.
- (j) Harmonised offences between the NZICA Rules and By-Laws.

Separately, the proposed change to NZICA Rule 15 mirrors the amendment to By-Law 23 and gives the NZICA Regulatory Board authority to exclude a Member who fails or refuses, without just cause, to comply with a sanction ordered under Rule 13.

See Schedule 2 for an extract showing deleted and new NZICA Rule 13 and new NZICA Rule 15. If Resolution 10 is passed, all the provisions in new NZICA Rule 13 and new NZICA Rule 15 will be inserted into the NZICA Rules other than the provisions which are the subject of Resolutions 11, 12 and 13 which Members are being asked to separately approve.

### **Resolution 11 – Introducing Voluntary Practice Entity Membership**

The proposed change introduces the concept of voluntary Practice Entity Membership in New Zealand. It aligns the NZICA Rules with the By-Laws, ensuring that New Zealand Practice Entities have the same membership opportunities as their Australian counterparts.

The new category of membership is proposed to be introduced to Rule 3 as set out the marked up amendments to Rule 3 set out in Schedule 2 to this Explanatory Memorandum. There are a number of consequential amendments proposed throughout the NZICA Rules to give effect to the proposed new membership category including in respect of the regulation and discipline.

In the event that Resolution 11 is not passed, Rule 3 will not be amended and any references to Practice Entity Member will be excluded from the NZICA Rules, including any rules amended as a result of the approval of Resolutions 10, 12, 13 or 14.

### **Resolution 12 – Increased Fines for Members as Principals of Practice Entities and Practice Entity Members**

The proposed inclusion of Rules 13.16(b)(ii)(B) and 13.21(b)(ii)(E) and ancillary definitions and references in the manner set out in Schedule 2 in Rule 1.1 and Rule 13 of the NZICA Rules will expand the range of events that are required to be disclosed to the Professional Conduct Committee by Members who are Principals of Practice Entities, beyond the existing categories of Practice Entity insolvency and criminal convictions applicable to the Practice Entity, to include the additional events that are currently covered by the By-Laws and by the definition of *Firm Event*, and will increase the maximum fines that may be proposed by the Professional Conduct Committee or imposed by the Disciplinary Tribunal on Members who are or were the Principals of the relevant Practice Entity in respect of such Firm Events. The changes will, in the event that Resolution 11 is approved (providing a category of Practice Entity Membership), also provide for a consistent maximum fine for that category of Member.

In the event that Resolutions 10, 11 and 12 are passed, then the maximum fine for the Members as Principals in connection with Firm Events, and for Practice Entity Members, will be \$100,000 at the Professional Conduct Committee and up to \$250,000 at the Disciplinary Tribunal, to reflect the significant reputational impact that offences by Practice Entities can have on our profession.

The changes will require the PCC and disciplinary bodies to consider the number of Members who are Principals of the Practice Entity and the size of the Practice Entity Member when calculating a fair and appropriate fine.

If Resolution 10 is not passed, but Resolution 12 is passed, signifying Members' approval for an expanded range of 'Firm Events' and increased fines for such events, then amendments to give effect will be made to existing NZICA Rules 1.1 and 13 as set out in the Table below.

If Resolutions 10 and 11 are not passed, but Resolution 12 is passed, then amendments to give effect to Resolution 12 will be made to the existing NZICA Rules as set out in the Table below but will exclude references to Practice Entity Members.

NZICA Rule	Amendment	Rationale
Interpretation Definitions 1.1	<p>Insert new definitions for <b>Firm Event</b> and <b>Notifying Principal</b> as shown in Schedule 2.</p> <p>Insert the definition of <b>Practice Entity</b> from the By-Laws into Rule 1.1.</p>	<p>A definition of <b>Firm Event</b>, which expands (for consistency with the By-Laws) and consolidates all the events which are intended to engage Members' obligations and liabilities as Principals of Practice Entities, is desirable to simplify drafting and to give effect to provisions to increase the maximum fine that may apply to Members who are Principals of a Practice Entity collectively, in respect of any such event.</p> <p>A new definition of <b>Notifying Principal</b>, which reflects the rights of some or all Principals in a Practice Entity to appoint a Member to represent them, is desirable to give effect to the provisions which increase maximum fines that may apply to Members who are Principals of a Practice Entity collectively, in respect of any such event.</p> <p>The term <b>Practice Entity</b> is used in both the definitions above but is not currently defined in the NZICA Rules. Inclusion of the definition is required to resolve the definitions of Notifying Principal and Firm Event.</p>
13.4	<p>Amend NZICA Rule 13.4(a) and (b) as follows:</p> <p>13.4 A Disclosure Event occurs in relation to a Member when:</p> <p>(a) that Member <del>or a Practice Entity of which that Member is a Principal</del>, has been convicted of an offence punishable by imprisonment or a fine under any enactment or other legislation in New Zealand or any other territory or jurisdiction;</p> <p>(b) that Member <del>or a Practice Entity of which that Member is a Principal</del> enters a state of insolvency, including...</p> <p>Insert new Rule 13.4(bb) as follows:</p> <p><del>(bb) the Practice Entity of which that Member is a Principal suffers or experiences a Firm Event;</del></p>	Amended to simplify drafting.
13.13	<p>Amend Rule 13.13 as follows:</p> <p>During an investigation the Professional Conduct Committee may make a decision and adopt 1 or more of the following courses of action:</p> <p>(d) <del>set the matter down for convene</del> a case conference, and decide <del>if whether the Professional</del></p>	The amendments clarify that a reference to a Member includes, in relation to the investigation of a Firm Event, the Notifying Principal who has agreed to represent all the Members who are Principals of the Practice Entity in the PCC investigation and proceedings.

NZICA Rule	Amendment	Rationale
	<p><del>Conduct Committee requires that the Member or the Notifying Principal is required to attend or if the complainant or any other person should be invited to attend the case conference;</del></p> <p>Insert a new 13.13(dd) as follows:</p> <p>(dd) require the Member or the Member's Practice Entity, or the Notifying Principal's Practice Entity, to submit, at the Member's or Notifying Principal's cost, to a review or reviews on such matters and on such terms as determined by the Professional Conduct Committee, such terms to include that the results of such reviews are made available to the Professional Conduct Committee;</p>	<p>The inclusion of new (dd) is desirable to align with the By-Laws.</p>
Amend Rule 13.15	<p>Amend Rule 13.15(d)(vi) as follows:</p> <p>Following consideration of a complaint at a case conference, the Professional Conduct Committee may make a decision and adopt 1 or more of the following courses of action:</p> <p>...</p> <p>d) subject to Rule 13.16, when a complaint would otherwise warrant being referred to the Disciplinary Tribunal, make (with the written agreement of the Member or Notifying Principal given in accordance with Rule 13.17) 1 or more of the following orders which shall be entered on the Member's or Notifying Principal's record:</p> <p>...</p> <p>(vi) the Member shall pay to NZICA a fine of such sum as the Professional Conduct Committee determines, not exceeding:</p> <p>(A) \$25,000 in the case of any complaint about an individual Member; and</p> <p>(B) \$100,000 in the case of any complaint against a Notifying Principal on behalf of the Members who are or were the Principals of the relevant Practice Entity in connection with a Firm Event or against a Practice Entity Member.</p>	<p>In the event that Resolution 10 is <b>not passed</b> but Resolution 12 is passed (signifying members' approval of increased fines for Firm Events) and – subject to approval of Resolution 11 for Practice Entity Members for consistency, these changes are required to enable the Professional Conduct Committee to propose a fine above the current cap and to enable resolution of complaints about such Members in connection with Firm Events.</p>
Rule 13.50 (e)	<p>Amend Rule 13.50(e) and add new (ee) as follows:</p> <p>The Disciplinary Tribunal may, after conducting a hearing, exercise any 1 or more of the disciplinary powers set out in Rule 13.51 if the Disciplinary Tribunal finds:</p> <p>...</p> <p>(e) the Member <del>or a practice entity of which the Member is a Principal</del> has entered a state of insolvency as defined in <del>Rule paragraph</del> 13.4(b), within three years of being referred to the Disciplinary Tribunal;</p> <p>(ee) the Member is a Principal of a Practice Entity that has suffered or experienced a Firm Event;</p>	<p>Amending the provision to extend the liability from insolvency to the broader category of offences caught by the definition of Firm Event.</p>
Amend Rule 13.51(c)	<p>13.51 Where the Disciplinary Tribunal finds a Member guilty of a charge it may exercise 1 or more of the following powers:</p> <p>...</p> <p>(c) impose a fine on the Member not exceeding \$50,000 <del>or, in the case of a Member who is a Notifying Principal in respect of a Firm Event or a Practice Entity Member, impose a fine not exceeding \$250,000;</del></p>	<p>In the event that Resolution 10 is <b>not passed</b> but Resolution 12 is passed (signifying members' approval of increased fines for Firm Events) and – subject to approval of Resolution 11 for Practice Entity Members for consistency, these changes are required to enable the Disciplinary Tribunal to impose a fine above the current cap and to enable resolution of complaints</p>

NZICA Rule	Amendment	Rationale
		about such Members in connection with Firm Events.

### Resolution 13 – Stronger investigation powers for PCC

The changes will give the Professional Conduct Committee power to make a request for information and documents required for an investigation about a Member from any Member and to interview complainants and others relevant to an investigation.

The proposed amendments to NZICA Rule 13.12 clarify the existing investigative powers of the Professional Conduct Committee and harmonise the drafting as between the NZICA Rules and the By-Laws. Three new powers have been introduced to strengthen the PCC's investigative powers including NZICA Rule 13.12(b)(iii), (vi) and (viii). The amendments also enable the PCC to engage a panel of experts through amendments to Rule 13.12(b)(i) to assist in the investigation of technical complaints.

In the event that Resolutions 10 and 11 are not passed, and this Resolution 13 is passed, approval is given to provide for the stronger investigation powers by amending existing NZICA Rule 13.11 as set out in the following Table but will exclude references pertaining to Notifying Principals of Practice Entities (and retain existing references to Practice Entities for example, in existing NZICA Rule 13.11(c)).

NZICA Rule	Amendment	Rationale
1.1	<p>Insert the definitions of <b>Firm Event</b> and <b>Notifying Principal</b> as shown in Schedule 2.</p> <p>Insert the definition of <b>Practice Entity</b> in the By-Laws into Rule 1.1 of the NZICA Rules.</p>	<p>The definitions of Notifying Principal and Firm Event are required to ensure the references to the PCC's powers of investigation clearly apply to a Member who is acting as a representative.</p> <p>The term <b>Practice Entity</b> is used in both the definitions above but is not currently defined in the NZICA Rules. Inclusion of the definition is required to resolve the definitions of Notifying Principal and Firm Event.</p>
13.11	<p>Amend NZICA Rule 13.11 as follows:</p> <p>The Professional Conduct Committee may investigate any matter that it considers may result in disciplinary action being taken in respect of a Member or a Former Member under the Rules. For the purposes of any investigation, the Professional Conduct Committee may:</p> <p>...</p>	<p>The changes will allow the PCC to make inquiries of Members other than those who are directly the subject of an investigation, and require those</p>



	<p>(b) require any Member, <del>Notifying Principal, or</del> Former Member or suspended Member to whom the investigation relates to respond to the complaint and to provide the Professional Conduct Committee, or any person <del>so</del> engaged or employed <del>within such period of time as specified</del> by the Professional Conduct Committee, any documents, things or information that are in the possession or under the control of that Member <del>or Former Member</del> and that may relate to the subject matter of the investigation (including original digital records so that metadata may be assessed) within such period of time as the Professional Conduct Committee or any person engaged or employed by the Professional Conduct Committee, specifies in its notification; and</p> <p>(bb) require any other Member to provide the Professional Conduct Committee, or any person engaged or employed by the Professional Conduct Committee, any documents, things or information that are in the possession or under the control of that Member that may relate to the subject matter of an investigation by the Professional Conduct Committee (including original digital records so that metadata may be assessed), within such period of time as the Professional Conduct Committee or any person engaged or employed by the Professional Conduct Committee, specifies in its notification; and</p> <p>(c) require the Member to whom the investigation relates, and/or <del>the</del> that Member's Practice Entity, or the Notifying Principal's Practice Entity, to submit, at the Member's or the Notifying Principal's cost, to a review or reviews on such matters and on such terms as determined by the Professional Conduct Committee, such terms to include that the results of such reviews are made available to the Professional Conduct Committee; and</p> <p>(d) make and retain copies of any documents that are provided to the Professional Conduct Committee, including those containing personal information for the purposes of the <i>Privacy Act 1988 (Cth)</i> or <i>Privacy Act 1993/2020 (NZ)</i> (as applicable); and</p> <p>(e) require the Member or the Notifying Principal, <del>at the Member's</del> their own cost, to attend an interview before the Professional Conduct Committee <del>on at least 14 days' notice to confer regarding the complaint</del> or any person engaged or employed by the Professional Conduct Committee, to answer any questions and/or discuss the complaint or any matter arising from it; and</p> <p>(f) request the complainant (where the investigation arises from or relates to a complaint) <del>at the complainant's own cost</del> to attend an interview before the Professional Conduct Committee <del>on at least 14 days' notice to confer regarding the complaint</del>, or any person engaged or employed by the Professional Conduct Committee, to answer any questions and/or discuss the complaint or any matter arising from it or to attend a case conference; and</p> <p>(g) make enquiries of, including interview, any other persons or entities which the Professional Conduct Committee considers necessary for its investigation.</p>	<p>Members to disclose information, documents or things that may be relevant to a PCC investigation.</p> <p>It will also allow the PCC to interview complainants and other persons.</p> <p>The inclusion of the references to 'Notifying Principal' clarifies the PCC's investigation powers extend to Members who act on behalf of their fellow Principals in notifying the PCC of Disclosure Events (Firm Events) in the investigation of such events.</p>
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## Resolution 14 – Editorial Amendments

A number of editorial, typographical and clarificatory amendments to the NZICA Rules are proposed, to remove redundant definitions and transitional provisions and to correct errors and inconsistencies.

None of these proposed amendments have any substantive effect.

See Table for marked up changes to the NZICA Rules.

NZICA Rule	Amendment	Rationale
1.1	<p>Amend Rule 1.1 by inserting the new definitions in alphabetical order and amending existing definitions as follows:</p> <p><b>Advisory Group</b> means those advisory groups specified in Appendix I.</p> <p><b>CA ANZ Regulations</b> means the regulations of CA ANZ as defined in the CA ANZ By-Laws and as amended or replaced from time to time.</p> <p><b>CPD</b> means Continuing Professional Development.</p> <p><b>Insolvency Practitioners Act</b> means the <i>Insolvency Practitioners Regulation Act 2019</i> as amended or substituted from time to time and (unless the context requires otherwise) includes all regulations and other notices, standards, conditions, or requirements promulgated under that Act.</p> <p><b>NZICA</b> means the New Zealand Institute of Chartered Accountants constituted under the Act.</p> <p><b>Practice Review Advisory Group</b> has the meaning given to it in Rule 12.4(f).</p> <p><b>Prescribed Sum</b> means:</p> <p>(i) any costs and expenses which a person is ordered to pay by the Professional Conduct Committee, the Disciplinary Tribunal or the Appeals Council or the Reviewer of Complaints; and</p> <p>(ii) any sum which a person is ordered to pay by the Professional Conduct Committee, the Disciplinary Tribunal or the Appeals Council.</p> <p><b>Statutory Body</b> means those statutory bodies specified in Appendix I.</p> <p><b>Statutory Oversight Bodies in New Zealand</b> includes the Financial Markets Authority, the Registrar of Companies and any other statutory agency who has oversight of NZICA's functions as an accredited body or otherwise under any enactment including but not limited to the Auditor Regulation Act and the Insolvency Practitioners Act.</p>	Editorial and clarification
Rule 1.4	Insert the following new Rule 1.4:	Clarification

NZICA Rule	Amendment	Rationale
	<p>1.4 All references to dollars and expressions preceded by the symbol "\$" shall be to New Zealand currency and all references to cost, value and price shall be to cost, value and price expressed in New Zealand currency.</p>	
Rule 7.3	<p>Amend Rule 7.3 as follows:</p> <p>Without derogating from the generality of Rule 7.2, the Regulatory Board shall:</p> <p>(a) ...</p> <p>(b) ...</p> <p><del>(c)</del>(i) oversee CPD monitoring, practice review functions and monitor Member compliance with the obligations in Rule 4.1;</p> <p><del>(d)</del> ...</p> <p><del>(e)</del> ...</p> <p>(i) ...</p> <p>(ii) ...</p>	Editorial
Rule 10 - CERTIFICATE OF PUBLIC PRACTICE AND AUDITOR LICENCES	<p>Amend Rule 10.2 as follows:</p> <p>10.2 Subject to Rules 10.3, 10.4, 10.5, 10.6, 10.7 and 10.12, only Members who hold the designation "Chartered Accountant" and a Certificate of Public Practice are entitled to offer accounting services to the public.</p> <p>Amend Rule 10.4 as follows:</p> <p>10.4 Subject to Rule 10.6, Provisional Members are not entitled to offer accounting services to the public.</p> <p>Amend Rule 10.5 as follows:</p> <p>10.5 Assurance engagements (including "related services" as defined in the Financial Reporting Act) shall only be conducted:</p> <p>(a)...</p> <p>(b)...</p> <p>(c)...</p> <p>Amend Rule 10.6 as follows:</p> <p>10.6 Notwithstanding Rules 10.2 and 10.4, but subject to Rules 10.5 and 10.7, NZICA may approve any Member to provide certain services to the public upon such terms and conditions as NZICA considers appropriate.</p> <p>Amend Rule 10.8 as follows:</p> <p>10.8 Subject to these Rules ..., a chartered accountant in <del>private-public</del> practice or a</p>	Editorial and clarification

NZICA Rule	Amendment	Rationale
	chartered accountant who holds a Certificate of Public Practice.	
Rule 11.2	<p>Amend Rule 11.2 as follows:</p> <p>11.2 NZICA shall permit a holder of a <del>Certificate of Public Practice Members</del> to practise in a <del>Practice Entity</del> with non-Members of NZICA provided they meet the requirements set out in Appendix IV.</p>	Clarification
12 PRACTICE REVIEWS AND INVESTIGATIONS	<p>Amend Rule 12.2 as follows:</p> <p>12.2 NZICA may review the conduct of a licensed auditor or registered audit firm <del>or licensed insolvency practitioner</del>, in response to a request under any legislation as a practice review under Rule 12 rather than as a complaint under Rule 13.</p> <p>Amend Rule 12.4 as follows:</p> <p>12.4 NZICA may:</p> <p>(a) require the Member <del>or the Principal of any Practice Entity Member</del> to respond to any request for information and/or to produce any document or other material in the Member's <del>or Practice Entity's</del> possession or power which may be required for the purposes of determining the timing and scope of a review or for a review;</p> <p>(b) interview any Member <del>or any Principal of any Practice Entity Member</del> and examine any document or other material or undertake any other form of enquiry which may be required for the purposes of determining the timing and scope of a review or for a review;</p> <p>(c) ...</p> <p>(d) ...</p> <p>(e) ...</p> <p>(f) ...</p> <p>Amend Rule 12.5 as follows:</p> <p>12.5 Where required by NZICA under Rule 12.4, a Member <del>or the Principal of a Practice Entity Member</del> shall produce documents or other material in the Member's possession or power <del>(or in the case of a Principal of a Practice Entity Member, in the possession or power of the Practice Entity)</del> and shall co-operate in any interview. A Member <del>or Principal of a Practice Entity Member</del> shall respond to any request for information or response within the timeframe specified by NZICA.</p>	Editorial and clarification

NZICA Rule	Amendment	Rationale
	<p>Amend Rule 12.6 as follows:</p> <p>12.6 On completion of a review, NZICA may do 1 or more of the following:</p> <p>(a) ...</p> <p>(b) determine ... as an accredited body under the Auditor Regulation Act, <b>Insolvency Practitioners Act</b> or any other enactment;</p> <p>(c) following consultation ... has breached the Act, these Rules, the Code of Ethics, the Auditor Regulation Act, <b>Insolvency Practitioners Act</b> or any other enactment; and/or</p> <p>(d) ...</p>	
<p>14 FEES AND OTHER SUMS PAYABLE BY MEMBERS</p>	<p>Amend Rule 14 by inserting new Rule 14.2 as follows (and renumbering subsequent existing Rules):</p> <p>14.2 <b>Every Member shall pay any sum prescribed by the Regulatory Board or CA ANZ (to NZICA or CA ANZ as directed by the Regulatory Board from time to time) including sums payable as:</b></p> <p>(a) admission fees;</p> <p>(b) Membership fees;</p> <p>(c) Certificate of Public Practice fees;</p> <p>(d) practice review fees;</p> <p>(e) approved company fees; and</p> <p>(f) a fee where the amounts at paragraphs (a) to (e) of this Rule 14.2 become overdue (in addition to any interest that may become payable on such amounts).</p> <p>Amend renumbered Rule 14.3 as follows:</p> <p>14.3<del>2</del> <b>Every person or entity, whether or not remaining a Member of NZICA, shall pay to NZICA any and all the following as prescribed Ssums as are owed by that person or entity to NZICA.":-</b></p> <p><del>(a) any costs and expenses which the person is ordered to pay by the Professional Conduct Committee, the Disciplinary Tribunal or the Appeals Council or the Reviewer of Complaints; and</del></p> <p><del>(b) any sum which the person is ordered to pay by the Professional Conduct Committee, the Disciplinary Tribunal or the Appeals Council.</del></p> <p>Amend renumbered Rule 14.5 as follows:</p>	<p>Editorial and clarification</p>

NZICA Rule	Amendment	Rationale
	<p>14.54 The rate of any discount or penalty interest under Rule 14.43 shall be determined by the Regulatory Board, acting reasonably, and notified with the invoice or request for payment.</p> <p>Amend renumbered Rule 14.6 as follows:</p> <p>14.65 Where a person's name has been removed from the Register of Members for non-payment of a Prescribed Sum the person may apply to CA ANZNZICA for readmission as a Member.</p>	
16 MEMBER'S NOTIFICATION AND SERVICE OF NOTICES	<p>Rule 16.1 is amended as follows:</p> <p>16.1 Every Member shall notify NZICA and/or CA ANZ as soon as practicable:</p> <p>(a) ...;</p> <p>(b) ...;</p> <p>(c) ...; and</p> <p>within 7 days:</p> <p>(d) ...</p>	Editorial. In the event that Resolution 10 is <b>not passed</b> but this Resolution 14 is passed, this amendment will apply to existing Rule 15 MEMBER'S NOTIFICATION AND SERVICE OF NOTICES
17 DECLARATIONS	<p>Rule 17 is amended to:</p> <p><b>17 DECLARATIONS &amp; NOTIFICATIONS</b></p> <p>17.1 ...</p> <p>17.2 ...</p> <p>17.3 ...</p>	Editorial. In the event that Resolution 10 is <b>not passed</b> but this Resolution 14 is passed, this amendment will apply to existing Rule 16 DECLARATIONS
20 INDEMNITY OF OFFICERS	<p>Rule 20.1 is amended as follows:</p> <p>Every member of the Council, the Regulatory Board and every Permanent Body established under these Rules, any executive officer and every other officer of NZICA (including current and former employees and persons appointed to any role by the Regulatory Board) shall be indemnified by NZICA from all losses and expenses incurred by them in connection with the discharge of their duties, except in the case of their wilful default. This indemnity is in addition to any indemnity given to such persons by CA ANZ under the CA ANZ By-Laws.</p>	Clarification and editorial. In the event that Resolution 10 is <b>not passed</b> but this Resolution 14 is passed, this amendment will apply to existing Rule 19 INDEMNITY OF OFFICERS
Appendix II - MEMBERSHIP, APPOINTMENT TO MEMBERSHIP, PROCEEDINGS, DELEGATIONS AND REMUNERATION OF THE REGULATORY BOARD (RULE 7)	<p>Clause 6 of Appendix II is amended as follows:</p> <p>Every Regulatory Board member (other than an ex-officio member) has 1 vote. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chair shall not have a second or casting vote and the resolution submitted to the meeting shall be deemed to have lapsed.</p>	Clarification

# **Schedule 1: Section 5 of By-Laws**



## Schedule 1 – Section 5 - ~~Professional Conduct~~ Rules

39. In this Section 5 unless the context requires otherwise:

- ~~(a)~~ **Application Fee** means the application fee payable under ~~By-Law 40(8.2)~~ in the amount prescribed in the Regulations from time to time;
- ~~(b)~~(a) **Bankruptcy Act** means the *Bankruptcy Act 1966* (Cth);
- ~~(c)~~(b) **Case Conference** means a meeting of the Professional Conduct Committee in respect of a complaint which has been convened and notified to a Member in accordance with ~~By-Law 40(7.1)~~By-Law 40.14;
- ~~(d)~~(c) **Caution** means a ~~type of~~ private sanction relating to specified conduct of a Member that may be imposed by the Professional Conduct Committee ~~on a Member~~ and which is not to be disclosed by or on behalf of CA ANZ other than to the Professional Conduct Committee, a Reviewer of Complaints, Disciplinary Tribunal, Appeals ~~Tribunal Council~~ or Professional Conduct Oversight Committee, pursuant to the decisions of these disciplinary bodies or otherwise in accordance with Section 5 of these By-Laws;
- ~~(e)~~(d) **Charter** has the meaning given to it in ~~By-Law 40(1.2)~~By Law 40.3;
- (e) **Conduct Unbecoming a Member** includes conduct which:
- (i) would be regarded by a reasonable and informed third party as unprofessional or unbecoming of a Member; or
  - (ii) involves a substantial or consistent failure to maintain the proper standard of professionalism, integrity, care, skill, competence or diligence of or in relation to the Member's professional duties and obligations.
- (f) **Consent Order Agreement** ~~has the meaning given to it in~~ means an agreement under ~~By-Law 40(7.3)(g)~~By-Law 40.16(a);
- (g) **Consent Period** has the meaning given to it in ~~By-Law 40(7.4)(c)~~By Law 40.16(c)(iv);
- (h) **Costs** means any costs and expenses incurred by or on behalf of CA ANZ or on behalf of CA ANZ in relation to the investigation and determination of a complaint (whether through the Professional Conduct Committee, Reviewer of Complaints, Disciplinary Tribunal, Appeals ~~Tribunal Council~~ or otherwise) and any other taxes, fees and charges, paid or payable on ~~them~~such costs and expenses, including, without limitation:
- (i) fees and disbursements of professionals, advisors or consultants employed, engaged or retained to investigate, represent, appear (as expert witnesses or otherwise), hear, or determine the complaint or advise on the same; and
  - (ii) other outgoings and disbursements including, without limitation, couriers, any transport, travel, accommodation, search fees, transcription services, outsourced photocopying, publication fees, room hire, video-conferencing, telephone conferencing and meals;
- (i) **Costs Agreement** means the form of agreement adopted by CA ANZ from time to time, under which an applicant under By-Law 40.18~~By-Law 40(8.2)~~, agrees to pay so much of the costs and expenses incurred by or on behalf of CA ANZ in engaging the Reviewer of Complaints to conduct the review, as the Reviewer of Complaints determines;
- (j) **Disclosure Event** has the meaning given to it in ~~By-Law 40(3.1)~~By-Law 40.8(a);
- (k) **Encumbrance** means any Security Interest and any burden, charge, mortgage, lien, pledge or other security interest or third party interest, whether legal or equitable;

(l) **Final Decision** means ~~a decision of the Professional Conduct Committee under:~~

~~(iii) By-Law 40(4.3) not to notify a Member of a complaint;~~

~~(iv) By-Law 40(6.1) (other than paragraphs (d) or (f)); or~~

~~(v) By-Law 40(7.3) (other than paragraphs (b) or (e));~~

(i) a decision of the Professional Conduct Committee under By-Law 40.13(a) (other than paragraphs 40.13(a)(v) and 40.13(a)(x));

(ii) a decision of the Disciplinary Tribunal which finally disposes of the matter referred by the Professional Conduct Committee to the Disciplinary Tribunal; or

(iii) a decision of the Appeals Council which finally disposes of an appeal to the Appeals Council of a Final Decision of the Disciplinary Tribunal.

For the avoidance of doubt, where a Disciplinary Tribunal or Appeals Council (as the case may be) deliver separate decisions as to any interlocutory matters and any one or any combination of (but not all) of Offences, Sanctions, publication and costs, the matter before the Disciplinary Tribunal or the Appeals Council (as the case may be) will be finally disposed of upon the delivery of the last of these decisions in relation to Offences, Sanctions, publication and costs;

(m) **Firm Event** means any of the following events occurring in relation to a Practice Entity:

(i) the Practice Entity, has before any court of law in any jurisdiction in Australia or elsewhere pleaded guilty to, or been found guilty of, a criminal offence (with or without conviction) which has not been set aside on appeal;

(ii) the Practice Entity has admitted to, or been found to have committed, any statutory or other offence (with or without conviction) which has not been set aside on appeal by a court of law, professional body, statutory or other regulatory authority or body, commission or inquiry in any jurisdiction in Australia or elsewhere which may not be a crime but which, in the opinion of the Professional Conduct Committee, the Disciplinary Tribunal or the Appeals Council, brings or may bring discredit upon the Practice Entity, the membership as a whole or the profession of accountancy;

(iii) the Practice Entity has been found to have acted dishonestly in any binding determination by any body including any court of law, professional body, royal commission, statutory authority, regulatory authority, statutory body, commission or inquiry which is empowered to make such determinations and which has not been set aside on appeal;

(iv) the Practice Entity has been the subject of any adverse or unfavourable binding determination in relation to its professional or business conduct, competence or integrity (including in relation to direct discrimination, vilification, sexual harassment or bullying in the workplace and/or work-related) by any body including any court of law, professional body, royal commission, statutory authority, regulatory authority, statutory body, commission or inquiry which is empowered by law to make such determinations;

(v) the Practice Entity has agreed to, or has had imposed, any condition or restriction on any professional membership, registration or licence in the Practice Entity's name other than conditions or restrictions imposed by CA ANZ and/or NZICA; or



(vi) the Practice Entity suffers an Insolvency Event;

(n) **Former Member** means a person or entity who was at any time previously a Member and who is not a current Member in accordance with these By-Laws, or any other person or entity who has agreed in writing to be, and to remain bound by, Section 5 of these By-Laws;

~~(m)~~(o) **Insolvency Event** in relation to:

- (i) a natural person, means that person:
  - (A) becoming bankrupt under the Bankruptcy Act;
  - (B) being served with notice of a creditor's petition presented to a court under section 43 of the Bankruptcy Act;
  - (C) 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; or
  - (D) applying to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounding with that person's creditors or making an assignment of that person's remuneration for their benefit; or
- (ii) a corporation, means:
  - (A) that corporation becomes unable to pay its debts as and when they fall due;
  - (B) an order is made for the winding up or dissolution of, or the appointment of a provisional liquidator to, that corporation or a resolution is passed for the winding up or dissolution of that corporation (other than for the purpose of an amalgamation or reconstruction whilst solvent);
  - (C) an application is made for its winding up and, if the application is capable of being set aside is not set aside within 14 days of being made;
  - (D) that corporation becomes subject to external administration within the meaning of Chapter 5 of the Corporations Act by appointment of a receiver, receiver and manager, provisional liquidator, liquidator or administrator;
  - (E) a Secured Party or ~~mortgagee~~ other holder of an Encumbrance exercises its rights under any Encumbrance of which that corporation is the ~~G~~grantor or mortgagor; or
  - (F) the party enters into or resolves to enter into any arrangement, composition or compromise with or for the benefit of its creditors or any class of them (other than for the purpose of amalgamation or reconstruction whilst solvent); or
- (iii) a partnership, means the occurrence of any event specified in:
  - (A) paragraphs (i)(A) to (i)(D) to any partner who is a natural person; or
  - (B) paragraphs (ii)(A) ~~(ii)(1)~~ to (ii)(F) ~~(ii)(6)~~ to any partner that is a corporation; or

- (iv) any person or entity, the occurrence of any analogous event, circumstance, matter or thing to those specified in paragraphs (i), (ii) or (iii) above (as applicable) in any jurisdiction;

~~(A)~~(p) **Member** means from time to time a person or entity:

- (i) with current Membership in any of the classes specified in By-Law 7; and
  - (ii) that is a Non Member Practice Entity,
- and **Membership** shall have a corresponding meaning;

(q) **Misconduct** includes conduct which:

- (i) would be regarded by a reasonable and informed third party as disgraceful, dishonourable or bringing discredit to the profession of accountancy;
- (ii) involves a wilful or reckless failure to maintain the proper standard of professionalism, integrity, care, skill, competence or diligence of or in relation to the Member's professional duties and obligations;
- (iii) would justify a finding that the Member is not a fit and proper person to hold Membership; or
- (iv) otherwise involves a departure from acceptable standards of behaviour for a member of the accounting profession of such a degree as to justify a finding of misconduct;

~~(o)~~ **Notice of Disciplinary Action** has the meaning given to it in ~~By-Law 40(10.1)~~;

(r) **Notification Event** has the meaning given to it in ~~By-Law 40(3.3)~~By-Law 40.8(c);

(s) **Notifying Principal** means a Member who is Principal of a Practice Entity and who is authorised, from time to time, by all other Members who are Principals of the Practice Entity or were Principals of the Practice Entity at the time of a Firm Event, to represent them for the purposes of the notification, investigation, resolution and determination of investigations generally and proceedings conducted under Section 5 of these By-Laws in relation to Firm Events;

(t) **Offence** has the meaning given in By-Law 40.9.

~~(p)~~(u) **PPSA** means the *Personal Property Securities Act 2009* (Cth);

~~(A)~~(v) **Principal** means any person, who is a principal of a Practice Entity or a principal, partner, director, officer or trustee of a Related Entity of the Practice Entity and includes:

- (i) in the case of a Practice Entity or a Related Entity of the Practice Entity which is a partnership, a partner of that partnership;
- (ii) in the case of a Practice Entity or a Related Entity of the Practice Entity which is a body corporate, a director of that body corporate;
- (iii) in the case of a Practice Entity or a Related Entity of the Practice Entity that is conducted as a trust, an individual who, as an officer or employee of the trustee of that trust, or otherwise, provides or participates as a Principal in the provision of the services provided by the Practice Entity; and
- (iv) in the case of a Practice Entity or a Related Entity of the Practice Entity, an individual who, as an officer or employee or otherwise, of the Practice Entity or Related Entity of the Practice Entity, provides or participates as a Principal in the provision of the services provided by the Practice Entity;

~~(r)~~(w) **Registers** means the General Register, Regional Register and ~~or~~ Overseas Regional Register and Register means any one of them;

~~(s)~~(x) **Related Entity** means any partnership, company, corporation or trust carrying on the whole or any part of ~~practice as a Practice Entity~~the practise as public accountants in association with or in conjunction with a Practice Entity;

~~(t)~~(y) **Reviewer of Complaints** has the meaning given to it in ~~By-Law 40(8.1)~~ By-Law 40.18(a);

(z) **Reviewer of Complaints Application Fee** means the application fee payable under Section 5 of these By-Laws in connection with an application for review by a Reviewer of Complaints in the amount prescribed in the Regulations from time to time;

(aa) **Sanction** means sanctions ordered or imposed under this Section 5;

(bb) **Serious Criminal Offence** means an offence under a law of a State, Territory, or Commonwealth of Australia, New Zealand or any foreign jurisdiction which imposes a minimum penalty of imprisonment of not less than 24 months;

~~(u)~~(cc) **Secured Party** has the meaning given in section 10 of the PPSA; and

(dd) **Security Interest** has the meaning given in section 12 of the ~~PPSA.~~

## **40. Conduct Rules**

### **40.1 Purpose**

(a) The purpose of the conduct rules is to allow the hearing of complaints and the investigation of other disciplinary related matters in a manner which:

(i) is consistent with the purpose of the Supplemental Charter and NZICA Act (where applicable); and

(ii) promotes the resolution of complaints in a fair, efficient, speedy and simple manner, which is consistent with the rules of natural justice, and procedural fairness, and which takes into account the public interest.

(b) The conduct rules are to be interpreted and applied in a way that is consistent with their purpose.

(c) Members must be open and honest in their dealings with the Professional Conduct Committee, Reviewer of Complaints, Disciplinary Tribunal and Appeals Council in connection with an investigation, a complaint or any matters arising from or in relation to the investigation or the complaint promptly and in any event within any timeframe prescribed by Section 5 of these By-Laws and any applicable Regulations.

### **40.2 Committees, Tribunals and Council**

There shall be the following investigative and disciplinary bodies:

(a) a Professional Conduct Oversight Committee whose members are appointed by the Board with oversight responsibility for the integrity, timeliness and effectiveness of the disciplinary procedures carried out by the Professional Conduct Committee, the Reviewer of Complaints, the Disciplinary Tribunal and the Appeals Council and such other oversight functions as may be conferred upon it by the Board;

(b) a Professional Conduct Committee which shall receive, initiate, investigate, dispose of and refer and prosecute complaints and respond to any applications for Readmission made to the Disciplinary Tribunal;

- (c) a Disciplinary Tribunal which shall hear and determine complaints made to it by the Professional Conduct Committee and any other applications made to it in accordance with Section 5 of these By-Laws; and
- (d) an Appeals Council which shall hear and determine appeals of decisions of the Disciplinary Tribunal.

#### **40.3 Powers of Committees, Tribunals and Council**

- (a) The Board may approve from time to time a Charter for each of the Professional Conduct Oversight Committee, Professional Conduct Committee, Disciplinary Tribunal and Appeals Council which shall be consistent with the functions of these bodies under Section 5 of these By-Laws, the Supplemental Charter and the Regulations.
- (b) Subject to these By-Laws, the Regulations, and the Charters, each of the Professional Conduct Oversight Committee, Professional Conduct Committee, the Disciplinary Tribunal and the Appeals Council is empowered to:
  - (i) regulate its own affairs;
  - (ii) issue directions, either of its own motion or on the application of any party, for the efficient conduct of its functions;
  - (iii) appoint experts and/or investigators;
  - (iv) make decisions by circular resolution;
  - (v) issue practice notes or guidelines; and
  - (vi) delegate any of its functions or powers.

#### **40.4 General principle**

No Member shall be Sanctioned under both the CA ANZ By-Laws and NZICA Rules in respect of the same conduct.

#### **40.5 Application of conduct rules**

The following provisions apply to a Member who is, or who is recognised as, a Member of both CA ANZ and NZICA or who has otherwise agreed to be subject to Section 5 of these By-Laws:-

- (a) Every decision made by the Professional Conduct Committee, Disciplinary Tribunal or Appeals Council in respect of a Member, including the imposition of a Sanction or an interim suspension, will automatically form part of the Member's record with both CA ANZ and NZICA.
- (b) Any Sanction (other than a fine) which is imposed on the Member by the Professional Conduct Committee, Disciplinary Tribunal or Appeals Council will automatically result in the imposition on the Member of the equivalent Sanction in respect of their Membership of both CA ANZ and NZICA.
- (c) Any interim suspension which is imposed on the Member by the Disciplinary Tribunal or Appeals Council will automatically result in the imposition on the Member of an interim suspension in equivalent terms in respect of their Membership of both CA ANZ and NZICA.
- (d) CA ANZ and NZICA will notify each other of any Sanction or interim suspension imposed on the Member under Section 5 of these By-Laws or the NZICA Rules (as applicable).
- (e) CA ANZ and NZICA may notify each other of any information in its possession relating to the Member, whether in respect of disciplinary proceedings or otherwise, as it considers appropriate.

#### **40.6 Complaints against Suspended Members or Former Members**

- (a) A Member whose membership is interim suspended or suspended under Section 5 of these By-Laws or any earlier version remains subject to Section 5 of these By-Laws and any applicable Regulations during the period of their interim suspension or suspension from Membership.
- (b) A Former Member remains subject to Section 5 of these By-Laws and any applicable Regulations in relation to conduct which occurred while they were a Member and any reference in Section 5 of these By-Laws to a Member includes a Former Member and -suspended Member unless the context requires otherwise.
- (c) Where a complaint has been made against a Member, and that Member ceases to be a Member before the complaint has been finally disposed of, that complaint may continue to be considered and determined in accordance with Section 5 of these By-Laws in the same manner as a complaint concerning a Former Member, to the extent permitted by Section 5 of these By-Laws.
- (d) All actions, determinations or Sanctions that would have been available to the Professional Conduct Committee, Disciplinary Tribunal and Appeals Council if the Former Member were a Member continue to apply. For the avoidance of doubt, where the Disciplinary Tribunal or Appeals Council finds a Former Member has committed an Offence it may make a finding that, had the Former Member still been a Member, it would have:

  - (i) terminated that person's or entity's Membership; or
  - (ii) suspended that person or entity from Membership for a specified period not exceeding 5 years.
- (e) A Former Member may not apply for readmission to Membership within 5 years of any finding of the Disciplinary Tribunal or Appeals Council made in accordance with By-Law 40.6(d)(i).
- (f) A Former Member may not apply for readmission to Membership during the period of any suspension specified by the Disciplinary Tribunal or Appeals Council for the purposes of By-Law 40.6(d)(ii).

#### **40.7 Complaints against Non-Members subject to CA ANZ or NZICA's regulatory or disciplinary jurisdiction**

- (a) A person who is not a Member of CA ANZ or NZICA but has agreed in writing to be subject to its regulatory or disciplinary jurisdiction will be subject to Section 5 of these By-Laws as if they were a Member of CA ANZ or NZICA. This includes, without limitation:

  - (i) Non-Member Principals (as that term is defined in the NZICA Rules) and Non-Member Practice Entities; and
  - (ii) Non-Members recognised, licensed or accredited by CA ANZ or NZICA under any legislation or voluntary arrangement.
- (v)(b) The provisions relating to suspended or Former Members also apply to Non-Members subject to Section 5 of these By-Laws.
- (c) A reference in this Section 5 to a Member includes or means as the context requires, a Non-Member Practice Entity, a Non-Member Principal, any other non-Member, Former Member or Notifying Principal who is, or who has agreed to be, bound by this Section 5.

#### **40.8 Disclosure and Notification Obligations**

- (a) A Disclosure Event occurs in relation to a Member when the Member or a Practice Entity of which a Member is a Principal:

- (i) is convicted of a Serious Criminal Offence;
  - (ii) is convicted of any offence under the *Tax Administration Act 1953* of the Commonwealth or any offence under analogous legislation in any other jurisdiction;
  - (iii) suffers an Insolvency Event; or
  - (iv) does something or suffers an event specified in any Regulations as being a Disclosure Event for the purposes of Section 5 of these By-Laws.
- (b) When a Disclosure Event occurs in relation to a Member, that Member must, within 7 days of becoming aware of the Disclosure Event:
  - (i) give notice to the Professional Conduct Committee of the Disclosure Event; and
  - (ii) send a written statement to the Professional Conduct Committee within 21 days setting out the circumstances of the Disclosure Event and 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 as a result of the Disclosure Event.
- (c) A Notification Event occurs when a Member, or a Practice Entity of which a Member is Principal, becomes aware the Member or Practice Entity:
  - (i) has committed an Offence or a Firm Event has occurred under Section 5 of these By-Laws;
  - (ii) has been charged with any Serious Criminal Offence;
  - (iii) has been the subject of an adverse or unfavourable finding in relation to that Member's professional or business conduct, competence or integrity (including in relation to direct discrimination, vilification, sexual harassment, harassment or bullying in the workplace and/or work-related), by any body, including any court of law, tribunal, professional body, royal commission, statutory authority, regulatory authority, statutory body, commission or inquiry, which is empowered by law to make such findings; or
  - (iv) with or without any admissions, has given or entered into an undertaking (whether enforceable or not) or consented, accepted or agreed to any order in connection with any matter or proceedings or any threatened or proposed proceedings or any review, audit or investigation by any statutory or regulatory authority or body, or professional body in any jurisdiction in Australia, New Zealand or elsewhere (other than an undertaking or order in respect of procedural matters in respect of or in the course of the conduct of the proceedings or investigation).
- (d) When a Notification Event occurs in relation to a Member, or a Practice Entity of which that Member is a Principal, that Member must, in accordance with Section 5 of these By-Laws and Regulations give notice to the Professional Conduct Committee of the Notification Event within 7 days of becoming aware of the Notification Event.
- (e) The Members who are Principals of a Practice Entity may appoint a Notifying Principal to notify the Professional Conduct Committee of Firm Events relating to the Practice Entity on behalf of all such Members. A notice given by such a Notifying Principal shall be deemed to discharge the obligation of each Member who is a Principal to notify the Professional Conduct Committee of the relevant Firm Event.

#### **40.9 Offences**

- (a) A Member will have committed an Offence for the purposes of Section 5 of these By-Laws if that Member:
- (i) has committed any act, omission or default that amounts to Misconduct;
  - (ii) has committed any act, omission or default that amounts to Conduct Unbecoming of a Member;
  - (iii) has failed to observe a proper standard of professional care, skill, competence or diligence in the course of carrying out that Member's professional duties and obligations;
  - (iv) has, before any court of law in any jurisdiction in Australia or elsewhere pleaded guilty to, or been found guilty of, a Serious Criminal Offence (with or without conviction) which has not been set aside on appeal;
  - (v) has pleaded guilty to, or been found guilty of, any statutory or other offence (with or without conviction) by a court of law, professional body, statutory or other regulatory authority or body, commission or inquiry in any jurisdiction in Australia or elsewhere, which has not been set aside on appeal, which may not be a crime but which, in the opinion of the Professional Conduct Committee, the Disciplinary Tribunal or the Appeals Council, brings or may bring discredit upon Member, the Member's Practice Entity, the membership as a whole or the profession of accountancy;
  - (vi) has in any proceedings before any court, tribunal, or similar body in any jurisdiction in Australia or elsewhere been subject of a binding determination that the Member has acted dishonestly, which has not been set aside on appeal;
  - (vii) has been the subject of any adverse or unfavourable binding determination in relation to the Member's professional or business conduct, competence, or integrity (including in relation to direct discrimination, vilification, sexual harassment, harassment or bullying in the workplace and/or work-related) by any body, including any court of law, tribunal, professional body, royal commission, statutory authority, regulatory authority, statutory body, commission or inquiry, which is empowered by law to make such determinations;
  - (viii) has agreed to, or has had imposed, any condition or restriction on any professional membership, registration or licence in that Member's name;
  - (ix) has committed any breach of the Compliance Obligations;
  - (x) has failed to comply with any reasonable and lawful direction of any officer or body of CA ANZ or NZICA acting within the powers conferred by CA ANZ's Supplemental Charter, these By-Laws or the Regulations;
  - (xi) suffers an Insolvency Event;
  - (xii) is or was a Principal of a Practice Entity that has suffered, experienced or is the subject of a Firm Event;
  - (xiii) has provided information to CA ANZ or NZICA which is false or misleading (including by omission);



(xiv) has failed to comply with any Sanction, determination or decision made by the Professional Conduct Committee, Disciplinary Tribunal or Appeals Council under Section 5 of these By-Laws;

(xv) has failed to comply with any undertaking given to the Professional Conduct Committee, the Disciplinary Tribunal or Appeals Council under Section 5 of these By-Laws; and/or

(xvi) has made any admissions or committed any act, omission or default which, in the opinion of the Professional Conduct Committee, Disciplinary Tribunal or Appeals Council brings, or may bring, discredit upon that Member, or the profession of accountancy.

(b) For the avoidance of doubt, a reference in paragraph 40.9(a) to a Member includes:

(i) a Former Member, to the extent the conduct giving rise to the Offence occurred during the Former Member's membership; and

(ii) a suspended Member to the extent the conduct giving rise to the Offence occurred during the suspended Member's membership or the period of the suspension.

#### **40.10 Lodging a Complaint**

(a) A complaint about the conduct of a Member (including a Member who is suspended) or a Former Member, or person or body otherwise subject to CA ANZ's regulatory or disciplinary jurisdiction, whether or not the conduct occurred in Australia or elsewhere, may be:

(i) made by any person; or

(ii) initiated and made by CA ANZ or the Professional Conduct Committee at any time following an investigation or receipt of information (including information of the kind specified by By-Law 40.12(a)).

(b) Every complaint shall be:

(i) in writing; and

(ii) with respect to complaints lodged by a person, in such form as prescribed in the Regulations and if required by the Professional Conduct Committee, supported by evidence by way of statutory declaration or such additional information as specified.

#### **40.11 Initial Assessment and Jurisdiction Decision by Professional Conduct Committee**

(a) The Professional Conduct Committee must notify the relevant Member of any complaint relating to that Member.

(b) The Professional Conduct Committee may dismiss, without investigation, a complaint if it:

(i) relates to conduct that does not amount to an Offence;

(ii) is trivial, frivolous, vexatious or made in bad faith;

(iii) is lacking in substance, vague, imprecise or unsupported by evidence, including where the complainant has failed to provide such further information as required by the Professional Conduct Committee;

(iv) is, may or could be, an abuse of process;



- (v) relates to historical issues that the Professional Conduct Committee considers would no longer be practical to investigate;
  - (vi) is of an insufficient nature to warrant investigation; or
  - (vii) comes within the jurisdiction of another body or agency or is otherwise the subject of a separate Professional Conduct Committee investigation and in all the circumstances it is reasonable for the complaint to be so dismissed.
- (c) If the Professional Conduct Committee dismisses a complaint under this Conduct Rule, it will notify the Member and complainant of that dismissal within 21 days of the dismissal.
- (d) A Member must respond in writing to the Professional Conduct Committee within such period of time as the Professional Conduct Committee specifies in its notification under By-Law 40.11(a). The Member's written response must address all matters raised in the notification to the satisfaction of the Professional Conduct Committee.
- (e) Without limiting paragraph (d) above, where a complaint relates to a Firm Event, the Notifying Principal or, in the absence of the appointment of a Notifying Principal, any other Member who is a Principal of the Practice Entity, must respond to the Professional Conduct Committee in writing within such period of time as the Professional Conduct Committee specifies in its notification under By-Law 40.11(a). The Notifying Principal's or Member's (as the case may be) written response must address all matters raised in the notification to the satisfaction of the Professional Conduct Committee.

#### **40.12 Investigation by Professional Conduct Committee**

- (a) The Professional Conduct Committee may investigate any complaint or, on its own initiative, any matter that it considers may constitute an Offence in respect of a Member (including a Member who is suspended) or a Former Member under Section 5 of these By-Laws.
- (b) For the purposes of any investigation under this By-Law 40.12, the Professional Conduct Committee may:
- (i) make, or engage or employ any person, including any expert or experts, to make such inquiries or provide such assistance as the Professional Conduct Committee considers necessary;
  - (ii) require any Member, Former Member or suspended Member to whom the investigation relates to provide the Professional Conduct Committee, or any person engaged or employed by the Professional Conduct Committee, any documents, things or information that are in the possession or under the control of that Member that may relate to the subject matter of the investigation (including original digital records so that metadata may be assessed) within such period of time as the Professional Conduct Committee or any person engaged or employed, specifies;
  - (iii) require any other Member to provide the Professional Conduct Committee, or any person engaged or employed by the Professional Conduct Committee, any documents, things or information that are in the possession or under the control of that Member that may relate to the subject matter of an investigation by the Professional Conduct Committee (including original digital records so that metadata may be assessed), within such period of time as the Professional Conduct Committee or any person engaged or employed by the Professional Conduct Committee, specifies in its notification;

- (iv) require the Member to whom the investigation relates, and/or that Member's Practice Entity, or the Notifying Principal's Practice Entity, to submit, at the Member's or the Notifying Principal's cost, to a review or reviews on such matters and on such terms as determined by the Professional Conduct Committee, such terms to include that the results of such reviews are made available to the Professional Conduct Committee;
  - (v) make and retain copies of any documents that are provided to the Professional Conduct Committee, including those containing personal information for the purposes of the *Privacy Act 1988* (Cth);
  - (vi) require the Member or Notifying Principal, at their own cost, to attend an interview before the Professional Conduct Committee or any person engaged or employed by the Professional Conduct Committee, to answer any questions and/or discuss the complaint or any matter arising from it;
  - (vii) request the complainant (where the investigation arises from or relates to a complaint), to attend an interview before the Professional Conduct Committee or any person engaged or employed by the Professional Conduct Committee, to answer any questions and/or discuss the complaint or any matter arising from it or to attend a Case Conference; and
  - (viii) make enquiries of, including interview, any other persons or entities which the Professional Conduct Committee considers necessary for its investigation.
- (c) The investigative powers of the Professional Conduct Committee may be exercised at any time, including after the Professional Conduct Committee has decided to convene a Case Conference or refer a complaint against a Member to the Disciplinary Tribunal for hearing.
- (d) Members may be legally represented when responding to complaints or matters raised in connection with an investigation or attending before the Professional Conduct Committee or at a Case Conference. If attending before the Professional Conduct Committee, Members are required to notify the Professional Conduct Committee of the name of any legal representative no less than 7 days before any appearance by the legal representative.

#### **40.13 Interim and Final Decision by Professional Conduct Committee**

- (a) During or at the conclusion of an investigation, the Professional Conduct Committee may take one or more of the following actions:
- (i) determine to discontinue the investigation and take no further action;
  - (ii) take no further action following the conclusion of the investigation;
  - (iii) issue a professional reminder that the Member's or Practice Entity's conduct has fallen short of best practice;
  - (iv) issue a Caution whether or not an Offence has been committed;
  - (v) convene a Case Conference and decide if the Member or Notifying Principal is required to attend or if the complainant or any other person should be invited to attend the Case Conference;
  - (vi) require the Member and/or the Member's Practice Entity or the Notifying Principal's Practice Entity to submit, at the Member's or Notifying Principal's cost, to a review or reviews on such matters and on such terms as determined by the Professional Conduct Committee, such terms to include that the results of such reviews are made available to the Professional Conduct Committee;

- (vii) require the Member, at the Member's own expense, or in the case of a Practice Entity Member or the Members who are Principals of a Practice Entity in the case of a Firm Event, require some or all of the Members who are Principals of the Practice Entity, at their own expense, to complete any one or more professional development or other courses prescribed by the Professional Conduct Committee within the time period and on the terms stipulated by the Professional Conduct Committee;
- (viii) investigate and make a decision regarding any other matter arising out of the complaint or the Professional Conduct Committee's investigation;
- (ix) when it considers a complaint would otherwise warrant being referred to the Disciplinary Tribunal (without convening a Case Conference) propose a Consent Order Agreement;
- (x) refer the complaint directly to the Disciplinary Tribunal (without convening a Case Conference) where it is satisfied that:

  - (A) a Disclosure Event has occurred;
  - (B) the Member has failed, within the time specified, to provide any documents, things or information (including any response to the complaint);
  - (C) the Member has failed to attend before the Professional Conduct Committee, having been required to do so;
  - (D) the Member has provided information to CA ANZ or NZICA which is false or misleading (including by omission);
  - (E) the Member has failed to comply with any action, determination or decision made by the Professional Conduct Committee, the Disciplinary Tribunal or the Appeals Council;
  - (F) the Member has failed to comply with any undertaking given to the Professional Conduct Committee, the Disciplinary Tribunal or the Appeals Council;
  - (G) the matter is sufficiently serious that the Disciplinary Tribunal should be asked to suspend the Member on an interim basis;
  - (H) the Member has confirmed that they will not contest the complaint and the Professional Conduct Committee considers the Sanctions it may impose are not sufficient; and/or
  - (I) the complaint is otherwise appropriate to be referred directly to the Disciplinary Tribunal.
- (b) Written notice of a decision made by the Professional Conduct Committee with reasons for that decision must be sent to the relevant Member and complainant (other than where the complainant is the Professional Conduct Committee itself) within 21 days of that decision, or such longer period as may be reasonably required by the Professional Conduct Committee in the circumstances of specific matters.

#### **40.14 Administrative process for Case Conferences**

If the Professional Conduct Committee decides that a complaint should be considered at a Case Conference, it must give the relevant Member, or the Notifying Principal, not less than 21 days' notice specifying:

- (a) the date, time and place or virtual location of the Case Conference;
- (b) the matters to be considered at the Case Conference; and
- (c) that the Member or Notifying Principal (as applicable) is required to attend.

#### **40.15 Case Conference with the Professional Conduct Committee**

(a) At the Case Conference, the Professional Conduct Committee may take one or more of the following actions:

- (i) determine to take no further action in relation to the complaint;
- (ii) issue a professional reminder that the Member's or Practice Entity's conduct has fallen short of best practice;
- (iii) issue a Caution whether or not an Offence has been committed;
- (iv) refer the complaint to the Disciplinary Tribunal for hearing;
- (v) require the Member and/or the Member's Practice Entity, or the Notifying Principal's Practice Entity to submit, at the Member's or Notifying Principal's cost, to a review or reviews on such matters and on such terms as determined by the Professional Conduct Committee, such terms to include that the results of such reviews are made available to the Professional Conduct Committee;
- (vi) require the Member, at the Member's own expense, or in the case of a Practice Entity Member, or the Members who are Principals of a Practice Entity in the case of a Firm Event, require some or all of the Members who are Principals of the Practice Entity, at their own expense, to complete any one or more professional development or other courses prescribed by the Professional Conduct Committee within the time period and on the terms stipulated by the Professional Conduct Committee; and/or
- (vii) when it considers a complaint would otherwise warrant being referred to the Disciplinary Tribunal, propose a Consent Order Agreement.

(b) Written notice of the decision of the Professional Conduct Committee at a Case Conference with reasons for the decision must be given to the complainant (if any other than where the complainant is the Professional Conduct Committee itself) and to the Member concerned within 21 days of that decision, or such longer period as may be reasonably required by the Professional Conduct Committee in the circumstances of specific matters.

#### **40.140.16 Consent Order Agreements**

- (a) A Consent Order Agreement may be made (by way of deed or otherwise) with the Member, or Notifying Principal in respect of a Firm Event (on behalf of all of the Members who are Principals of the Practice Entity).
- (b) A Consent Order Agreement is to contain one or more of the following orders, which shall be entered on the Member's record or the Notifying Principal's record (as the representative of the Members who are Principals of the Practice Entity only, in respect of a Firm Event) as applicable:

- (i) that the Member or the Notifying Principal, be censured;
  - (ii) that the Member, or the Notifying Principal pay to CA ANZ a fine of such sum as the Professional Conduct Committee determines, not to exceed:
    - (A) \$25,000 in the case of an Individual Member; and
    - (B) \$100,000 in the case of a Practice Entity Member or a Notifying Principal in respect of any Firm Event;
  - (iii) that the Member, or the Notifying Principal pay to CA ANZ all or any portion of the Costs incurred by or on behalf of CA ANZ in investigating and dealing with the complaint or the Case Conference as the Professional Conduct Committee determines;
  - (iv) subject to paragraph 40.16(b)(v), that the Member at their own expense, complete any one or more professional development or other courses prescribed by the Professional Conduct Committee within the time period and on the terms stipulated by the Professional Conduct Committee;
  - (v) ~~require the Member, at the Member's own expense, or~~ in the case of a Practice Entity Member, Non-Member Practice Entity or a Notifying Principal, ~~in connection with a Firm Event require~~ that the Practice Entity Member, Non-Member Practice Entity or the Notifying Principal procure that some or all of the Members who are Principals of the Practice Entity, at their own expense, complete any ~~4~~one or more professional development or other courses prescribed by the Professional Conduct Committee within the time period and on the terms stipulated by the Professional Conduct Committee; or
  - (vi) that the Member or the Notifying Principal, at their own expense, engage an adviser, consultant or other person as approved by the Professional Conduct Committee for the period and on the terms specified by the Professional Conduct Committee;
  - (vii) that the Member and/or the Member's Practice Entity, or the Notifying Principal's Practice Entity submit, at the Member's or Notifying Principal's cost, to a review or reviews on such matters and on such terms as determined by the Professional Conduct Committee, such terms to include that the results of such reviews are made available to the Professional Conduct Committee;
  - (viii) where the Member's or the Member's Practice Entity's fees or billing practices have been found to breach Compliance Obligations that the Member and/or Practice Entity shall:
    - (A) waive the whole or part of any fee agreed to or invoiced; or
    - (B) return the whole or part of any fee already paid; and/or
  - (ix) such other orders as the Professional Conduct Committee considers reasonable.
- (c) Where the Professional Conduct Committee decides to propose a Consent Order Agreement, it shall give a written notice to the Member or the relevant Notifying Principal, setting out:
- (i) the orders which the Professional Conduct Committee proposes to include in the Consent Order Agreement including any undertakings being sought;
  - (ii) whether or not the Professional Conduct Committee intends to publish its decision in accordance with Section 5 of these By-Laws, and whether or not the

Professional Conduct Committee considers there are special circumstances that warrant disclosing the name of the Member or the Practice Entity and the terms of any proposed publication wording;

(iii) whether or not the Professional Conduct Committee intends to notify any interested parties; and

(iv) the period of no less than 14 days (**Consent Period**) within which the Member or Notifying Principal may respond to and negotiate the proposed Consent Order Agreement and deliver the duly executed Consent Order Agreement to the Professional Conduct Committee.

(d) If the Professional Conduct Committee receives the Member's or Notifying Principal's duly executed Consent Order Agreement by no later than the end of the Consent Period, the Consent Order Agreement is effective on the date specified as the effective date in the Consent Order Agreement.

(e) If the Member or Notifying Principal fails to deliver a duly executed Consent Order Agreement within the Consent Period or by such later date as the parties may agree in writing, the complaint or any matter arising out of the complaint or the Professional Conduct Committee's investigation will be referred to the Disciplinary Tribunal for hearing.

#### **40.17 General Powers**

(a) The Professional Conduct Committee must refer a complaint to the Disciplinary Tribunal (whether or not it has convened a Case Conference) if it determines that:

(i) the complaint involves matters of high public interest or significance to the accounting profession as a whole; or

(ii) the complaint involves a contest of evidence or dispute that should be resolved with the benefit of the examination of evidence from an independent expert or evidence that should be given on oath.

(b) Where the Professional Conduct Committee finds that the Member or Notifying Principal concerned has failed to comply with any direction of the Professional Conduct Committee given in accordance with Section 5 of these By-Laws and/or failed to attend a Case Conference as required, the Professional Conduct Committee may without giving further notice to the Member or Notifying Principal:

(i) refer the complaint or such failure to the Disciplinary Tribunal without holding a Case Conference; or

(ii) make a decision to take any other action prescribed under Section 5 of these By-Laws.

(c) The Professional Conduct Committee:

(i) may, of its own motion or on application by the complainant or Member or Notifying Principal (such application to be made within 28 days of the decision) correct any error in the documented decision that does not accurately reflect the decision;

(ii) may at any time review and reconsider a decision if it becomes aware of new information after the date of such decision, which the Professional Conduct Committee considers would have been material to its decision; and



- (iii) must review and reconsider a decision if directed to do so by the Reviewer of Complaints. In doing so, the Professional Conduct Committee must have regard to any recommendations made by the Reviewer of Complaints.

#### **40.18 Reviewer of Complaints**

- (a) The Board shall from time to time appoint one or more independent reviewers to review decisions of the Professional Conduct Committee (each a **Reviewer of Complaints**).
- (b) Subject to paragraph 40.18(c), the complainant (other than the Professional Conduct Committee) or relevant Member or Notifying Principal may request a review, of a decision to dismiss a complaint without investigation or a Final Decision made by the Professional Conduct Committee, using the form prescribed by the Regulations.
- (c) Any such request must be received by CA ANZ within 21 days of the date of notification of the Professional Conduct Committee's decision and accompanied by payment of the Reviewer of Complaints Application Fee and a Costs Agreement duly executed by the applicant.
- (d) The relevant Member or Notifying Principal may not request a review of a Final Decision made pursuant to By-Laws 40.13(a)(ix), 40.15(a)(vii) and 40.16.
- (e) CA ANZ will refer such a request to a Reviewer of Complaints who shall review every such request and:
- (i) determine whether to accept a request which was received by CA ANZ more than 21 days after the date of notification of the Professional Conduct Committee's decision, which the Reviewer of Complaints may do only if he or she considers that there are exceptional circumstances which make this appropriate;
  - (ii) if the request is accepted, consider whether the procedure followed by the Professional Conduct Committee in making its decision was in all the circumstances appropriate;
  - (iii) if the request is accepted, consider whether the decision made by the Professional Conduct Committee was one which could reasonably have been made by the Professional Conduct Committee, taking into account the information available to the Professional Conduct Committee; and
  - (iv) if the request is accepted, determine whether, and to what extent, the applicant for review should pay the costs and expenses it may be required to pay under the Costs Agreement.
- (f) The Reviewer of Complaints need not review a decision if the Reviewer of Complaints considers that the application is trivial, frivolous, vexatious or made in bad faith or if it is not made in accordance with these By-Laws and the Regulations. The Reviewer of Complaints must give notice to the applicant of a decision not to proceed with a review on these grounds, including a summary of the reasons for the Reviewer of Complaints' decision.
- (g) In reviewing a decision of the Professional Conduct Committee, the Reviewer of Complaints may only examine the Professional Conduct Committee's file and any other documents or other material held by CA ANZ concerning the original complaint together with the application lodged.
- (h) The Reviewer of Complaints:
- (i) may provide a draft report to the Member or the Notifying Principal and, if the complainant is other than the Professional Conduct Committee, the complainant,

setting out the factual matters and redacting any draft conclusions expressed in the draft report, to seek confirmation from the Member or the Notifying Principal and the complainant that the factual matters are accurately stated;

- (ii) must then issue a final report to the complainant, the Member or the Notifying Principal and the Professional Conduct Committee, and may at their discretion, issue the report to the Professional Conduct Oversight Committee, on the matters the Reviewer of Complaints is required to consider under By-Law 40.18(e) or otherwise notify them, with reasons, of a decision not to proceed with a review;
- (iii) may direct the Professional Conduct Committee to reconsider the relevant Final Decision and/or make such recommendations with respect to the procedure to be followed by the Professional Conduct Committee or its consideration of the matter, as the Reviewer of Complaints considers appropriate;
- (iv) may, in the report to the Professional Conduct Oversight Committee under paragraph (ii), make recommendations concerning the procedure adopted by the Professional Conduct Committee in relation to the complaint where the Reviewer of Complaints considers this to be appropriate; and
- (v) may recommend that CA ANZ refund all or part of the Application Fee to the applicant for the review, where the Reviewer of Complaints considers this to be appropriate.

#### **40.19 Interim Orders**

- (a) At any time after a complaint is lodged, the Professional Conduct Committee may apply to the Disciplinary Tribunal for interim orders, including that:
  - (i) the Member be suspended from Membership on an interim basis;
  - (ii) the Member's Certificate of Public Practice be suspended on an interim basis;
  - (iii) any license, accreditation, recognition, specialisation or status issued to the Member by CA ANZ in accordance with any legislation, regulations, the By-Laws or the Regulations be varied or suspended on an interim basis; and/or
  - (iv) the Disciplinary Tribunal's decision in respect of the Professional Conduct Committee's application be published.
- (b) On application by the Professional Conduct Committee, the Disciplinary Tribunal may make any order pursuant to By-Law 40.19(a) if it is satisfied that it is necessary or desirable to do so, having regard to such matters as it sees fit, including, but not limited to:
  - (i) the urgency of the matter;
  - (ii) the interests of the public;
  - (iii) the financial interests of any person; and/or
  - (iv) the integrity of the profession of accounting as a whole.
- (c) Without limiting the generality of paragraph (b), where a Member has been charged with a Serious Criminal Offence which, if upheld, in the reasonable opinion of the Disciplinary Tribunal or the Appeals Council, would bring the profession of accountancy into disrepute or would reflect upon the integrity of the profession or the membership of CA ANZ, that Member's Membership may be suspended on an interim basis, on the application of the Professional Conduct Committee to the Disciplinary Tribunal pending final determination of the criminal



proceedings. In that event, the determination of the Disciplinary Tribunal or the Appeals Council shall be published and, unless the Disciplinary Tribunal or Appeals Council considers that there are exceptional circumstances for not publishing the name and location of the Member, that Member's name and location shall also be published.

(d) Subject to any directions made by the Disciplinary Tribunal:

(i) the Professional Conduct Committee must give written notice to the Disciplinary Tribunal of the application for interim orders against the Member together with all supporting documents or evidence and, where the Professional Conduct Committee's application will be presented at the Disciplinary Tribunal hearing by an external legal practitioner, a statement to that effect and, if known, the legal practitioner's name and firm, organisation or chambers;

(ii) the Disciplinary Tribunal must give the Member, not less than two business days before the hearing before the Disciplinary Tribunal, notice of the date, time and place or virtual location of the hearing and all of the information provided by the Professional Conduct Committee to the Disciplinary Tribunal pursuant to this Conduct Rule;

~~(vi)~~(iii) the Disciplinary Tribunal may hear the application for interim orders on an ex parte basis if the Member fails to attend;

(iv) the Disciplinary Tribunal shall issue a decision with written reasons including any orders made to the Member and the Professional Conduct Committee as soon as reasonably practicable, however any decision of the Disciplinary Tribunal will take immediate effect;

(e) Within 7 days of notification of the Disciplinary Tribunal's decision to issue interim orders (including any order for publication and costs) on an ex-parte basis (or otherwise) on an application by the Professional Conduct Committee, notice of which was provided to the Member with less than 14 days' notice:

(i) the Member may apply to revoke any orders (a **Revocation Application**) and stay any publication orders. Any such Revocation Application must include all material to be relied on by the Member in opposition to the interim orders (and no additional material is to be relied upon without the leave of the Disciplinary Tribunal); and

(ii) the Disciplinary Tribunal shall determine the Revocation Application and issue a decision with written reasons including any final orders made to the Member and the Professional Conduct Committee as soon as reasonably practicable.

(f) In relation to an interim suspension, no publication will be made until at least 14 days after the making of the interim suspension order -or where a Revocation Application is made, the Disciplinary Tribunal has determined any application to stay its publication orders;

(g) Within 14 days of the date of notification of the Disciplinary Tribunal's decision, the Member or the Professional Conduct Committee may:

(i) give notice of appeal of any decision of the

(ii) Disciplinary Tribunal to impose or -not to impose interim orders or its costs or publication orders or any decision regarding a stay of its publication orders; and/or

- (iii) seek that the Disciplinary Tribunal's decision to publish any decision be stayed pending determination of the appeal.
- (h) Any appeal must be made in writing using the prescribed form in the Regulations, specify the grounds of appeal and include all material to be relied on by the Member or the Professional Conduct Committee.
- (i) If, at the conclusion of an investigation or determination of a complaint in relation to a Member who has been subject of an interim suspension order by the Disciplinary Tribunal, the Professional Conduct Committee decides not to refer the substantive complaint to the Disciplinary Tribunal, the interim suspension order will automatically lapse.
- (j) For the period of a Member's suspension from Membership on an interim basis:

  - (i) that Member's name shall be removed from the Registers on which it appears; and
  - (ii) that Member:

    - (A) loses the rights and privileges of Membership;
    - (B) must surrender to CA ANZ that Member's certificate of Membership, certificate(s) of public practice and any other documents specified in Section 5 of these By-Laws; and
    - (C) remains subject to the disciplinary processes under Section 5 of these By-Laws as if still a Member.
- (k) The provisions of this Conduct Rule do not apply to Non-Member Practice Entities.
- (l) Where an application results in the interim suspension of a Member, the Professional Conduct Committee will use all reasonable endeavours to expedite determination of the substantive matters of the complaint that gave rise to the interim suspension.

#### **40.20 Disciplinary Tribunal**

- (a) Subject to any directions made by the Disciplinary Tribunal, where the Professional Conduct Committee refers any matter to the Disciplinary Tribunal for hearing:

  - (i) the Professional Conduct Committee must give written notice to the Disciplinary Tribunal of the Offences alleged against the Member together with all supporting documents and other evidence and, where the Professional Conduct Committee's case against the Member will be presented at the Disciplinary Tribunal hearing by an external legal practitioner, a statement to that effect and, if known, the legal practitioner's name and firm, organisation or chambers;
  - (ii) the Disciplinary Tribunal must give the Member, not less than 35 days before the hearing before the Disciplinary Tribunal, notice of the date, time and place or virtual location of the hearing and all of the information provided by the Professional Conduct Committee to the Disciplinary Tribunal pursuant to this Conduct Rule; and
  - (iii) the Member must, not less than 14 days before the date of the hearing, give written notice to the Disciplinary Tribunal of:

    - (A) which of the alleged Offences are admitted, and which are disputed;
    - (B) whether the Member intends to attend the hearing;

- (C) whether the Member intends to be represented by a legal representative at the hearing and, if so, the name and contact details of the representative;
  - (D) whether the Member intends to call any evidence at the hearing, and if so, the names of the witnesses; and
  - (E) copies of any documents and other evidence on which the Member proposes to rely at the hearing.
- (b) The Professional Conduct Committee may amend the notice detailing the Offences alleged against a Member by giving written notice of the amendments to the Disciplinary Tribunal and to the Member:
  - (i) not less than 35 days before the date of the hearing before the Disciplinary Tribunal; or
  - (ii) at any other time, with the consent of the Member or with the leave of the Disciplinary Tribunal.
- (c) The Professional Conduct Committee may withdraw the referral of a matter to the Disciplinary Tribunal at any time.
- (d) If the Professional Conduct Committee seeks to present evidence at a hearing before the Disciplinary Tribunal, notice of which has not been given in accordance with this Conduct Rule or in accordance with any direction of the Disciplinary Tribunal, that evidence may only be presented:
  - (i) with the consent of the Member; or
  - (ii) with the leave of the Disciplinary Tribunal on such terms and conditions as it sees fit. The Disciplinary Tribunal may grant leave only if it is satisfied that doing so will not materially prejudice the Member and that it is otherwise appropriate to do so.
- (e) If a Member fails to comply with this Conduct Rule, that failure does not prevent the Member from disputing any Offences, attending the hearing, being represented at the hearing, or calling any evidence at the hearing, subject to any directions made by the Disciplinary Tribunal.
- (f) The Disciplinary Tribunal may, with the written consent of the Member and the Professional Conduct Committee, dispense with any or all of the procedures in this Conduct Rule, including timeframes and the requirement to have one or both parties attend the hearing, and proceed to make and impose orders in respect of Sanctions, publication or Costs and/or accept a written undertaking.
- (g) The Disciplinary Tribunal may appoint a legal adviser who is an independent legal practitioner to advise (attending the hearing as necessary) the Disciplinary Tribunal on matters of law, procedure and evidence.
- (h) At every hearing before the Disciplinary Tribunal, the Professional Conduct Committee shall be responsible for the presentation of the case against the Member concerned-. The Professional Conduct Committee may appoint a legal practitioner to present the case on its behalf.
- (i) The Disciplinary Tribunal may require any Member or a Notifying Principal to attend and give evidence at the Disciplinary Tribunal hearing.
- (j) Failure by the Member or Notifying Principal to comply with any or all of the above requirements (or to attend) shall not preclude the Disciplinary Tribunal from proceeding to

determine the matter and impose orders in respect of Sanctions, publication or costs and/or accept a written undertaking.

#### **40.21 Sanctions**

- (a) The Disciplinary Tribunal may impose one or more Sanctions upon a Member if it is satisfied that a Member has committed one or more Offences.
- (b) If satisfied that an Individual Member, Practice Entity Member, or Non-Member Practice Entity has, or in the case of a Firm Event, the Members who are Principals of the relevant Practice Entity have, committed one or more Offences:
- (i) the following Sanctions or any combination of them (if applicable) may be imposed by the Disciplinary Tribunal on an Individual Member:
    - (A) the termination of the Member's membership of CA ANZ;
    - (B) the suspension of the Member from Membership of CA ANZ for a period not exceeding 5 years;
    - (C) the cancellation or suspension of any certificate of public practice held by the Member;
    - (D) the declaration that the Member is ineligible to hold a certificate of public practice for a period not exceeding 5 years and on such terms and conditions as to the earlier termination of such period of ineligibility as the Disciplinary Tribunal may prescribe;
    - (E) an order that any licence, accreditation, recognition, specialisation or status issued to the Member by CA ANZ in accordance with any enactment, regulation, other legislation, CA ANZ By-Laws or Regulations or any other instrument, be varied, suspended for any period, or cancelled;
    - (F) removal of the Member's membership status as a Fellow and alter it to that of Chartered Accountant, Associate Chartered Accountant or Accounting Technician (as the case may be);
    - (G) where the Member's fees or billing practices have been found to breach Compliance Obligations set out in the CA ANZ By-Laws, an order that the Member be required to:
      - (1) waive the whole or part of any fee agreed to or invoiced;
      - (2) return the whole or part of any fee already paid; and/or
    - (H) the Member be required to pay an amount not exceeding \$50,000 within the time prescribed by the Disciplinary Tribunal, being not less than 28 days;
    - (I) the censure of the Member;
    - (J) an order that the Member, at the Member's own expense, complete any professional development courses prescribed by the Disciplinary Tribunal within the time period and on the terms stipulated by the Disciplinary Tribunal;
    - (K) an order that the Member engage an adviser or consultant or other person at the Member's own expense, as directed by the Disciplinary Tribunal; or

- (L) an order that the Member and/or the Member's Practice Entity, at the Member's own expense, submit to an investigation or review or reviews, on such matters and on such terms as specified by the Disciplinary Tribunal, such terms to include that the results of such investigation or reviews are made available to the Professional Conduct Committee or that the Professional Conduct Committee itself conduct the investigation.
- (ii) the following Sanctions or any combination of them (where applicable) may be imposed by the Disciplinary Tribunal on the Practice Entity Member, the Non-Practice Entity Member or on the Notifying Principal in respect of a Practice Entity for Offences that are Firm Events:
- (A) the termination of the Practice Entity Member's membership of CA ANZ;
- (B) the suspension of the Practice Entity Member's membership of CA ANZ for a period not exceeding 5 years;
- (C) an order that any licence, accreditation, recognition, specialisation or status issued to the Practice Entity Member by CA ANZ in accordance with any enactment, regulation, other legislation, CA ANZ By-Laws or Regulations or any other instrument, be varied, suspended for any period, or cancelled;
- (D) an order that the Practice Entity Member, the Non-Member Practice Entity or Notifying Principal (on behalf of the Members are who Principals of the Practice Entity) pay an amount not exceeding \$250,000 within the time prescribed by the Disciplinary Tribunal, being not less than 28 days from the notification of the Disciplinary Tribunal's decision. In calculating any fine payable under this paragraph (D), the Disciplinary Tribunal shall have regard to the seriousness of the Offence and the number of Members employed by or who are the Principals of the relevant Practice Entity Member, the Non-Member Practice Entity or in the case of a Firm Event, the Practice Entity (as applicable) and the principles prescribed by the Regulations;
- (E) an order that the Practice Entity Member, the Non-Member Practice Entity or Notifying Principal engage an advisor or consultant or other person in respect of the Practice Entity or the Non-Member Practice Entity, at the Practice Entity's or the Non-Member Practice Entity's own expense, as directed by the Disciplinary Tribunal;
- (F) an order that the Practice Entity Member, the Non-Member Practice Entity or the Notifying Principal's Practice Entity, at such Member's, Practice Entity's or Non-Member Practice Entity's expense, submit to an investigation or reviews on such matters and on such terms as specified by the Disciplinary Tribunal, such terms to include that the results of such investigation or reviews are made available to the Professional Conduct Committee; and/or
- (G) where the Practice Entity Member's or the Non-Member Practice Entity's fees or billing practices have been found to breach compliance obligations set out in the CA ANZ By-Laws, an order that the Practice Entity or the Non-Member Practice Entity be required to:

- (1) waive the whole or part of any fee agreed to or invoiced;
      - (2) return the whole or part of any fee already paid.
    - (H) the Censure of the Practice Entity Member, the Non-Member Practice Entity or the Notifying Principal;
    - (I) an order that the Practice Entity Member, the Non-Member Practice Entity or some or all of the Members who are Principals of the Practice Entity, complete at their own expense any one or more professional development or other courses prescribed by the Disciplinary Tribunal within the time period and on the terms stipulated by the Disciplinary Tribunal;
    - (J) an order that the Practice Entity Member, the Non-Member Practice Entity or the Notifying Principal engage an adviser or consultant or other person at their own expense, as directed by the Disciplinary Tribunal; or
    - (K) an order that the Practice Entity Member, the Non-Member Practice Entity and/or the Member's or Notifying Principal's Practice Entity, at their own expense, submit to an investigation or review or reviews, on such matters and on such terms as specified by the Disciplinary Tribunal, such terms to include that the results of such investigation or reviews are made available to the Professional Conduct Committee or that the Professional Conduct Committee itself conduct the investigation.
- (c) Where a Member (including a Practice Entity Member or Non-Member Practice Entity) fails to comply with a Sanction imposed by the Disciplinary Tribunal or Appeals Council within the time stipulated in the relevant order of the Disciplinary Tribunal or Appeals Council, without reasonable explanation, and if the time for making an appeal has expired or a Final Decision in relation to the appeal has been made:
  - (i) the Disciplinary Tribunal may suspend forthwith the Member's membership of CA ANZ on the application of the Professional Conduct Committee to the Disciplinary Tribunal and maintain a suspension until the Sanction has been complied with; and
  - (ii) the CA ANZ Board may terminate the membership of the Member and exclude the Member from Membership or reject an application by that Member for the renewal of membership until the Sanction has been complied with.

#### **40.22 Appeals Council**

- (a) Within 21 days, or such longer timeframe as approved by the Appeals Council in its discretion, after the date of written notification of the Final Decision of the Disciplinary Tribunal, the Member or the Professional Conduct Committee may give notice of appeal of the entire or any part of the Final Decision, including but not limited to decisions as to Offences, Sanctions, publication and costs, in the form prescribed by the Regulations, to the Appeals Council.
- (b) A notice of appeal must state the grounds of appeal in full. Once given, a notice of an appeal and the grounds of appeal cannot be amended except with the approval of the Appeals Council. The appellant must also give notice of any Final Decision that it seeks be stayed pending determination of the appeal.
- (c) The Appeals Council may, at its discretion or on application by the Professional Conduct Committee, require the Member or Notifying Principal on behalf of a Practice to pay such

amount as it determines to CA ANZ as security against the anticipated Costs which CA ANZ may incur in the conduct and hearing of the appeal.

- (d) The Appeals Council may, at its discretion, stipulate a time period of not less than 28 days within which the Member must pay the security amount and, if it does stipulate a period and the Member has not paid that amount at the expiry of that period, the appeal will automatically lapse.
- (e) Subject to the payment of any security amount ordered, as soon as practicable after receipt of a notice of appeal, the Appeals Council shall give to the Member and the Professional Conduct Committee not less than 28 days' notice of the date, time and place or virtual location fixed for the hearing of the appeal.
- (f) Every appeal shall be by way of rehearing but, unless the Appeals Council directs otherwise, no witnesses who gave evidence before the Disciplinary Tribunal will be recalled and the parties will not be permitted to introduce any new evidence.
- (g) The Appeals Council may require any Member to attend and give evidence at the Appeals Council hearing.
- (h) The Member shall not later than 14 days (or such other date as the Appeals Council prescribes) before the date of the hearing, provide in writing to the Appeals Council:

  - (i) notice as to whether the Member will attend the hearing and, if legally represented, by whom (including details of that legal representative's name and firm, organisation or chambers); and
  - (ii) notice of any other relevant fact or circumstance the Member wishes to bring to the attention of the Appeals Council.
- (i) At every hearing before the Appeals Council, the Professional Conduct Committee shall be responsible for the presentation of the case against the Member concerned where the Professional Conduct Committee has issued the notice of appeal or acting as the respondent in any appeal brought by the Member. The Professional Conduct Committee may appoint an external legal representative to present the case on its behalf.
- (j) The Appeals Council may appoint a legal adviser who is an independent legal representative to advise (attending the hearing as necessary) the Council on matters of law, procedure and evidence.
- (k) On each appeal, the Appeals Council may stay, affirm, vary or set aside any Final Decision of the Disciplinary Tribunal or any part of that Final Decision.

#### **40.23 Alternative Dispute Resolution**

At any time after the lodgement of a complaint, the Professional Conduct Committee, Disciplinary Tribunal or Appeals Council may propose by written notice to the complainant and the Member that the complaint be referred to conciliation, mediation, arbitration or other dispute resolution process and may refer it accordingly if the parties agree to engage in any such process in good faith. Where any complaint is referred to conciliation, mediation, arbitration or other dispute resolution process, the parties will advise the Professional Conduct Committee, Disciplinary Tribunal or Appeals Council (as applicable) of the status and outcome at the conclusion of the dispute resolution process, at a time as directed by the Professional Conduct Committee, Disciplinary Tribunal or Appeals Council. At that time, the Professional Conduct Committee, Disciplinary Tribunal or Appeals Council (as applicable), shall then make a decision to take any course of action permitted by Section 5 of these By-Laws, irrespective of whether the complaint has been resolved or not by the dispute resolution process.



#### **40.24 Costs**

- (a) If the Professional Conduct Committee makes a Final Decision about a complaint, other than a decision not to investigate a complaint, it may require the Member or Notifying Principal to pay all or some 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 complaint.
- (b) The Disciplinary Tribunal may make such orders as it sees fit to require the Member or Notifying Principal to pay 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 respect of:
- (i) any interim suspension or revocation application considered under Section 5 of these By-Laws;
  - (ii) the Professional Conduct Committee's investigation of or in relation to the complaint and any matters arising from it;
  - (iii) the Professional Conduct Committee's presentation of the complaint to the Disciplinary Tribunal;
  - (iv) the Disciplinary Tribunal's hearing;
  - (v) the publication of the Disciplinary Tribunal's decision; and
  - (vi) and any other matters before the Disciplinary Tribunal, as it determines.
- (c) The Appeals Council may, including where a Member or Notifying Principal discontinues an appeal prior to or during its hearing, require the Member or Notifying Principal to pay 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 and Disciplinary Tribunal) in investigating and dealing with the original complaint and the matters before the Disciplinary Tribunal and Appeals Council. If the Member or Notifying Principal has paid any security amount to CA ANZ, then CA ANZ must apply any part of that amount in satisfaction of the Costs so awarded.
- (d) The Professional Conduct Committee, Disciplinary Tribunal or Appeals Council must have regard to the guidelines set out in any applicable Regulations and may have regard to any practice notes when determining whether or not to require a Member or Notifying Principal to pay Costs or the amount of such Costs a Member is required to pay.
- (e) The Disciplinary Tribunal or Appeals Council may, where the Member or Notifying Principal is wholly successful, order the Professional Conduct Committee to pay some or all of the costs of the Member or Notifying Principal.

#### **40.25 Issuing of Final Decisions of the Committee, Tribunal and Council**

- (a) Written notice of a Final Decision made by any of the Professional Conduct Committee, Disciplinary Tribunal and Appeals Council with reasons for that decision must be sent to the relevant Member within 21 days, or such longer period as may be reasonably required by the Professional Conduct Committee, Disciplinary Tribunal or the Appeals Council (as the case may be) in the circumstances of specific matters, and:
- (i) the complainant, if any, in relation to Final Decisions of the Professional Conduct Committee; and
  - (ii) in the case of a decision of the Disciplinary Tribunal and Appeals Council, to the Professional Conduct Committee.
- (b) Subject to any decision of the Disciplinary Tribunal or the Appeals Council that a Final Decision of the Disciplinary Tribunal shall take immediate effect, such decision shall take effect from:



- (i) the day immediately after the expiry of the period during which an appeal may be notified against that decision provided that no appeal has been notified within that period;
- (ii) if an appeal has been notified during the appeal period and that appeal is subsequently withdrawn, from the date of such withdrawal; and
- (iii) If an appeal has been notified during the appeal period and not withdrawn, from the date of the Final Decision of the Appeals Council.

For the avoidance of doubt, no Final Decision including any decision as to publication is to take effect prior to the determination of any stay application by the Appeals Council.

- (c) A Final Decision of the Appeals Council shall take effect from the date it is made.
- (d) The Professional Conduct Committee must give notice to the relevant complainant (other than the Professional Conduct Committee itself) of:
  - (i) the lodgement of any appeal of a Final Decision of the Disciplinary Tribunal within 14 days of this occurring; and
  - (ii) the Final Decision of the Disciplinary Tribunal and Appeals Tribunal no later than 14 days after that decision takes effect.

#### **40.26 Publication and public comment**

- (a) The Professional Conduct Committee may only publish its Final Decision if:
  - (i) the decision is made under a Consent Order Agreement or written undertaking; and
  - (ii) the Professional Conduct Committee considers it is in the public interest to do so.
- (b) Any such publication made under By-Law 40.26(a) must not disclose the name and location of the relevant Member or Practice Entity unless the Professional Conduct Committee considers there are special circumstances for doing so.
- (c) If the Professional Conduct Committee considers it is in the public interest to do so, it may notify other professional bodies, regulatory authorities, the Member's current and/or former employers, partners, and clients of the Member or the Member's Practice Entity, who are or may be affected by the Member's conduct to which the Final Decision relates, of the Member's name and location and so much of a decision made under a Consent Order Agreement or a written undertaking, the reasons for it and/or the Sanctions imposed, as it thinks fit.
- (d) Where the Disciplinary Tribunal or Appeals Council determines that an Offence has been committed or decides to suspend a Member on an interim basis, it must direct that a notice be published by CA ANZ or NZICA of the Final Decision or the decision to suspend a Member on an interim basis. Any such publication must disclose the name and location of the relevant Member unless the Disciplinary Tribunal or Appeals Council (as applicable) considers that there are exceptional circumstances for not doing so. If the Final Decision is under appeal, and no stay is granted, any publication of the Final Decision must include a statement that it is under appeal.
- (e) Publication under paragraph (a) and (c) may be in such form and publication as the Professional Conduct Committee, Disciplinary Tribunal or Appeals Council (as applicable) considers appropriate, including in CA ANZ's official publication, on CA ANZ's website, including in the Register of Disciplinary Decisions, or in any other manner that it may in its discretion direct.

- (f) The Disciplinary Tribunal or Appeals Council 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 Final Decision relates, of so much of a Final Decision or a decision to suspend on an interim basis, the reasons for it and/or the Sanctions imposed, as it thinks fit. The Disciplinary Tribunal or Appeals Council will not do so until the day following the last date on which an appeal may be notified in accordance with Section 5 of these By-Laws. If an appeal is notified in accordance with Section 5 of these By-Laws, the Disciplinary Tribunal will not make such a notification until that appeal is finalised or otherwise determined.
- (g) Any publication of a Final Decision in relation to a Firm Event will not identify the name of any Member who is a Principal of the relevant Practice Entity, but may identify the name of the Practice Entity.
- (h) Where the Professional Conduct Committee commences an investigation, CA ANZ is entitled in its discretion to publicise the fact that an investigation is taking, or has taken, place, and to publicise (including details of the name and location of the Member, and that Member's Practice Entity or, in the case of the investigation of a Firm Event, the name of the relevant Practice Entity) the status and/or outcome of that investigation, provided that CA ANZ must not, in exercising such discretion, contravene any suppression orders issued by any court, tribunal or other disciplinary body and/or any confidentiality obligations imposed by the Professional Conduct Committee, Disciplinary Tribunal or Appeals Council.

#### **40.27 Readmission application after removal**

- (a) This Conduct Rule applies to a Former Member applying for Readmission to Membership following termination or exclusion of that Member from Membership by the Disciplinary Tribunal or Appeals Council or any predecessor bodies (but not, for the avoidance of doubt, following suspension or suspension on an interim basis). The Former Member must, when lodging an application with CA ANZ, also lodge a copy of that application with the Disciplinary Tribunal. When considering a Readmission application, the Disciplinary Tribunal:
- (i) shall consider the application and make a recommendation to the Board and/or to the NZICA Regulatory Board as applicable as to whether or not the application should be granted; and
  - (ii) may require the Former Member to pay to CA ANZ all or any portion of the costs, fees and expenses incurred or that it considers may be incurred by or on behalf of CA ANZ in having the Disciplinary Tribunal consider the application and making its recommendation to the Board, and may require the Former Member to pay such sums in advance to CA ANZ on account of such costs, fees and expenses as it considers appropriate.
- (b) The Professional Conduct Committee is entitled to be heard in relation to any application for Readmission made under paragraph (a).
- (c) A suspended Member may be readmitted to Membership following the expiry of the period of suspension ordered by the Disciplinary Tribunal or Appeals Council, provided that the Board or the NZICA Regulatory Board as applicable is satisfied in its absolute discretion that all conditions and requirements for readmission, as prescribed by these By-Laws and the Regulations have been satisfied, and otherwise on such conditions as the Board or the NZICA Regulatory Board as applicable considers appropriate.

#### **40.28 Expedition**

- (a) The Professional Conduct Committee, Disciplinary Tribunal and Appeals Council shall endeavour to investigate, hear and determine complaints in a timely and efficient manner.
- (b) The Professional Conduct Committee and Disciplinary Tribunal may deal with certain Offences on an expedited basis as it thinks fit. Those Offences which may be dealt with on an expedited basis include:
- (i) The Member has, before any court of law in any jurisdiction in Australia or elsewhere pleaded guilty to, or been found guilty of, a Serious Criminal Offence (with or without conviction);
  - (ii) The Member has pleaded guilty to, or been found guilty of, any statutory or other offence (with or without conviction), which has not been set aside on appeal;
  - (iii) The Member has been found to have acted dishonestly in any binding determination by a court, tribunal, or similar body which is empowered to make such determinations, which has not been set aside on appeal;
  - (iv) The Member has been the subject of any adverse or unfavourable binding determination in relation to the Member's professional or business conduct, competence, or integrity (including in relation to direct discrimination, vilification, sexual harassment, harassment or bullying in the workplace and/or work-related) by any body, including any court of law, tribunal, professional body, royal commission, statutory authority, regulatory authority, statutory body, commission or inquiry, which is empowered by law to make such determinations;
  - (v) The Member has failed to comply with any reasonable and lawful direction of any officer or body of CA ANZ or NZICA acting within the powers conferred by CA ANZ's Supplemental Charter, these By-Laws, the Regulations, the NZICA Act or NZICA Rules;
  - (vi) The Member suffers an Insolvency Event;
  - (vii) The Member has failed to comply with any Sanction, determination or decision made by the Professional Conduct Committee, Disciplinary Tribunal or Appeals Council in accordance with Section 5 of these By-Laws;
  - (viii) a Firm Event; or
  - (ix) any other matter with the written consent of the Member.
- (c) In dealing with a matter on an expedited basis under paragraph (b) the Professional Conduct Committee and Disciplinary Tribunal may:
- (i) forego any formal investigation or Case Conference;
  - (ii) in the case of the Professional Conduct Committee, hold a without prejudice meeting with the Member, or in the case of a Firm Event, the Notifying Principal, to seek an agreement as to appropriate Sanction, and if that is not possible, to seek an agreement as to whether the matter may be dealt with on the papers without a hearing;
  - (iii) in the case of the Professional Conduct Committee, refer the matter to the Disciplinary Tribunal for a hearing before a single Tribunal member in respect of the expedited Offences, listed on an expedited basis; and/or
- (d) At the hearing of any matter on an expedited basis:

- (i) the Member or the Notifying Principal (as the case may be) bears the onus of establishing that there is a genuine dispute as to whether they are the subject of the relevant matter, which if established will require the matter to be referred to the Disciplinary Tribunal for hearing in the usual manner; and
- (ii) the Member or the Notifying Principal (as the case may be) may make submissions on any mitigating factors or otherwise adduce evidence only on whether there is a genuine dispute as to whether they are the subject of the relevant matter.

#### **40.29 Evidence**

- (a) The rules of evidence do not apply to the processes or proceedings of the Professional Conduct Committee, the Disciplinary Tribunal or the Appeals Council.
- (b) The Professional Conduct Committee, Disciplinary Tribunal and Appeals Council may receive as evidence any statement, document, thing or information whether or not it would be admissible in a court.;
- (c) The Professional Conduct Committee, Disciplinary Tribunal and Appeals Council may inspect and examine any documents, thing or information.
- (d) The Disciplinary Tribunal or Appeals Council may:
  - (i) require a Member or a Notifying Principal to produce documents or information to the Tribunal, on the application by another Member made in accordance with the form specified in the Regulations;
  - (ii) require that any document, thing or information be provided to any person appearing at the hearing; and
  - (iii) impose any terms or conditions on the provision of any document or information or thing to a Member, or (if applicable) the complainant or any other person in respect of the use that may be made of them, including any assessment of any claim for confidentiality or privilege.

#### **40.30 Recording and transcribing of hearings**

Each of the Professional Conduct Committee, Disciplinary Tribunal and Appeals Council may record and transcribe its meetings, interviews, investigations, proceedings and hearings in any manner it decides, including by the use of stenography and sound recording technology.

#### **40.31 Termination and Suspension**

If the Member's membership is terminated or suspended in accordance with Section 5 of these By-Laws, the Member's certificate of Membership, any certificate of public practice and any other accreditation, specialisation or other certificate or award then held by the Member is cancelled with immediate effect and must be delivered to CA ANZ.

#### **40.32 Reimbursement**

The Professional Conduct Committee, the Disciplinary Tribunal or the Appeals Council may, if it thinks fit, require the payment or reimbursement by CA ANZ of the reasonable travelling and other out of pocket expenses, or any part thereof, of the Member whose conduct has been referred to the Disciplinary Tribunal for hearing or of any witness or other person who has attended a meeting of such Committee or Tribunal or Council convened for the hearing of a complaint against such Member.

#### **40.33 Written undertakings**

The Professional Conduct Committee, the Disciplinary Tribunal or the Appeals Council may, if it considers that it is appropriate to do so in connection with the consideration or determination of any matter before that body, accept a written undertaking from a Member on such terms as it thinks fit.

#### **40.34 Adjournment**

- (a) The Professional Conduct Committee may adjourn its investigation of a complaint or, adjourn a Case Conference, at any time in its sole discretion including where it considers that to do so is reasonable to do so or may aid resolution of the matter giving rise to a complaint or investigation by an alternative means (including, without limitation, mediation, arbitration or expert determination).
- (b) The Professional Conduct Committee will give notice of any decision with reasons it makes to adjourn to:
- (i) the complainant (if any); and
  - (ii) the relevant Member.
- (c) Each of the Disciplinary Tribunal and Appeals Council may set, change or cancel the date of a hearing before it, or adjourn a hearing after it has commenced.

#### **40.35 Public and Private Hearings**

- (a) The Professional Conduct Committee will hold its meetings (including Case Conferences) in private.
- (b) Subject to Section 5 of these By-Laws, and unless the Disciplinary Tribunal or Appeals Council determine otherwise, each shall hold its hearings in public.
- (c) The Disciplinary Tribunal or Appeals Council may determine to hear any part of a hearing in private.
- (d) The Disciplinary Tribunal or Appeals Council may:
- (i) make an order prohibiting the publication of all or any of the following:
    - (A) a report of any proceedings before it or any part of those proceedings;
    - (B) any document, or any part of any document, produced at any hearing before it; and
    - (C) the name of, or any matter that may identify, the person to whom any hearing relates or any other person; and
  - (ii) 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.
- (e) An order made under this Conduct Rule shall continue in force for the period specified in the order or, if no period is specified, until the order is revoked by the Disciplinary Tribunal or the Appeals Council, as the case may be.
- (f) An order prohibiting publication made under this Conduct Rule shall not apply to communications by, to or between any or all of the following:
- (i) the NZICA Regulatory Board or CA ANZ;

(ii) the CA ANZ and NZICA investigative or disciplinary bodies; or

(iii) an employee or officer of CA ANZ and NZICA.

#### **40.36 Appearance of Expert Witness**

A person who is a current member of the Professional Conduct Committee, Disciplinary Tribunal or Appeals Council may not appear as an expert witness, or as a representative of a Member, before any of the Professional Conduct Committee, the Disciplinary Tribunal or the Appeals Council.

#### **40.37 Disclosure of information to external bodies**

CA ANZ or the Professional Conduct Committee, the Disciplinary Tribunal and the Appeals Council may, in exercising their powers under this Section 5, notify any relevant regulatory authority, professional body or other external body of the status and/or outcome of any complaint or investigation and may disclose information, held or obtained for the purposes of such complaint or investigation, as permitted or required by any legislative or other obligation to do so.

#### **40.38 Confidentiality**

(a) Subject to Section 5 of these By-Laws and any Regulations:

(i) the complaints and disciplinary process in Section 5 of these By-Laws is confidential. All information, correspondence and other documentation sent and/or received by CA ANZ or NZICA, the Professional Conduct Committee, Disciplinary Tribunal, Appeals Council or Reviewer of Complaints or any person engaged on their behalf, in connection with a complaint, its investigation and outcome, any review of that outcome (including the Reviewer of Complaints' report, recommendation and/or any directions) and any disciplinary hearings or appeal (including decisions) is confidential (**Confidential Information**) and may not be disclosed to any person (including for the avoidance of the doubt, any Member or complainant) unless and until such time it is required to be disclosed in the ordinary course of proceedings conducted in accordance with Section 5 of these By-Laws;

(ii) Members and, by acceding to these terms in writing, complainants must:

(A) keep any Confidential Information disclosed to them in accordance with Section 5 of these By-Laws confidential;

(B) securely store and not disclose or permit disclosure of the Confidential Information;

(C) comply with any directions by CA ANZ or NZICA, the Professional Conduct Committee, Disciplinary Tribunal or Appeals Council or Reviewer of Complaints 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 Conduct Rule 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 the confidentiality obligations under Section 5 of these By-Laws); or

(B) details of complaints, investigations and/or decisions that CA ANZ or NZICA, the Professional Conduct Committee, Disciplinary Tribunal or Appeals Council have published or made available to the public in accordance with By-Law 40.26.

(b) The obligations contained in this Section 5 of these By-Laws do not prevent the disclosure of Confidential Information:

(i) that is required to be disclosed by the Member or the Notifying Principal to comply with any applicable statute or regulation or where the Member is lawfully entitled to receive such information;

(ii) to the Member's or complainant'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;

(v) if required, and with the consent of CA ANZ, for the purpose of the complaint, investigation and any disciplinary hearings or other related proceedings; or

(vi) otherwise made in accordance with this Section 5 of these By-Laws.

(c) Any disclosure of Confidential Information pursuant to these By-Laws 40.38(b)(ii) to 40.38(b)(v) to the Member's employer or business partners, insurer or with CA ANZ's or NZICA's consent, can only be made by the Member if the person to whom disclosure is made is subject to the equivalent confidentiality obligations to those prescribed by this By-Law 40.38.

#### **40.39 Transitional Provisions**

(a) All matters, complaints and investigations must be handled by the Professional Conduct Committee and each disciplinary body in accordance with the currently applicable Section 5 of these By-Laws regardless of when the matter, complaint or investigation arose.

(b) Save with the consent of a Member under By-Law 40.16, nothing in this Section 5 of these By-Laws shall operate so as to increase the Sanction imposed on a Member beyond those applicable to such Offence or to make a Member liable to a Sanction which that Member would not otherwise have been under Section 5 of these By-Laws which were in force at the time when the Offence occurred.

#### **40.40 Interest and enforcement costs**

If the Professional Conduct Committee, the Disciplinary Tribunal or the Appeals Council has required a Member or Notifying Principal to pay Costs and/or a fine to CA ANZ by a specified date and such payment has not been received by CA ANZ by the due date, unless waived by CA ANZ:

(a) interest accrues and is payable on the amount due and outstanding from the due date to the date of final payment at the Default Rate; and

(b) CA ANZ is entitled to recovery of all costs of enforcement.



**Schedule 2:  
NZICA Rules 1, 3, 13 and 15**



## Schedule 2 – Rules 1, 3, 13 and 15 of the NZICA Rules

### 1 INTERPRETATION

#### Definitions

1.1 In these Rules (and the Appendices to these Rules), unless the context otherwise requires:

- (a) **Act** means the *New Zealand Institute of Chartered Accountants Act 1996* as amended or substituted from time to time.
- (b) ...
- (c) **Amalgamation** means the arrangement for the combining of NZICA with CA ANZ under which Members of NZICA became members of CA ANZ on the Effective Date.
- (d) **Amalgamation Agreement** means the amalgamation agreement entered into by and between CA ANZ and NZICA to effect the Amalgamation.
- ~~(e)~~ **Appeals Council** has the meaning given to it in Rule 13.2(c).
- ~~(e)(f)~~ **Auditor Regulation Act** means the *Auditor Regulation Act 2011* as amended or substituted from time to time and (unless the context otherwise requires) includes all regulations and other notices, standards, conditions, or requirements promulgated under that Act (including by the Financial Markets Authority).
- ~~(f)(g)~~ **CA ANZ** means Chartered Accountants Australia and New Zealand (formerly called the Institute of Chartered Accountants in Australia) constituted under the Supplemental ~~Royal~~ Charter.
- ~~(g)(h)~~ **CA ANZ Board** means the board of CA ANZ.
- ~~(h)(i)~~ **CA ANZ By-Laws** means the By-Laws of CA ANZ as amended or replaced from time to time.
- ~~(i)(j)~~ ...
- ~~(k)~~ **Case Conference** means a meeting of the Professional Conduct Committee in respect of a complaint which has been notified to a Member in accordance with Rule 13 of these Rules.
- ~~(l)~~ **Caution** means a private sanction relating to specified conduct of a Member that may be imposed by the Professional Conduct Committee and which is not to be disclosed by or on behalf of NZICA or CA ANZ other than to the Professional Conduct Committee, a Reviewer of Complaints, Disciplinary Tribunal, or Appeals Council, pursuant to the decisions of these disciplinary bodies or otherwise in accordance with Rule 13 of these Rules.
- ~~(j)(m)~~ **Certificate of Public Practice** means a certificate issued by NZICA to a Member in accordance with these Rules.
- ~~(k)(n)~~ **Charter** means charters for each Statutory Body and Advisory Group, as referred to in Rules 8.2 and 8.5 respectively, and any document that is approved by the Regulatory Board and referred to as a Charter.
- ~~(l)(o)~~ **Code of Ethics** means the code of ethics that governs the professional conduct of Members prescribed by the Regulatory Board from time to time.
- ~~(m)(p)~~ **Compliance Obligations** has the meaning given to it in Rule 4.
- ~~(q)~~ **Conduct Unbecoming a Member** includes conduct which:

- (i) would be regarded by a reasonable and informed third party as unprofessional or unbecoming a Member; or
- (ii) involves a substantial or consistent failure to maintain the proper standard of professionalism, integrity, care, skill, competence or diligence of the Member's professional duties and obligations.
- (r) **Confidential Information** has the meaning given to it in Rule 13.38(a)(i).
- (s) **Consent Order Agreement** has the meaning given to it in Rule 13.16.
- (t) **Consent Period** has the meaning given to it in Rule 13.16(c)(iv).
- (u) **Costs** in the context of Rule 13 of these Rules, means any costs and expenses incurred by or on behalf of NZICA in relation to the investigation and determination of a complaint (whether through the Professional Conduct Committee, Reviewer of Complaints, Disciplinary Tribunal, Appeals Council or otherwise) and any other taxes, fees, disbursements and charges, paid or payable on them, including, without limitation:

  - (i) fees and disbursements of professionals, advisors or consultants employed, engaged or retained to investigate, represent, appear (as expert witnesses or otherwise), hear, or determine the complaint or advise on the same; and
  - (ii) other outgoings and disbursements including, without limitation, couriers, any transport, travel, accommodation, search fees, transcription services, outsourced photocopying, publication fees, room hire, video-conferencing, telephone conferencing and meals.
- (v) **Cost Agreement** means the form of agreement adopted by NZICA from time to time, under which an applicant under Rule 13 of these Rules, agrees to pay so much of the costs and expenses incurred by or on behalf of NZICA in engaging the Reviewer of Complaints to conduct the review, as the Reviewer of Complaints determines.
- ~~(n)~~(w) **Council** means the council of NZICA established under these Rules in accordance with the Act.
- ~~(o)~~(x) ...
- (y) **Disciplinary Tribunal** has the meaning given to it in Rule 13.2(b).
- ~~(p)~~(z) **Disclosure Event** means those matters set out in Rule 13.4-8(a).
- ~~(q)~~(aa) **Effective Date** means the date on which the Amalgamation Agreement became unconditional in all respects.
- ~~(r)~~(bb) **Former Member** means any person who was at any time previously admitted to full or provisional Membership of NZICA or any of its predecessor organisations including the New Zealand Society of Accountants or the Institute of Chartered Accountants of New Zealand and who is not a current Member in accordance with these Rules.
- (cc) **Final Decision** means:

  - (i) A decision of the Professional Conduct Committee under Rules 13.13(a)(i) to (iii), (v), (vi) and (viii) and Rules 13.15(a)(i) to (iii), and (v) to (vii) but for the avoidance of doubt shall not include any interlocutory decision by the Professional Conduct Committee; or
  - (ii) A decision of the Disciplinary Tribunal which finally disposes of the matter referred by the Professional Conduct Committee to the Disciplinary Tribunal. For the avoidance of doubt where the Disciplinary Tribunal delivers separate decisions as to any interlocutory matters and any one of Offences, Sanctions,

publication, and costs, the matter will be finally disposed of upon the delivery of the last of these decisions.

(iii) A decision of the Appeals Council which finally disposes of an appeal to the Appeals Council of a Final Decision of the Disciplinary Tribunal.

~~(s)~~(dd) **Financial Reporting Act** means the *Financial Reporting Act 2013* as amended or substituted from time to time.

(ee) **Firm Event** means any of the following events occurring in relation to a Practice Entity:

(i) the Practice Entity has before any court of law in any jurisdiction in New Zealand or elsewhere pleaded guilty to, or been found guilty of, a criminal offence (with or without conviction) which has not been set aside on appeal;

(ii) the Practice Entity has pleaded guilty to, or been found guilty of, any statutory or other offence (with or without conviction) which has not been set aside on appeal by a court of law, professional body, statutory or other regulatory authority or body, commission or inquiry in any jurisdiction in New Zealand or elsewhere which may not be a crime but which, in the opinion of the Professional Conduct Committee, the Disciplinary Tribunal or the Appeals Council, brings or may bring discredit upon the Practice Entity, the membership as a whole or the profession of accountancy (provided such finding has not been set aside on appeal);

(iii) the Practice Entity has been found to have acted dishonestly in any binding determination by any body including any court of law, professional body, statutory authority, regulatory authority, statutory body, commission or inquiry which is empowered to make such determinations and which has not been set aside on appeal;

(iv) the Practice Entity has been the subject of any adverse or unfavourable binding determination in relation to its professional or business conduct, competence or integrity (including in relation to direct discrimination, vilification, sexual harassment, harassment or bullying in the workplace and/or work-related) by any body including any court of law, professional body, royal commission, statutory authority, regulatory authority, statutory body, commission or inquiry which is empowered by law to make such determinations;

(v) the Practice Entity has agreed to, or has had imposed, any condition or restriction on any professional membership, registration or licence in the Practice Entity's name other than those imposed by NZICA and/or CA ANZ; or

(vi) the Practice Entity suffers an Insolvency Event.

~~(t)~~(ff) **FMC Audit** is defined in the Auditor Regulation Act.

(gg) **Former Member** means any person, including any Practice Entity, who or which was at any time previously admitted to membership of NZICA and/or CA ANZ and who is not a current Member in accordance with the CA ANZ By-Laws or the Rules, or who has agreed in writing to be, and to remain bound by the Rule 13 of these Rules.

~~(u)~~(hh) ...

(ii) **Insolvency Event** includes where a Member, a Practice Entity Member or a Practice Entity of which that Member is a Principal enters a state of insolvency, including:

(i) bankruptcy;

- (ii) admission to the no asset procedure under the Insolvency Act 2006;
- (iii) entering into a composition or compromise with creditors;
- (iv) receivership;
- (v) statutory management;
- (vi) liquidation;
- (vii) voluntary administration;
- (viii) having a receiver or receiver and manager appointed; and/or
- (ix) entering into some similar state arising from an inability to meet debts as they fall due.

~~(v)~~(jj) **Member** means any person admitted to full or provisional membership of NZICA in accordance with Rule 3, including for the purposes of Rule 13 of these Rules, a Former Member and a suspended Member, or any Practice Entity Member on the Register of Members, in accordance with these Rules and the CA ANZ By-Laws. The terms **Member** and **Membership** shall have corresponding meanings. ~~**New Zealand Appendix** means the New Zealand Appendix to the CA ANZ By-Laws as amended or replaced from time to time.~~

~~(k)~~ **Misconduct** includes conduct which:

- (i) would be regarded by a reasonable and informed third party as disgraceful, dishonourable or bringing discredit to the profession of accountancy; or
- (ii) involves a willful or reckless failure to maintain the proper standard of professionalism, integrity, care, skill, competence or diligence of the Member's professional duties and obligations;
- (iii) would justify a finding that the Member is not a fit and proper person to hold Membership; or
- (iv) otherwise involves a departure from acceptable standards of such a degree as to justify a finding of misconduct.

~~(w)~~(ll) **New Zealand Appendix** means the New Zealand Appendix to the CA ANZ By-Laws as amended or replaced from time to time.

~~(x)~~(mm) **New Zealand Council** has the meaning given to that term in the Act and the CA ANZ By-Laws.

~~(n)~~ **Notification Event** has the meaning given to it in Rule 13.8(c).

~~(o)~~ **Notifying Principal** means a Member who is Principal of a Practice Entity who is authorised, from time to time, by all other Members who are Principals of the Practice Entity or were at the time of the Firm Event to represent them for the purposes of the notification, investigation, resolution and determination of investigations and proceedings conducted under Rule 13 of these Rules in relation to Firm Events.

~~(y)~~(pp) ...

~~(q)~~ **Offence** has the meaning given in Rule 13.9.

~~(r)~~ **Practice Entity** means a practice structure through which 1 or more principals offer accounting services to the public, including sole practices, partnerships, companies, trusts, and other entities, and including combinations of entities.

~~(ss)~~ **Practice Entity Member** means a Practice Entity which has been admitted to Membership.

~~(z)~~(tt) ...

~~(aa)~~(uu) ...

~~(vv)~~ **Principal** means any person, who is a principal of a Practice Entity or a principal, partner, director, officer or trustee of a Related Entity of the Practice Entity and includes:

~~(i)~~ in the case of a Practice Entity or a Related Entity of the Practice Entity which is a partnership, a partner of that partnership;

~~(ii)~~ in the case of a Practice Entity or a Related Entity of the Practice Entity which is a body corporate, a director of that body corporate;

~~(iii)~~ in the case of a Practice Entity or a Related Entity of the Practice Entity that is conducted as a trust, an individual who, as an officer or employee of the trustee of that trust, or otherwise, provides or participates as a Principal in the provision of the services provided by the Practice Entity; and

~~(iv)~~ in the case of a Practice Entity or a Related Entity of the Practice Entity, an individual who, as an officer or employee or otherwise, of the Practice Entity or Related Entity of the Practice Entity, provides or participates as a Principal in the provision of the services provided by the Practice Entity;

~~(ww)~~ **Professional Conduct Committee** has the meaning given to it in Rule 13.2(a).

~~(bb)~~(xx) **Regional Council** has the meaning given to that term in the CA ANZ By-Laws.

~~(yy)~~ **Register of Disciplinary Decisions** means the online register of decisions made by the CA ANZ or NZICA disciplinary bodies, any publicly available findings of the Professional Conduct Committee and other related data.

~~(ee)~~(zz) **Register of Members** means the register of Members maintained in accordance with these Rules.

~~(dd)~~(aaa) **Regulatory Board** means the Executive Board of NZICA established under these Rules in accordance with the Act.

~~(bbb)~~ **Reviewers of Complaints** has the meaning given to it in Rule 13.18(a).

~~(ccc)~~ **Reviewer of Complaints Application Fee** means the application fee payable under Rule 13.18(c) in the amount prescribed in Appendix VIII from time to time.

~~(ddd)~~ **Revocation Application** has the meaning given to it in Rule 13.19(d)(v).

~~(eee)~~ **Rules** reference to the Rules or these Rules refers to the Rules of the New Zealand Institute of Chartered Accountants.

~~(fff)~~ **Sanctions** means sanctions ordered or imposed under Rule 13 of these Rules.

~~(ggg)~~ **Serious Criminal Offence** means an offence under a law of Australia, a State or Territory, New Zealand or a foreign law which imposes a minimum penalty of imprisonment for not less than 24 months.

~~(ee)~~(hhh) ...

~~(ff)~~(iii) ...

~~(gg)~~(iii) **Supplemental Charter** means the Supplemental Royal Charter of CA ANZ as amended or added to from time to time.

### 3 MEMBERSHIP

3.1 NZICA shall consist of all persons (including individuals and any Practice Entities) whose names are for the time being entered in the Register of Members as Members.

3.2 ~~A person shall be a Member if the person~~ Membership of NZICA shall consist of:

(a) ~~is a member~~ s of CA ANZ in any of the classes of membership prescribed by the CA ANZ By-Laws from time to time who reside in New Zealand; and who satisfy any requirements (in respect of training, education, examinations or otherwise) for Membership set out in these Rules or the New Zealand Appendix or as may be specified from time to time by the Regulatory Board who have been admitted to Membership in New Zealand in accordance with Rule 3.3; and

~~(b) resides in New Zealand; and~~

~~(c) satisfies any requirements (in respect of training, education, examinations or otherwise) for Membership set out in these Rules or the New Zealand Appendix or as may be specified from time to time by the Regulatory Board; and~~

~~(d) subject to these Rules, has not had his or her name~~

~~(b)~~ Practice Entities who satisfy any requirements for Membership set out in these Rules or the New Zealand Appendix or as may be specified from time to time by the Regulatory Board and who have been admitted to Membership in New Zealand in accordance with Rule 3.3; and

~~(c)~~ subject to these Rules and/or the CA ANZ By-laws, individuals or Practice Entity Members who have~~has~~ not had ~~his or her~~ their names removed from the Register of Members by order of the Disciplinary Tribunal or Appeals Council.

3.3 NZICA shall, if it is satisfied that ~~a person~~ an individual or Practice Entity meets the Membership requirements set out in Rule 3.2, cause the ~~person's~~ individual's or Practice Entity's name to be entered in the Register of Members as a Member. On entry of that ~~person's~~ individual's or Practice Entity's name in the Register of Members, that ~~person~~ individual or Practice Entity becomes a Member.

3.4 Notwithstanding Rule 3.3, NZICA may, in its absolute discretion and without giving any reason, refuse to admit as a Member ~~a person~~ an individual or Practice Entity whom it shall consider not to be a fit and proper ~~person~~ individual or Practice Entity to be so admitted even if he or she or it has fulfilled the prescribed conditions of such admission.

3.5 A person:

(a) who was a Member immediately prior to the Effective Date and who does not for any reason become a member of CA ANZ; or

(b) who is a member of CA ANZ and who for any reason ceases to be a member of CA ANZ,

shall, unless NZICA otherwise determines, automatically cease to be a Member.

3.6 For the purposes of NZICA carrying out its regulatory and disciplinary functions pursuant to the Act and these Rules, NZICA may treat a person who is a member of CA ANZ in any of the classes of membership prescribed by the CA ANZ By-Laws from time to time, who does not reside in New Zealand but who practises the profession of accountancy in New Zealand, as a



Member of NZICA. Nothing shall take away from CA ANZ's jurisdiction to the extent that the relevant person practises the profession of accountancy in locations other than New Zealand.

3.7 Every Member:

- (a) who, under the CA ANZ By-Laws, is admitted as a member of CA ANZ:
  - (i) in the class of membership known as "Chartered Accountant Fellow"; or
  - (ii) the class of membership known as "Chartered Accountant",  
and who satisfies the relevant requirements relating to Chartered Accountants set out in ~~the New Zealand~~ Appendix VII or as may be specified by or on behalf of the Regulatory Board from time to time, shall be entitled to use:
    - (iii) if a Chartered Accountant Fellow, (in addition to the designation "Chartered Accountant" and the initials "CA"), the designation "Fellow Chartered Accountant" and the initials "FCA"; and
    - (iv) if a Chartered Accountant Fellow or a Chartered Accountant, the designation "Chartered Accountant" and the initials "CA";
- (b) who, under the CA ANZ By-Laws, is admitted as a member of CA ANZ in the class of membership known as Associate Chartered Accountant and who satisfies the relevant requirements relating to Associate Chartered Accountants set out in ~~the New Zealand~~ Appendix VII or as may be specified by or on behalf of the Regulatory Board from time to time, shall be entitled to use the designation "Associate Chartered Accountant" and the initials "ACA" and if a Fellow Associate Chartered Accountant immediately prior to the Effective Date, the designation "Fellow Associate Chartered Accountant" and the initials "FACA";
- (c) who, under the CA ANZ By-Laws, is admitted as a member of CA ANZ in the class of membership known as Accounting Technician and who satisfies the relevant requirements relating to Accounting Technicians set out in ~~the New Zealand~~ Appendix VII or as may be specified by or on behalf of the Regulatory Board from time to time, shall be entitled to use the designation "Accounting Technician" and the initials "AT" and if a Fellow Accounting Technician immediately prior to the Effective Date, the designation "Fellow Accounting Technician" and the initials "AT (Fellow)"; and
- (d) who, under the CA ANZ By-Laws, is admitted as a provisional member of any of the classes of membership referred to in Rules 3.7 (a) – (c), may only describe themselves as a "Provisional Member of CA ANZ" and is otherwise not entitled to refer to any post-nominal designations, or use letters, or abbreviations referring to a specific class of membership.

3.8 A Practice Entity approved under Appendix IV of these Rules shall be eligible for admission to Membership as a Practice Entity Member if, at the date of its application for such admission it complies, or upon admission will be able to and undertakes to comply, with Rule 4.1 insofar as they relate to Practice Entities generally. Practice Entities granted Membership of NZICA must ensure that the conditions applying to that Membership continue to be met. Failure to comply with the undertakings and obligations of Practice Entity Membership will lead to cessation of Membership at the expiration off 30 days from the breach. Notwithstanding Rule 9.2, Practice Entity Members are not entitled to vote at any Special General Meeting.

### Resignations

3.89 Any ~~member~~Member of NZICA who wishes to resign from Membership must send in writing to NZICA or CA ANZ a request to resign together with all monies owing by him or her to NZICA or CA ANZ.

3.910 Any Member whose notice of resignation was not received by NZICA or CA ANZ prior to 30 June in any year shall remain liable for any subscription, fee or other amount payable by him



or her to NZICA or CA ANZ in respect of the year ending the following 30 June, save that, in any case, NZICA may in its absolute discretion remit the whole or any part of such subscription, fee or other amount.

~~3.40~~11 No resignation shall take effect unless and until it has been accepted by NZICA. NZICA may refuse to accept the resignation of any Member if:

- (a) NZICA reasonably believes, by virtue of matters brought to its attention, that the Member's conduct may become the subject of professional conduct proceedings;
- (b) any matter concerning the Member is before the Professional Conduct Committee, the Disciplinary Tribunal or the Appeals Council for investigation or hearing, whether or not the Member has been notified of the complaint or is subject to a written complaint, and whether or not the period for appeal to the Appeals Council under Rule 13.63 has expired; or
- (c) the Member has been requested to provide information, given notice of or is undergoing a review or investigation under Rule 12 or any follow up process arising thereof or pursuant to the Auditor Regulation Act, Insolvency Practitioners Act or any other legislation or standard.

~~3.41~~12 The decision to accept or refuse a resignation shall be communicated to the Member.

~~3.42~~13 Resignation of Membership from NZICA shall be taken as a resignation of membership from both CA ANZ and NZICA, unless the Member gives notice that they are no longer resident in New Zealand and wish to resign from Membership of NZICA but remain a member of CA ANZ.

~~3.43~~14 Subject to any refusal under ~~3.40~~and Rule 3.11, if CA ANZ advises NZICA that a Member has resigned from his or her membership of CA ANZ, NZICA shall treat that Member as having resigned from NZICA.

#### **Right of Appeal for Admission and Membership Decisions**

~~3.44~~15 There shall be a final right of appeal to the Regulatory Board for decisions made in respect of admissions and Membership matters.

~~3.45~~16 The Regulatory Board shall have the power to dispense with, or vary, any of the Membership requirements set out in Rule 3.2 if the Regulatory Board in its sole discretion considers that there are grounds to justify the dispensation or variation, and gives notice in writing to CA ANZ.

~~3.46~~17 The Regulatory Board shall also have the power to confirm or vary or reverse any decision made by NZICA under Rules 3.3 and 3.4.

### **13 DISCIPLINE**

#### **13.1 Purpose**

(a) The purpose of Rule 13 of these Rules is to allow the hearing of complaints and the investigation of other disciplinary related matters in a manner which:

(i) is consistent with the purpose of the Supplemental Charter, the CA ANZ By-Laws and the Act (where applicable); and

(ii) promotes the resolution of complaints in a fair, efficient, speedy and simple manner, consistent with the rules of natural justice, and procedural fairness, and taking account of the public interest.

(b) Rule 13 of these Rules are to be interpreted and applied in a way that is consistent with their purpose.

(c) Members must be open and honest in their dealings with the Professional Conduct Committee, Reviewer of Complaints, Disciplinary Tribunal and Appeals Council in connection with an investigation, a complaint or any matters arising from or in relation to either of those promptly and in any event within any timeframe prescribed by Rule 13 of these Rules and Appendix VIII.

### **13.2 Professional Conduct Committees, Disciplinary Tribunals and Appeals Council**

For the implementation of the procedures referred to in Rule 13 of these Rules, there shall be the following investigative and disciplinary bodies:

- (a) a Professional Conduct Committee which shall receive, initiate, investigate, dispose of and refer and prosecute complaints and respond to any applications for readmission made to the Disciplinary Tribunal;
- (b) a Disciplinary Tribunal which shall hear and determine complaints made to it by the Professional Conduct Committee and any other applications made to it in accordance with Rule 13 of these Rules; and
- (c) an Appeals Council which shall hear and determine appeals of decisions of the Disciplinary Tribunal.

### **13.3 Powers of the Professional Conduct Committees, Disciplinary Tribunals and Appeals Council**

Subject to the Act, Rules and the Charters, each of the Professional Conduct Committee, Disciplinary Tribunal and Appeals Council is empowered to:

- (a) regulate its own affairs;
- (b) issue directions, either of its own motion or on the application of any party, for the efficient conduct of its functions;
- (c) appoint experts and/or investigators;
- (d) make decisions by circular resolution;
- ~~(h)~~(e) issue practice notes or guidelines; and
- ~~(i)~~(f) delegate any of its functions or powers.

~~13.3 Members must be open and honest in their dealings with the Professional Conduct Committee, Reviewer of Complaints, Disciplinary Tribunal and Appeals Council. Members must provide such information as is required of them by NZICA, the Professional Conduct Committee, Reviewer of Complaints, Disciplinary Tribunal and Appeals Council in connection with an investigation, a complaint or any matters arising from or in relation to it, in a timely fashion and in any event within any timeframe prescribed under the Rules.~~

### **13.4 General principle**

- (a) No Member shall be Sanctioned under both the CA ANZ By-Laws and the Rules in respect of the same conduct.

### **13.5 Application of ~~Conduct Rules~~Rule 13**

The following provisions apply to a Member who is, or who is recognised as, a Member of both CA ANZ and NZICA or who has otherwise agreed to be subject to ~~the Conduct Rules~~Rule 13 of these Rules

- (a) Every decision made by the Professional Conduct Committee, Disciplinary Tribunal or Appeals Council in respect of a Member, including the imposition of a Sanction or an interim suspension, will automatically form part of the Member's record with both CA ANZ and NZICA;
- (b) any Sanction (other than a fine) which is imposed on the Member by the Professional Conduct Committee, Disciplinary Tribunal or Appeals Council will automatically result in the imposition on the Member of the equivalent Sanction in respect of their Membership of both CA ANZ and NZICA;
- (c) any interim suspension which is imposed on the Member by the Disciplinary Tribunal or Appeals Council will automatically result in the imposition on the Member of an interim suspension in equivalent terms in respect of their Membership of both CA ANZ and NZICA;
- (d) CA ANZ and NZICA will notify each other of any Sanction or interim suspension imposed on the Member under Rule 13 of these ~~Conduct~~ Rules; and
- (e) CA ANZ and NZICA may notify each other of any information in its possession relating to the Member, whether in respect of disciplinary proceedings or otherwise, as it considers appropriate.

### 13.6 Complaints against Suspended and Former Members

- (f) A Member whose membership is interim suspended or suspended under these ~~NZICA~~ Rules or any earlier version remains subject to Rule 13 of these ~~the Conduct~~ Rules and any requirements set out in any Appendix to the ~~NZICA~~ Rules during their period of ~~their~~ interim suspension or suspension from membership.
- (g) A Former Member remains subject to Rule 13 of these ~~the Conduct~~ Rules and any applicable requirements set out in any Appendix to the ~~NZICA~~ Rules in relation to conduct which occurred while they were a Member. ~~A and any~~ reference in Rule 13 of these ~~Conduct~~ Rules to a Member includes a Former Member and Suspended Member unless the context requires otherwise.
- (h) Where a complaint has been made against a Member, and that Member ceases to be a Member before the complaint has been finally disposed of, that complaint may continue to be considered and determined in accordance with Rule 13 of these ~~Conduct~~ Rules in the same manner as a complaint concerning a Former Member, to the extent permitted by ~~the Conduct~~ Rule 13 of these Rules.
- (i) All actions, determinations or Sanctions that would have been available to the Professional Conduct Committee, Disciplinary Tribunal and Appeals Council if the Former Member were a Member continue to apply. For the avoidance of doubt, where ~~Where~~ the Disciplinary Tribunal or Appeals Council finds a Former Member has committed an Offence it may make a finding that, had the Former Member still been a Member, it would have:
  - (i) terminated that person or entity's Membership; or
  - (ii) suspended that person or entity from Membership for a specified period not exceeding 5 years.
- (j) A Former Member may not apply for readmission to Membership within 5 years of any finding of the Disciplinary Tribunal made in accordance with NZICA Rule 13.46(d)(i).
- (k) A Former Member may not apply for readmission to Membership during the period of any suspension specified by the Disciplinary Tribunal for the purposes of NZICA Rule 13.6(d)(ii).

13.4—7 Complaints against Non-Members subject to CA ANZ or NZICA’s regulatory or disciplinary jurisdiction

- (l) A person who is not a Member of CA ANZ or NZICA but has agreed to be subject to NZICA’s regulatory or disciplinary jurisdiction will be subject to Rule 13 of these Rules as if they were a Member of NZICA. This includes without limitation:
  - (i) Non-Member Principals; and
  - (ii) Non-Members recognised, licensed or accredited by CA ANZ or NZICA under any enactment or voluntary arrangement.
- (m) The provisions relating to suspended or Former Members also apply to Non-Members subject to Rule 13 of the Rules.

13.8 Disclosure and Notification Obligations

- (a) A Disclosure Event occurs in relation to a Member when the Member or a Practice Entity of which a Member is a Principal:
  - (i) is convicted of a Serious Criminal Offence in any jurisdiction;
  - (ii) is convicted of any offence under the Tax Administration Act 1994 or any offence under analogous legislation in any other jurisdiction;
  - (iii) suffers an Insolvency Event; or
  - (iv) does something or suffers an event specified in any Appendix to the Rules for the purposes of Rule 13 of these Rules.
- (b) When a Disclosure Event occurs in relation to a Member, that Member must:
  - (i) within 7 days of becoming aware of the Disclosure Event give notice to the Professional Conduct Committee of the Disclosure Event; and
  - (ii) send a written statement to the Professional Conduct Committee within 21 days of becoming aware of the Disclosure Event setting out the circumstances of the Disclosure Event and 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.
- (c) A Notification Event occurs when a Member or Practice Entity of which a Member is Principal, becomes aware the Member or Practice Entity:
  - (i) has committed an Offence or a Firm Event has occurred, as defined by Rule 13 of these Rules;
  - (ii) has been charged with any Serious Criminal Offence in any jurisdiction;
  - (iii) has been the subject of an adverse or unfavourable finding in relation to that Member’s professional or business conduct, competence or integrity (including in relation to direct discrimination, vilification, sexual harassment, harassment or bullying in the workplace and/or work-related), by any body, including any court of law, tribunal, professional body, royal commission, statutory authority, regulatory authority, statutory body, commission or inquiry, which is empowered by law to make such findings; or
  - (iv) with or without any admissions, has given or entered into an undertaking (whether enforceable or not) or consented, accepted or agreed to any order in connection with any matter or proceedings or any threatened or proposed

proceedings or any review, audit or investigation by any statutory or regulatory authority or body, or professional body in any jurisdiction in Australia, New Zealand or elsewhere (other than an undertaking or order in respect of procedural matters in respect of or in the course of the conduct of the proceedings or investigation, or otherwise imposed by NZICA and/or CA ANZ).

- (d) When a Notification Event occurs in relation to a Member, or a Practice Entity of which that Member is a Principal, that Member must, in accordance with Rule 13 of these Rules and Appendix VIII give notice to the Professional Conduct Committee of the Notification Event within 7 days of becoming aware of the Notification Event.
- (e) The Members who are Principals of a Practice Entity may appoint a Notifying Principal to notify the Professional Conduct Committee of Firm Events relating to the Practice Entity on behalf of all such Members. A notice given by such a Notifying Principal shall be deemed to discharge the obligation of each Member who is a Principal to notify the Professional Conduct Committee of the relevant Firm Event.

### 13.9 Offences

- (a) A Member will have committed an Offence for the purposes of Rule 13 of these Rules if that Member:
  - (i) has committed any act, omission or default that amounts to Misconduct;
  - (ii) has committed any act, omission or default that amounts to Conduct Unbecoming a Member;
  - (iii) has failed to observe a proper standard of professional care, skill, competence or diligence in the course of carrying out that Member's professional duties and obligations;
  - (iv) has, before any court of law in any jurisdiction in New Zealand or elsewhere pleaded guilty to, or been found guilty of, a Serious Criminal offence (with or without conviction) which has not been set aside on appeal;
  - (v) has pleaded guilty to, or been found guilty of, any statutory or other offence (with or without conviction) which has not been set aside on appeal;
  - (vi) has been found to have acted dishonestly in any binding determination by a court, tribunal, or similar body which is empowered to make such determinations which has not been set aside on appeal;
  - (vii) has been the subject of any adverse or unfavourable final or binding determination in relation to the Member's professional or business conduct, competence, or integrity (including in relation to direct discrimination, vilification, sexual harassment, harassment or bullying in the workplace and/or work-related) by any body, including any court of law, tribunal, professional body, royal commission, statutory authority, regulatory authority, statutory body, commission or inquiry, which is empowered by law to make such determinations;
  - (viii) has agreed to, or has had imposed, any condition or restriction on any professional membership, registration or licence in that Member's name;
  - (ix) has committed any breach of the Compliance Obligations prescribed by the NZICA Rules;

- (x) has failed to comply with any reasonable and lawful direction of any officer or body of CA ANZ or NZICA acting within the powers conferred by CA ANZ's Supplemental Charter, these By-Laws, the CA ANZ Regulations or the Act or the Rules;
  - (xi) suffers an Insolvency Event;
  - (xii) is or was a Principal of a Practice Entity Member which is the subject of a Firm Event;
  - (xiii) has provided information to CA ANZ or NZICA which is false or misleading;
  - (xiv) has failed to comply with any Sanction, determination or decision made by the Professional Conduct Committee, Disciplinary Tribunal or Appeals Council in accordance with Rule 13 of these Rules;
  - (xv) has failed to comply with any undertaking given to the Professional Conduct Committee, the Disciplinary Tribunal or Appeals Council in accordance with Rule 13 of these Rules;
  - (xvi) has made any admissions or committed any act, omission or default which, in the opinion of the Professional Conduct Committee, Disciplinary Tribunal or Appeals Council brings, or may bring, discredit upon that Member, or the profession of accountancy; and/or
  - (xvii) the Member has failed to comply with any statutory requirement applicable to the Member's profession, including the Auditor Regulation Act and/or the Insolvency Practitioners Act (where applicable).
- (b) For the avoidance of doubt, a reference in paragraph (a) to a Member includes:
- (i) a Former Member, to the extent the conduct giving rise to the Offence occurred during the Former Member's membership; and
  - (ii) a suspended Member to the extent the conduct giving rise to the Offence occurred during the suspended Member's membership or the period of the suspension.

#### **13.10 Lodging a complaint**

- (a) A complaint about the conduct of a Member (including a Member who is suspended) or a Former Member, or person or body otherwise subject to CA ANZ or NZICA's disciplinary jurisdiction, whether or not the conduct occurred in Australia or New Zealand or elsewhere, may be:
- (i) lodged by any person; or
  - (ii) initiated and made by NZICA or the Professional Conduct Committee at any time following an investigation or receipt of information (including information of the kind specified by Rule 13.12(a)).
- (b) Every complaint shall be:
- (i) in writing; and
  - (ii) with respect to complaints lodged by a person, in such form as prescribed in Appendix VIII and supported by any statutory declaration or additional information the Professional Conduct Committee may require from time to time.

### **13.11 Initial Assessment and Jurisdiction Decision by Professional Conduct Committee**

- (a) The Professional Conduct Committee must notify the relevant Member (including a Former Member or suspended Member) of any complaint relating to that Member.
- (b) The Professional Conduct Committee may dismiss, without investigation, a complaint on one or more of the following grounds, if it:

  - (i) relates to conduct that does not amount to an Offence;
  - (ii) is trivial, frivolous, vexatious or in bad faith;
  - (iii) is lacking in substance, vague, imprecise or unsupported by evidence including where the complainant has failed to provide such further information as required by the Professional Conduct Committee;
  - (iv) is, may or could be, an abuse of process;
  - (v) relates to historical issues that it considers would no longer be practical to investigate;
  - (vi) is of an insufficient nature to warrant investigation; or
  - (vii) comes within the jurisdiction of another forum or is otherwise the subject of a separate Professional Conduct Committee investigation and in all the circumstances it is reasonable for the complaint to be so dismissed.
- (c) If the Professional Conduct Committee dismisses a complaint in accordance with this Conduct Rule, it will notify the Member and complainant of that dismissal within 21 days of the dismissal.
- (d) A Member must respond in writing to the Professional Conduct Committee within such period of time as the Professional Conduct Committee specifies in its notification. The Member's written response must address all matters raised in the notification to the satisfaction of the Professional Conduct Committee.
- (e) Without limiting paragraph (d) above, where a complaint relates to a Firm Event, the Notifying Principal or, in the absence of the appointment of a Notifying Principal, any other Member who is a Principal of the Practice Entity, must respond to the Professional Conduct Committee in writing within such period of time as the Professional Conduct Committee specifies in its notification. The Notifying Principal's or Member's (as the case may be) written response must address all matters raised in the notification to the satisfaction of the Professional Conduct Committee.

### **13.12 Investigation by Professional Conduct Committee**

- (a) The Professional Conduct Committee may investigate any matter that it considers may result in disciplinary action in respect of a Member (including a Member who is suspended) or a Former Member under Rule 13 of these Rules.
- (b) For the purposes of any investigation, the Professional Conduct Committee may:

  - (i) make, or engage or employ any person, including any expert or experts, to make such inquiries or provide such assistance as the Professional Conduct Committee considers necessary;
  - (ii) require any Member, Notifying Principal, Former Member or suspended Member to whom the investigation relates to respond to the complaint and to provide the Professional Conduct Committee, or any person engaged or employed by the Professional Conduct Committee, any documents, things or information that are in the possession or under the control of that Member



that may relate to the subject matter of the investigation (including original digital records so that metadata may be assessed) within such period of time as the Professional Conduct Committee or any person engaged or employed, specifies in its notification;

- (iii) require any other Member to provide the Professional Conduct Committee, or any person engaged or employed by the Professional Conduct Committee, any documents, things or information that are in the possession or under the control of that Member that may relate to the subject matter of an investigation by the Professional Conduct Committee (including original digital records so that metadata may be assessed), within such period of time as the Professional Conduct Committee or any person engaged or employed by the Professional Conduct Committee, specifies in its notification;
  - (iv) require the Member to whom the investigation relates, and/or that Member's Practice Entity, or the Notifying Principal's Practice Entity, to submit, at the Member's or the Notifying Principal's cost, to a review or reviews on such matters and on such terms as determined by the Professional Conduct Committee, such terms to include that the results of such reviews are made available to the Professional Conduct Committee;
  - (v) make and retain copies of any documents that are provided to the Professional Conduct Committee, including those containing personal information for the purposes of the *Privacy Act 1988 (Cth)* or *Privacy Act 2020 (NZ)* (as applicable);
  - (vi) require the Member or the Notifying Principal, at their own cost, to attend an interview before the Professional Conduct Committee or any person engaged or employed by the Professional Conduct Committee, to answer any questions and/or discuss the complaint or any matter arising from it;
  - (vii) request the complainant, at the complainant's own cost, to attend an interview before the Professional Conduct Committee or any person engaged or employed by the Professional Conduct Committee, to answer any questions and/or discuss the complaint or any matter arising from it or to attend a Case Conference; and
  - (viii) make enquiries of, including, interview any other persons or entities which the Professional Conduct Committee considers necessary for its investigation of the complaint.
- (c) The investigative powers of the Professional Conduct Committee may be exercised at any time, including after the Professional Conduct Committee has decided to convene a Case Conference or refer a complaint against a Member to the Disciplinary Tribunal for hearing.
- (d) Members may be legally represented when responding to complaints or attending before the Professional Conduct Committee or at a Case Conference. If attending before the Professional Conduct Committee, Members are required to notify the Professional Conduct Committee of the name of any legal representative no less than 7 days before any appearance by the legal representative.

### **13.13 Interim and Final Decision by Professional Conduct Committee**

- (a) During an investigation, the Professional Conduct Committee may take one or more of the following actions:
  - (i) take no further action;



- (ii) issue a professional reminder that the Member's or Practice Entity's conduct has fallen short of best practice;
- (iii) issue a Caution whether or not an Offence has been committed;
- (iv) convene a Case Conference and decide if the Member or Notifying Principal is required to attend or if the complainant or any other relevant person should be invited to attend the Case Conference;
- (v) require the Member and/or the Member's Practice Entity or the Notifying Principal's Practice Entity to submit, at the Member's or Notifying Principal's cost, to a review or reviews on such matters and on such terms as determined by the Professional Conduct Committee, such terms to include that the results of such reviews are made available to the Professional Conduct Committee;
- (vi) require the Member, at the Member's own expense, or in the case of a Practice Entity Member, or a Notifying Principal in connection with a Firm Event, require some or all of the Members who are Principals of the Practice Entity, at their own expense, to complete any 1 or more professional development or other courses prescribed by the Professional Conduct Committee within the time period and on the terms stipulated by the Professional Conduct Committee;
- (vii) investigate and make a decision regarding any other matter arising out of the complaint or the Professional Conduct Committee's investigation of the complaint;
- (viii) when it considers a complaint would otherwise warrant being referred to the Disciplinary Tribunal (without convening a Case Conference) propose a Consent Order Agreement;
- (ix) refer the complaint directly to the Disciplinary Tribunal (without convening a Case Conference) where it is satisfied that:

  - (A) a Disclosure Event has occurred;
  - (B) the Member has failed, within the time specified, to provide any documents, things or information (including any response to the complaint);
  - (C) the Member has failed to attend before the Professional Conduct Committee, having been required to do so;
  - (D) the Member has provided information to CA ANZ or NZICA which is false or misleading;
  - (E) the Member has failed to comply with any action, determination or decision made by the Professional Conduct Committee, the Disciplinary Tribunal or the Appeals Council;
  - (F) the Member has failed to comply with any undertaking given to the Professional Conduct Committee, the Disciplinary Tribunal or the Appeals Council;
  - (G) the matter is sufficiently serious that the Disciplinary Tribunal may suspend the Member on an interim basis;

(H) the Member has confirmed that they will not contest the complaint and the Professional Conduct Committee considers the Sanctions it may impose are not sufficient; and/or

(I) the complaint is otherwise appropriate to be referred directly to the Disciplinary Tribunal.

(b) Written notice of a decision made by the Professional Conduct Committee with reasons for that decision must be sent to the relevant Member and complainant (if any) within 21 days of that decision, or such longer period as may be reasonably required by the Professional Conduct Committee in the circumstances of specific matters.

#### **13.14 Administrative processes for Case Conference**

(a) If the Professional Conduct Committee decides that a complaint or any matter arising out of the complaint or the Professional Conduct Committee's investigation should be considered at a Case Conference, it must give the relevant Member or Notifying Principal not less than 21 days' notice specifying:

- (i) the date, time and place or virtual location of the Case Conference;
- (ii) the matters to be considered at the Case Conference; and
- (iii) that the Member or Notifying Principal (as applicable) is required to attend.

#### **13.15 Case Conference with Professional Conduct Committee**

(a) At the Case Conference, the Professional Conduct Committee may take one or more of the following actions:

- (i) take no further action;
- (ii) issue a professional reminder that the Member's or Practice Entity's conduct has fallen short of best practice;
- (iii) issue a Caution whether or not an Offence has been committed;
- (iv) refer the complaint or any matter arising out of the complaint or the Professional Conduct Committee's investigation to the Disciplinary Tribunal for hearing;
- (v) require the Member and/or the Member's Practice Entity, or the Notifying Principal's Practice Entity to submit, at the Member's or Notifying Principal's cost, to a review or reviews on such matters and on such terms as determined by the Professional Conduct Committee, such terms to include that the results of such reviews are made available to the Professional Conduct Committee;
- (vi) require the Member, at the Member's own expense, or in the case of a Practice Entity Member, or Case Conference convened with a Notifying Principal in connection with a Firm Event, require some or all of the Members who are Principals of the Practice Entity, at their own expense, to complete any 1 or more professional development or other courses prescribed by the Professional Conduct Committee within the time period and on the terms stipulated by the Professional Conduct Committee; and/or
- (vii) when it considers a complaint would otherwise warrant being referred to the Disciplinary Tribunal, propose a Consent Order Agreement.

(b) Written notice of the decision of the Professional Conduct Committee at a Case Conference with reasons for the decision must be given to the complainant (if any) and to the Member concerned within 21 days of that decision, or such longer period as may be reasonably required by the Professional Conduct Committee in the circumstances of specific matters.

### **13.16 Consent Order Agreements**

(a) A Consent Order Agreement may be made (by way of deed or otherwise) with the Member or Notifying Principal on behalf of all of the Members who are Principals of the Practice Entity) in respect of a Firm Event.

(b) A Consent Order Agreement is to contain one or more of the following orders, which shall be entered on the Member's record or the Notifying Principal's record (as the representative of the Members who are Principals of the Practice Entity only, in respect of a Firm Event) as applicable:

(i) that the Member or the Notifying Principal, be censured;

(ii) that the Member, or Notifying Principal pay to NZICA a fine of such sum as the Professional Conduct Committee determines, not to exceed:

(A) \$25,000 in the case of an individual Member; and

(B) \$100,000 in the case of a Practice Entity Member or a Notifying Principal in respect of any Firm Event;

(iii) that the Member or Notifying Principal pay to NZICA all or any portion of the Costs incurred by or on behalf of NZICA in investigating and dealing with the matters the subject of the complaint or the Case Conference as the Professional Conduct Committee determines;

(iv) subject to paragraph 13.16(b)(v), that the Member, at their own expense, complete any one or more professional development or other courses prescribed by the Professional Conduct Committee within the time period and on the terms stipulated by the Professional Conduct Committee;

(v) in the case of a Practice Entity Member, or a Notifying Principal, that the Practice Entity member or the Notifying Principal procure that some or all of the Members who are Principals, at their own expense, to complete any one or more professional development or other courses prescribed by the Professional Conduct Committee within the time period and on the terms stipulated by the Professional Conduct Committee;

(vi) that the Member's or Notifying Principal's own expense, engage an adviser, consultant or other person as approved by the Professional Conduct Committee for the period and on the terms specified by the Professional Conduct Committee;

(vii) that the Member and/or the Member's Practice Entity, or the Notifying Principal's Practice Entity to submit, at the Member's or Notifying Principal's cost, to a review or reviews on such matters and on such terms as determined by the Professional Conduct Committee, such terms to include that the results of such reviews are made available to the Professional Conduct Committee;

(viii) where the Member's or Practice Entity's fees or billing practices have been found to breach Compliance Obligations the Member and/or Practice Entity shall:

- (A) waive the whole or part of any fee agreed to or invoiced;
  - (B) shall return the whole or part of any fee already paid; and/or
- (ix) such other orders as the Professional Conduct Committee considers reasonable.
- (c) Where the Professional Conduct Committee decides to propose a Consent Order Agreement, it shall give a written notice to the Member or Notifying Principal, setting out:
  - (i) the orders which the Professional Conduct Committee proposes to make including any undertakings being sought;
  - (ii) whether or not the Professional Conduct Committee intends to publish its decision in accordance with Rule 13 of these Rules, and whether or not the Professional Conduct Committee considers there are special circumstances that warrant disclosing the name of the Member or the Practice Entity and the terms of any proposed publication wording;
  - (iii) whether or not the Professional Conduct Committee intends to notify any interested parties; and
  - (iv) the period of no less than 14 days (**Consent Period**) within which the Member or Notifying Principal may respond to and negotiate the proposed agreement and deliver the duly executed Consent Order Agreement to the Professional Conduct Committee.
- (d) If the Professional Conduct Committee receives the Member's or Notifying Principal's duly executed Consent Order Agreement by no later than the end of the Consent Period, the Consent Order Agreement is treated as having been made on the effective date specified by the Professional Conduct Committee in the Consent Order Agreement.
- (e) If the Member or Notifying Principal and the Professional Conduct Committee are unable to agree as to the terms of a Consent Order Agreement or the Member does not deliver a duly executive Consent Order Agreement within the Consent Period or in such time as otherwise permitted by the Professional Conduct Committee, the Professional Conduct Committee shall be treated as having decided to refer the complaint or any matter arising out of the complaint or the Professional Conduct Committee's investigation to the Disciplinary Tribunal for hearing.

### 13.17 General Powers

- (a) The Professional Conduct Committee must refer a complaint to the Disciplinary Tribunal (whether or not it has convened a Case Conference) if it has determined that:
  - (i) the complaint involves matters of high public interest or significance to the accounting profession as a whole; or
  - (ii) the complaint involves a contest of evidence or dispute that should be resolved with the benefit of the examination of evidence from an independent expert or evidence that should be given on oath.
- (b) Where the Professional Conduct Committee finds that the Member or Notifying Principal concerned has failed to comply with any direction of the Professional Conduct Committee given in accordance with Rule 13 of these Rules and/or failed to attend a

Case Conference as required, the Professional Conduct Committee may without giving further notice to the Member or Notifying Principal:

(i) refer the complaint or such failure to the Disciplinary Tribunal without holding a Case Conference; or

(ii) make a decision to take any action prescribed under Rule 13 of these Rules.

(c) The Professional Conduct Committee:

(i) may, of its own motion or on application by the complainant or Member or Notifying Principal (such application to be made within 28 days of the decision) correct any error in the documented decision that does not accurately reflect the decision;

(ii) may at any time review and reconsider a decision which it has made where new information has been obtained by the Professional Conduct Committee after the date of the decision which the Professional Conduct Committee considers would have been material to its decision; and

(iii) must review and reconsider a decision made by it if directed to do so by the Reviewer of Complaints. In doing so, the Professional Conduct Committee must have regard to any recommendations made by the Reviewer of Complaints.

### **13.18 Reviewer of Complaints**

(a) The Regulatory Board shall from time to time appoint 1 or more independent reviewers to review decisions of the Professional Conduct Committee (**Reviewers of Complaints**).

(b) Subject to Rule 13 these Rules, the complainant (other than the Professional Conduct Committee) or relevant Member or Notifying Principal may request a review in the form prescribed by the Appendix VIII to the Rules of a decision to dismiss a complaint without investigation or a Final Decision made by the Professional Conduct Committee.

(c) Any such request must be received by NZICA within 21 days of the date of notification of the Professional Conduct Committee's decision and accompanied by payment of the Application Fee and a Costs Agreement duly executed by the applicant.

(d) The relevant Member or Notifying Principal may not request a review of a Final Decision made in accordance with a Consent Order Agreement.

(e) NZICA will refer such a request to a Reviewer of Complaints who shall review every such request and consider whether:

(i) to accept a request which was received by NZICA more than 21 days after the date of notification of the Professional Conduct Committee's decision, which the Reviewer of Complaints may do only if he or she considers that there are exceptional circumstances which make this appropriate;

(ii) the procedure followed by the Professional Conduct Committee in making its decision was in all the circumstances appropriate and took into account all relevant information;

(iii) the decision made by the Professional Conduct Committee was one which could reasonably have been made by the Professional Conduct Committee, taking into account the information available to the Professional Conduct Committee; and

- (iv) to what extent, the applicant for review should pay the costs and expenses it may be required to pay under the Costs Agreement.
- (f) The Reviewer of Complaints need not review a decision if the Reviewer of Complaints considers that the application is trivial, frivolous, vexatious or in bad faith or if it is not made in accordance with Rule 13 of these Rules and Appendix VIII. The Reviewer of Complaints must give notice to the applicant of a decision not to proceed with a review on these grounds, including a summary of the reasons for the Reviewer of Complaints decision.
- (g) In reviewing a decision of the Professional Conduct Committee, the Reviewer of Complaints may only examine the Professional Conduct Committee's file and any other documents or other material held by CA ANZ or NZICA concerning the original complaint together with the application lodged.
- (h) The Reviewer of Complaints:

  - (i) may provide a draft report to the Member and, if relevant, the complainant, setting out the factual matters and redacting any draft conclusions expressed in the draft report, to seek confirmation from the Member and the complainant that the factual matters are accurately stated;
  - (ii) must then issue a final report to the complainant, the Member and the Professional Conduct Committee, and may at their discretion, issue the report to the Regulatory Board, on the matters the Reviewer of Complaints is required to consider under Rule 13 of these Rules or otherwise notify them, with reasons, of a decision not to proceed with a review;
  - (iii) may direct the Professional Conduct Committee to reconsider the relevant Final Decision and/or make such recommendations with respect to the procedure to be followed by the Professional Conduct Committee or its consideration of the matter, as the Reviewer of Complaints considers appropriate;
  - (iv) may, in the report to be issued to the Regulatory Board under paragraph (ii), make recommendations concerning the procedure adopted by the Professional Conduct Committee in relation to the complaint where the Reviewer of Complaints considers this to be appropriate; and
  - (v) may recommend that NZICA refund all or part of the Application Fee to the applicant for the review, where the Reviewer of Complaints considers this to be appropriate.

### **13.19 Interim Orders**

- (a) At any time after a complaint is lodged, the Professional Conduct Committee may apply to the Disciplinary Tribunal for interim orders, including that:

  - (i) the Member be suspended from Membership on an interim basis;
  - (ii) the Member's Certificate of Public Practice be suspended on an interim basis;
  - (iii) any licence, accreditation, recognition, specialisation or status issued to the Member by NZICA in accordance with any enactment, regulations or the Rules be varied or suspended on an interim basis; and/or
  - (iv) the Disciplinary Tribunal's decision in respect of the Professional Conduct Committee's application be published.

- (b) On application by the Professional Conduct Committee, the Disciplinary Tribunal may make any order pursuant to Rule 13.19(a) if it is satisfied that it is necessary or desirable to do so. In reaching its determination, the Disciplinary Tribunal may have regard to such matters as it sees fit, including, but not limited to:
- (i) the urgency of the matter;
  - (ii) the interests of the public;
  - (iii) the financial interests of any person; and/or
  - (iv) the integrity of the profession of accounting as a whole.
- (c) Without limiting the generality of paragraph 13.19(b), where a Member has been charged with a Serious Criminal Offence which, if upheld, and in the reasonable opinion of the Disciplinary Tribunal or the Appeals Council, would bring the profession of accountancy into disrepute or would reflect upon the integrity of the profession or the membership of NZICA, that Member's Membership may be suspended on an interim basis, on the application of the Professional Conduct Committee to the Disciplinary Tribunal pending final determination of the criminal proceedings. In that event, the determination of the Disciplinary Tribunal or the Appeals Council shall be published and, unless the Disciplinary Tribunal or Appeals Council (as and where relevant) considers that there are exceptional circumstances for not publishing the name and location of the Member, that Member's name and location shall also be published.
- (d) Subject to any directions made by the Disciplinary Tribunal:
- (i) the Professional Conduct Committee must give written notice to the Disciplinary Tribunal of the application for interim orders against the Member together with all supporting documents or evidence and, where the Professional Conduct Committee's application will be presented at the Disciplinary Tribunal hearing by an external legal practitioner, a statement to that effect and, if known, the legal practitioner's name and firm, organisation or chambers;
  - (ii) the Disciplinary Tribunal must give the Member, not less than two business days before the hearing before the Disciplinary Tribunal, notice of the date, time and place or virtual location of the hearing and all of the information provided by the Professional Conduct Committee pursuant to this Conduct Rule;
  - (iii) the Disciplinary Tribunal may hear the application for interim orders on an ex-parte basis if the Member fails to attend;
  - (iv) the Disciplinary Tribunal shall issue a decision with written reasons including any orders made to the Member and the Professional Conduct Committee of its decision as soon as reasonably practicable and the decision will take immediate effect;
  - (v) within 7 days of notification of the Disciplinary Tribunal's decision to issue interim orders (including any order for publication and costs) on an ex-parte basis or otherwise with less than 14 days' notice, a Member may apply to revoke any orders (a Revocation Application) and stay any publication orders. Any such Revocation Application must include all material to be relied on by the Member in opposition to the interim orders (and no additional material is to be relied upon without the leave of the Disciplinary Tribunal);
  - (vi) after hearing a Revocation Application, the Disciplinary Tribunal shall issue a decision with written reasons including any final orders made to the Member



and the Professional Conduct Committee as soon as reasonably practicable;  
and

- (vii) in relation to an interim suspension, no publication will be made until at least 14 days after the making of the interim suspension order or where a Revocation Application is made, the Disciplinary Tribunal has determined any application to stay its publication orders.
- (e) Within 14 days of the date of notification of the Disciplinary Tribunal's decision, under Rules 13.19(d)(iv) or (vi) above, the Member or the Professional Conduct Committee may:
  - (i) give notice of appeal in the form prescribed pursuant to the Rules of any decision of the Disciplinary Tribunal to impose or not to impose interim orders or its costs or publication orders or any decision regarding a stay of its publication orders; and
  - (ii) seek that the Disciplinary Tribunal's decision to publish any decision be stayed pending determination of the appeal.
- (f) Any appeal must be made in writing using the prescribed form, specify the grounds of appeal and include all material to be relied on by the Member or the Professional Conduct Committee.
- (g) If, at the conclusion of an investigation or determination of a complaint in relation to a Member who has been subject of an interim suspension order by the Disciplinary Tribunal, the Professional Conduct Committee decides not to refer the substantive complaint to the Disciplinary Tribunal, the interim suspension order will automatically lapse.
- (h) For the period of a Member's suspension from Membership on an interim basis:
  - (i) that Member's name shall be removed from the Registers on which it appears; and
  - (ii) that Member:
    - (A) loses the rights and privileges of Membership;
    - (B) must surrender to NZICA that Member's certificate of Membership, Certificate(s) of Public Practice and any other documents specified in Rule 13 of these Rules; and
    - (C) remains subject to the disciplinary processes under Rule 13 of these Rules as if still a Member.
- (i) The provisions of this Conduct Rule do not apply to Non-Member Practice Entities.
- (j) Where an application results in the interim suspension of a Member, the Professional Conduct Committee will use all reasonable endeavours to expedite determination of the substantive matters of the complaint that gave rise to the interim suspension.

### **13.20 Disciplinary Tribunal**

- (a) Subject to any directions made by the Disciplinary Tribunal, where the Professional Conduct Committee refers any matter to the Disciplinary Tribunal for hearing:
  - (i) the Professional Conduct Committee must give written notice to the Disciplinary Tribunal of the Offences alleged against the Member together with all supporting documents or evidence and, where the Professional Conduct Committee's case against the Member will be presented at the



Disciplinary Tribunal hearing by an external legal practitioner, a statement to that effect and, if known, the legal practitioner's name and firm, organisation or chambers;

(ii) the Disciplinary Tribunal must give the Member, not less than 35 days before the hearing before the Disciplinary Tribunal, notice of the date, time and place or virtual location of the hearing and all of the information provided by the Professional Conduct Committee pursuant to this Conduct Rule;

(iii) the Member must, not less than 14 days before the date of the hearing, give written notice to the Disciplinary Tribunal of:

(A) which of the alleged Offences are admitted, and which are disputed;

(B) whether the Member intends to attend the hearing;

(C) whether the Member intends to be represented by a legal representative at the hearing and, if so, the name and contact details of the representative;

(D) whether the Member intends to call any witnesses at the hearing, and if so, the names of the witnesses; and

(E) copies of any documents or evidence on which the Member proposes to rely at the hearing.

(b) The Professional Conduct Committee may amend the Offences alleged against a Member by giving written notice of the amendments to the Disciplinary Tribunal and to the Member:

(i) not less than 35 days before the date of the hearing before the Disciplinary Tribunal; or

(ii) at any other time, with the consent of the Member or with the leave of the Disciplinary Tribunal.

(c) The Professional Conduct Committee may withdraw the referral of a matter to the Disciplinary Tribunal at any time.

(d) If the Professional Conduct Committee seeks to present evidence at a hearing before the Disciplinary Tribunal, notice of which has not been given in accordance with this Conduct Rule or in accordance with any direction of the Disciplinary Tribunal, that evidence may only be presented:

(i) with the consent of the Member; or

(ii) with the leave of the Disciplinary Tribunal on such terms and conditions as it sees fit. The Disciplinary Tribunal may grant leave only if it is satisfied that doing so will not materially prejudice the Member, and it is otherwise appropriate to do so.

(e) If a Member fails to comply with this Conduct Rule, that failure does not prevent the Member from disputing any Offences, attending the hearing, being represented at the hearing, or calling any evidence at the hearing.

(f) The Disciplinary Tribunal may, with the written consent of the relevant Member and the Professional Conduct Committee, dispense with any or all of the procedures in this Conduct Rule, including timeframes and the requirement to have one or both parties attend the hearing, and impose orders in respect of Sanctions, Publication or Costs and/or accept a written undertaking.

- (g) The Disciplinary Tribunal may appoint a legal adviser who is an independent legal practitioner, who may be present at the hearing and may at any time advise the Disciplinary Tribunal on matters of law, procedure and evidence.
- (h) At every hearing before the Disciplinary Tribunal, the Professional Conduct Committee shall be responsible for the presentation of the case against the Member concerned. The Professional Conduct Committee may appoint a legal practitioner to present the case on its behalf.
- (i) The Disciplinary Tribunal may require any Member or a Notifying Principal to attend and give evidence at the Disciplinary Tribunal hearing.
- (j) Failure by the Member or Notifying Principal to comply with any or all of the above requirements (or to attend) shall not preclude the Disciplinary Tribunal from proceeding to determine the case.

### **13.21 Sanctions**

- (a) The Disciplinary Tribunal may impose one or more Sanctions upon a Member if it is satisfied that a Member has committed one or more Offences.
- (b) Upon making a determination referred to in the previous paragraph:
  - (i) The following Sanctions or any combination of them (if applicable) may be imposed by the Disciplinary Tribunal on a Member for Offences (other than Firm Events):
    - (A) terminate the Member's membership of NZICA;
    - (B) suspend the Member's membership of NZICA for a period not exceeding 5 years;
    - (C) cancel or suspend any Certificate of Public Practice held by the Member;
    - (D) declare that the Member is ineligible to hold a Certificate of Public Practice for a period not exceeding 5 years and on such terms and conditions as to the earlier termination of such period of ineligibility as the Disciplinary Tribunal may prescribe;
    - (E) order that any licence, accreditation, recognition, specialisation or status issued to the Member by NZICA or CA ANZ in accordance with any enactment, regulation, other legislation, the Rules, CA ANZ By-Laws or CA ANZ Regulations or any other instrument, be varied, suspended for any period, or cancelled;
    - (F) order the Member or the Member's Practice Entity not to undertake specified assignments (without limitation, including assignments within particular categories of work such as audits, insolvency or compilation or particular types of assignments within a category of work such as listed entity audits, receiverships, valuations);
    - (G) remove the Member's Membership status as a Fellow and alter it to that of Chartered Accountant, Associate Chartered Accountant, or Accounting Technician (as the case may be);
    - (H) where the Member's fees or billing practices have been found to breach Compliance Obligations set out in the CA ANZ By-Laws or the Rules, the Member be required to:
      - (1) waive the whole or part of any fee agreed to or invoiced; and/or

(2) return the whole or part of any fee already paid;

(I) require the Member to pay an amount not exceeding \$50,000 within the time prescribed by the Disciplinary Tribunal, being not less than 28 days;

(J) censure the Member;

(K) require the Member, at the Member's own expense, to complete any professional development courses prescribed by the Disciplinary Tribunal within the time period and on the terms stipulated by the Disciplinary Tribunal;

(L) require the Member to engage an adviser or consultant or other person at the Member's own expense, as directed by the Disciplinary Tribunal;

(M) require the Member and/or the Member's Practice Entity, at the Member's own expense, to submit to an investigation or review or reviews, on such matters and on such terms as specified by the Disciplinary Tribunal, such terms to include that the results of such investigation or reviews are made available to the Professional Conduct Committee or that the Professional Conduct Committee itself conduct the investigation; or

(N) cancel, vary or suspend for a period not exceeding 12 months any Non-Member's recognition or standing as a Non-Member Principal granted.

(ii) Insofar as a complaint is determined in respect of a Practice Entity Member or a Notifying Principal in respect of an Offence which is a Firm Event, the following Sanctions or any combination of them (where applicable) may be imposed by the Disciplinary Tribunal on the Practice Entity Member or on the Notifying Principal in respect of a Practice Entity for Offences that are Firm Events:

(A) the termination of the Practice Entity Member's Membership of NZICA;

(B) the suspension of the Practice Entity Member's Membership of NZICA for a period not exceeding 5 years;

(C) an order that any licence, accreditation, recognition, specialisation or status issued to the Practice Entity Member by NZICA or CA ANZ in accordance with any enactment, regulation, other legislation, the Rules, CA ANZ By-Laws or CA ANZ Regulations or any other instrument, be varied, suspended for any period, or cancelled;

(D) an order that the Practice Entity Member or the Member's Practice Entity not to undertake specified assignments (without limitation, including assignments within particular categories of work such as audits, insolvency or compilation or particular types of assignments within a category of work such as listed entity audits, receiverships, valuations);

(E) an order that the Practice Entity Member or Notifying Principal pay on behalf of the Practice Entity an amount not exceeding \$250,000 within the time prescribed by the Disciplinary Tribunal, being not less than 28 days. In calculating any new amount payable, the Disciplinary Tribunal shall have regard to the size of the Practice Entity Member or Practice Entity (as applicable) and any principles prescribed under these Rules;

(F) an order that the Practice Entity Member or Notifying Principal to engage an advisor or consultant or other person in respect of the Practice Entity, at the Practice Entity's own expense, as directed by the Disciplinary Tribunal;

- (G) an order that the Practice Entity Member or the Notifying Principal's Practice Entity, at such Member's or Practice Entity's expense, to submit to an investigation or reviews on such matters and on such terms as specified by the Disciplinary Tribunal, such terms to include that the results of such investigation or reviews are made available to the Professional Conduct Committee;
  - (H) where the Practice Entity Member's fees or billing practices have been found to breach Compliance Obligations set out in the Rules, order that the Practice Entity be required to:
    - (1) waive the whole or part of any fee agreed to or invoiced;
    - (2) shall return the whole or part of any fee already paid;
  - (I) censure the Practice Entity Member or the Notifying Principal;
  - (J) an order requiring the Practice Entity Member, or some or all of the Members who are Principals of the Practice Entity, to complete at their own expense any one or more professional development or other courses prescribed by the Disciplinary Tribunal within the time period and on the terms stipulated by the Disciplinary Tribunal;
  - (K) an order requiring the Practice Entity Member or the Notifying Principal to engage an adviser or consultant or other person at the Member's own expense, as directed by the Disciplinary Tribunal; or
  - (L) an order requiring the Practice Entity Member and/or the Member's or Notifying Principal's Practice Entity, at their own expense, to submit to an investigation or review or reviews, on such matters and on such terms as specified by the Disciplinary Tribunal, such terms to include that the results of such investigation or reviews are made available to the Professional Conduct Committee or that the Professional Conduct Committee itself conduct the investigation.
- (c) Where a Member (including a Practice Entity Member) fails to comply with a Sanction imposed by the Disciplinary Tribunal or Appeals Council within the time stipulated without reasonable explanation, and if the time for making an appeal has expired or any appeal has been concluded:
- (i) the Disciplinary Tribunal may suspend forthwith the Member's membership of NZICA on the application of the Professional Conduct Committee to the Disciplinary Tribunal and maintain a suspension until the Sanction has been complied with; and
  - (ii) the Regulatory Board may exclude the Member from Membership or reject an application by that Member for the renewal of membership until the Sanction has been complied with.

### 13.22 Appeals Council

- (a) Within 21 days after the date of written notification of the Final Decision of the Disciplinary Tribunal, the Member or the Professional Conduct Committee may give notice of appeal of the entire or any part of the Final Decision, including but not limited decisions as to Offence, Sanctions, publication and Costs in the form prescribed by Appendix VIII, to the Appeals Council. At the discretion of the Appeals Council later notice may be accepted.
- (b) A notice of appeal must state the grounds of appeal in full and the grounds cannot be amended except with the approval of the Appeals Council. The appellant must also

give notice of any Final Decision that it seeks be stayed pending determination of the appeal.

- (c) In the event that a Member gives notice of an appeal, the Appeals Council may, at its discretion or on application by the Professional Conduct Committee, require the Member or Notifying Principal on behalf of a Practice to pay such amount as it determines to NZICA as security against the anticipated Costs which NZICA may incur in the conduct and hearing of the appeal.
- (d) The Appeals Council may, at its discretion, stipulate a time period of not less than 28 days within which the Member must pay the security amount referred to above and, if it does so and the Member has not paid that amount at the expiry of that period, the appeal will automatically lapse.
- (e) Subject to the payment of any security amount ordered, as soon as practicable after receipt of a notice of appeal the Appeals Council shall give to the Member and the Professional Conduct Committee not less than 28 days' notice of the date, time and place or virtual location fixed for the hearing of the appeal.
- (f) Every appeal shall be by way of rehearing but, unless the Appeals Council directs otherwise, it shall not allow witnesses to be recalled who gave evidence before the Disciplinary Tribunal or to introduce any new evidence.
- (g) The Appeals Council may require any Member to attend and give evidence at the Appeals Council hearing.
- (h) The Member shall not later than 14 days (or such other date as the Appeals Council prescribes) before the date of the hearing, provide in writing to the Appeals Council:

  - (i) notice as to whether the Member will attend the hearing and, if legally represented, by whom (including details of that legal representative's name and firm, organisation or chambers); and
  - (ii) notice of any other relevant fact or circumstance the Member wishes to bring to the attention of the Appeals Council.
- (i) At every hearing before the Appeals Council, the Professional Conduct Committee shall be responsible for the presentation of the case against the Member concerned where the Professional Conduct Committee has issued the notice of appeal or acting as the respondent in any appeal brought by the Member. The Professional Conduct Committee may appoint an external legal representative to present the case on its behalf.
- (j) The Appeals Council may appoint a legal adviser who is an independent legal representative to advise (attending the hearing as necessary) the Council on matters of law, procedure and evidence.
- (k) On each appeal, the Appeals Council may stay, affirm, vary or set aside any Final Decision of the Disciplinary Tribunal or any part of that Final Decision.

### **13.23 Alternative Dispute Resolution**

At any time after the lodgement of a complaint, the Professional Conduct Committee, Disciplinary Tribunal or Appeals Council may propose by written notice to the complainant and the Member that the complaint be referred to conciliation, mediation, arbitration or other dispute resolution process and may refer it accordingly if the parties agree to engage in any such process in good faith. Where any complaint is referred to conciliation, mediation, arbitration or other dispute resolution process, the parties will advise the Professional Conduct Committee, Disciplinary Tribunal or Appeals Council (as applicable) of the status and outcome at the conclusion of the dispute resolution process, at a time as directed by the Professional Conduct Committee, Disciplinary Tribunal or Appeals Council. At that time, the Professional Conduct Committee, Disciplinary Tribunal or Appeals Council (as applicable), shall then make a

decision to take any course of action permitted by Rule 13 of these Rules, irrespective of whether the complaint has been resolved or not by the dispute resolution process.

#### **13.24 Costs**

- (a) If the Professional Conduct Committee makes a Final Decision about a complaint, other than a decision not to investigate a complaint, it may require the Member or Notifying Principal to pay all or some of the Costs incurred by or on behalf of NZICA (including by or on behalf of the Professional Conduct Committee) in investigating and dealing with the complaint.
- (b) The Disciplinary Tribunal may make such orders as it sees fit to require the Member or Notifying Principal to pay all or any portion of the Costs incurred by or on behalf of NZICA (including by or on behalf of the Professional Conduct Committee), in respect of:

  - (i) any interim suspension or revocation application considered under Rule 13 of these Rules;
  - (ii) the Professional Conduct Committee's investigation of the complaint and any matters arising from it;
  - (iii) the Professional Conduct Committee's presentation of the complaint to the Disciplinary Tribunal;
  - (iv) the Disciplinary Tribunal's hearing;
  - (v) the publication of the Disciplinary Tribunal's decision; and
  - (vi) and any other matters before the Disciplinary Tribunal, as it determines.
- (c) The Appeals Council may, including where a Member or Notifying Principal discontinues an appeal prior to or during its hearing, require the Member or Notifying Principal to pay all or any portion of the Costs incurred by or on behalf of NZICA (including by or on behalf of the Professional Conduct Committee and Disciplinary Tribunal) in investigating and dealing with the original complaint and the matters before the Disciplinary Tribunal and Appeals Council. If the Member has paid any security amount to NZICA, then NZICA must apply any part of that amount in satisfaction of the Costs so awarded.
- (d) The Professional Conduct Committee, Disciplinary Tribunal or Appeals Council must have regard to the guidelines set out in the Appendix VIII and may have regard to any practice notes when determining whether or not to require a Member or Notifying Principal to pay Costs or the amount of such Costs a Member is required to pay.
- (e) The Disciplinary Tribunal or Appeals Council may, in exceptional circumstances, order the Professional Conduct Committee to pay some or all of the costs of the Member or Notifying Principal.

#### **13.25 Issuing of Final Decisions by the Committee, Tribunal and Council**

- (a) Written notice of a Final Decision made by any of the Professional Conduct Committee, Disciplinary Tribunal and Appeals Council with reasons for that decision must be sent to the relevant Member within 21 days, or such longer period as may be reasonably required by the disciplinary body in the circumstances of specific matters, and:

  - (i) the complainant, if any, in relation to Final Decisions of the Professional Conduct Committee; and
  - (ii) in the case of a decision of the Disciplinary Tribunal and Appeals Council, to the Professional Conduct Committee.



(b) Subject to any decision of the Disciplinary Tribunal or the Appeals Council that a Final Decision of the Disciplinary Tribunal shall take immediate effect, such decision shall take effect from:

- (i) the day immediately after the expiry of the period during which an appeal may be notified against that decision provided that no appeal has been notified within that period;
- (ii) if an appeal has been notified during the appeal period and that appeal is subsequently withdrawn, from the date of such withdrawal; and
- (iii) if an appeal had been notified during the appeal period and not withdrawn, from the date of the Final Decision of the Appeals Council.

For the avoidance of doubt, no Final Decision including any decision as to publication is to take effect prior to the determination of any stay application by the Appeals Council.

(c) A Final Decision of the Appeals Council shall take effect from the date it is made.

(d) The Professional Conduct Committee must give notice to the relevant complainant (if any) of:

- (i) the lodgement of any appeal of a Final Decision of the Disciplinary Tribunal within 14 days of this occurring; and
- (ii) the Final Decision of the Disciplinary Tribunal and Appeals Tribunal no later than 14 days after that decision takes effect.

### **13.26 Publication and public comment**

(a) The Professional Conduct Committee may publish its Final Decision where:

- (i) the decision is made under a Consent Order Agreement or written undertaking; and
- (ii) the Professional Conduct Committee considers it is in the public interest to do so.

(b) Any such publication made under 13.26(a) must not disclose the name and location of the relevant Member or the Practice Entity unless the Professional Conduct Committee considers there are special circumstances for doing so.

(c) If the Professional Conduct Committee considers it is in the public interest to do so, it may notify other professional bodies, regulatory authorities, the Member's current and/or former employers, partners, and 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 the Member's name and location and so much of a decision made under a Consent Order Agreement or a written undertaking, the reasons for it and/or the Sanctions imposed, as it thinks fit.

(d) Where the Disciplinary Tribunal or Appeals Council determines that an Offence has been committed or decides to suspend a Member on an interim basis, it must direct that a notice be published by CA ANZ or NZICA of the Final Decision or the decision to suspend a Member on an interim basis. Any such publication must disclose the name and location of the relevant Member unless the Disciplinary Tribunal or Appeals Council (as applicable) considers that there are exceptional circumstances for not doing so. If the Final Decision is under appeal, and no stay is granted, any publication of the Final Decision must include a statement that it is under appeal.

- (e) Publication under Rule 13 of these Rules may be in such form and publication as the Professional Conduct Committee, Disciplinary Tribunal or Appeals Council (as applicable) considers appropriate, including in NZICA's and/or CA ANZ's official publication, on NZICA's and/or CA ANZ's website, including in the Register of Disciplinary Decisions or in any other manner that it may in its discretion direct.
- (f) The Disciplinary Tribunal or Appeals Council (as the case may be) 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 Final Decision or a decision to suspend on an interim basis, the reasons for it and/or the Sanctions imposed, as it thinks fit. The Disciplinary Tribunal or Appeals Council will not do so until the day following the last date on which an appeal may be notified in accordance with Rule 13 of these Rules. If an appeal is notified in accordance with Rule 13 of these Rules, the Disciplinary Tribunal will not make such a notification until that appeal is finalised or otherwise determined.
- (g) Any publication of a Final Decision in relation to a Firm Event will not identify the name of any Member who is a Principal of the relevant Practice Entity, but may identify the name of the Practice Entity.
- (h) Where the Professional Conduct Committee commences an investigation, CA ANZ and/or NZICA is entitled in their discretion to publicise the fact that an investigation is taking, or has taken, place, and to publicise (including details of the name and location of the Member, Notifying Principal and that Member's or Notifying Principal's Practice Entity) the status and/or outcome of that investigation, provided that CA ANZ and/or NZICA must not, in exercising such discretion, contravene any suppression orders issued by any court, tribunal or other disciplinary body, breach any statutory, regulatory or contractual obligation and/or breach any confidentiality obligations imposed by the Professional Conduct Committee, Disciplinary Tribunal or Appeals Council.

#### **13.27 Readmission application after removal**

- (a) This Conduct Rule applies to a Former Member applying for readmission to Membership following termination or exclusion of that Member from Membership by the Disciplinary Tribunal or Appeals Council or any predecessor bodies (but not, for the avoidance of doubt, following suspension or suspension on an interim basis). The Member must, when lodging an application with CA ANZ or NZICA, also lodge a copy of that application with the Disciplinary Tribunal. When considering a readmission application, the Disciplinary Tribunal:

  - (i) shall consider the application and make a recommendation to the CA ANZ Board and/ or NZICA Regulatory Board (as applicable) as to whether or not the application should be granted; and
  - (ii) may require the Former Member to pay to CA ANZ or NZICA all or any portion of the costs, fees and expenses incurred or that it considers may be incurred by or on behalf of CA ANZ or NZICA in having the Disciplinary Tribunal consider the application and making its recommendation to the Board or NZICA Regulatory Board, and may require the former Member to pay such sums in advance to CA ANZ or NZICA on account of such costs, fees and expenses as it determines.
- (b) The Professional Conduct Committee is entitled to be heard in relation to any such application for readmission made under paragraph (a) of this Rule.
- (c) A suspended Member may be readmitted to Membership following the expiry of the period of suspension ordered by the Disciplinary Tribunal or Appeals Council, provided that the Regulatory Board or the CA ANZ Board (as applicable) is satisfied in its absolute discretion that all conditions and requirements for readmission, as prescribed



by the Rules and/or CA ANZ By-laws and Regulations, have been satisfied, and otherwise on such conditions as the Regulatory Board or CA ANZ Board (as applicable) considers appropriate.

### **13.28 Expedition**

- (a) The Professional Conduct Committee, Disciplinary Tribunal and Appeals Council shall endeavour to investigate, hear and determine complaints in a timely and efficient manner.
- (b) The Professional Conduct Committee and Disciplinary Tribunal may deal with certain Offences on an expedited basis as it thinks fit. Those Offences which may be dealt with on an expedited basis include:
- (i) where the Member has before any court of law in any jurisdiction in New Zealand or elsewhere pleaded guilty to, or been found guilty of, a Serious Criminal Offence (with or without conviction) which has not been set aside on appeal; or
  - (ii) where the Member has pleaded guilty to, or been found guilty of, any statutory or other offence (with or without conviction) which has not been set aside on appeal;
  - (iii) where the Member has been found to have acted dishonestly in any binding determination by a court, tribunal, or similar body which is empowered to make such determinations which has not been set aside on appeal;
  - (iv) where the member has been the subject of any adverse or unfavourable binding determination in relation to the Member's professional or business conduct, competence or integrity (including in relation to direct discrimination, vilification, sexual harassment, harassment or bullying in the workplace and/or work-related) by any body, including any court of law, tribunal, professional body, royal commission, statutory authority, regulatory authority, statutory body, commission or inquiry, which is empowered by law to make such determinations;
  - (v) where the Member has failed to comply with any reasonable and lawful directions of any officer or body of CA ANZ or NZICA acting within the powers conferred by CA ANZ's Supplemental Charter, the CA ANZ By-Laws, the CA ANZ Regulations, the Act, or these Rules;
  - (vi) where the Member suffers an Insolvency Event;
  - (vii) where the Member has failed to comply with any Sanction, determination or decision made by the Professional Conduct Committee, Disciplinary Tribunal or Appeals Council in accordance with Rule 13 of these Rules;
  - (viii) a Firm Event; or
  - (ix) any other matter with the written consent of the Member.
- (c) The Professional Conduct Committee and Disciplinary Tribunal expedition processes may, as they think fit, include:
- (i) the Professional Conduct Committee may forego any formal investigation, or Case Conference;
  - (ii) the Professional Conduct Committee may hold a without prejudice meeting with the Member to seek an agreement as to appropriate Sanction, and if that

is not possible, to seek an agreement as to whether the matter may be dealt with on the papers without a hearing;

(iii) the Professional Conduct Committee may refer the matter to the Disciplinary Tribunal for a hearing before a single Tribunal member in respect of the expedited Offences, listed on an expedited basis; and/or

(iv) at the hearing:

(A) the Member bears the onus of establishing that there is a genuine dispute as to whether they are the subject of the relevant matter, which if established will require the matter to be referred to the Disciplinary Tribunal for hearing in the usual manner; and

(B) the Member may make submissions on any mitigating factors or otherwise adduce evidence only on whether there is a genuine dispute as to whether they are the subject of the relevant matter.

### **13.29 Evidence**

(a) The rules of evidence do not apply to the processes and proceedings of the Professional Conduct Committee, the Disciplinary Tribunal and the Appeals Council.

(b) The Professional Conduct Committee, Disciplinary Tribunal and Appeals Council may receive as evidence any statement, document, thing or information whether or not it would be admissible in a Court;

(c) The Professional Conduct Committee, Disciplinary Tribunal and Appeals Council may inspect and examine any documents, things and information.

(d) The Disciplinary Tribunal or Appeals Council may:

(i) require a Member or Former Member to produce documents or information to the Tribunal, on the application by another Member made in accordance with the form specified in Appendix VIII;

(ii) require that copies of any documents, things or information be provided to any person appearing at the hearing; and

(iii) impose any terms and conditions in respect of the provision of copies of any document or information to a Member, and if relevant the complainant or any other person, and the use that may be made of them, including any assessment of any claim for confidentiality or privilege.

(e) In relation to proceedings before the Disciplinary Tribunal or Appeals Council:

(i) any party to proceedings before those bodies, may apply to the District Court for a summons in accordance with section 11 of the Act; and

(ii) the Disciplinary Tribunal or Appeals Council may permit:

(A) a person to give evidence under oath or affirmation administered by the Chair of the Disciplinary Tribunal or Appeals Council; and

(B) a person appearing as a witness before it to give evidence by tendering a written statement and verifying that statement by oath administered by the Chair of the Disciplinary Tribunal or Appeals Council.

### **13.30 Recording and transcribing of meetings and hearings**

Each of the Professional Conduct Committee, Disciplinary Tribunal and Appeals Council may record and transcribe its meetings, interviews, investigations, proceedings and hearings in any manner it decides, including by the use of stenography and sound recording technology.

### **13.31 Termination and suspension**

If the Member's Membership is terminated or suspended in accordance with Rule 13 of these Rules, the Member's certificate of Membership, any Certificate of Public Practice and any other accreditation, specialisation or other certificate or award then held by the Member is cancelled with immediate effect and must be delivered up by the Former Member or suspended Member to CA ANZ or NZICA.

### **13.32 Reimbursement**

Each of the Professional Conduct Committee, the Disciplinary Tribunal and the Appeals Council may, in special circumstances on such terms as it thinks fit, require the payment or reimbursement by NZICA of the reasonable travelling and other out of pocket expenses, or any part thereof, of the Member whose conduct has been referred to the Disciplinary Tribunal for hearing or of any witness or other person who has attended a meeting of such Committee or Tribunal or Council convened for the hearing of a complaint against such Member.

### **13.33 Written undertakings**

The Professional Conduct Committee, the Disciplinary Tribunal or the Appeals Council may, if it considers that it is appropriate to do so in connection with the consideration or determination of any matter before that body, accept a written undertaking from a Member on such terms as it thinks fit.

### **13.34 Adjournment**

- (a) The Professional Conduct Committee may adjourn its investigation of a complaint or, adjourn a Case Conference, at any time in its sole discretion including where it considers that to do so is reasonable to do so or may aid resolution of the matter giving rise to a complaint or investigation by an alternative means (including, without limitation, mediation, arbitration or expert determination).
- (b) The Professional Conduct Committee will give notice of any decision with reasons it makes to adjourn to:
  - (i) the complainant (if any); and
  - (ii) the relevant Member.
- (c) Each of the Disciplinary Tribunal and Appeals Council may set, change or cancel the date of a hearing before it, or adjourn a hearing after it has commenced.

### **13.35 Public and private hearings**

- (a) The Professional Conduct Committee will hold its meetings (including Case Conferences) in private.
- (b) Subject to Rule 13 of these Rules, and unless the Disciplinary Tribunal or Appeals Council determine otherwise, each of the Disciplinary Tribunal and Appeals Council shall hold its hearings in public.
- (c) The Disciplinary Tribunal or Appeals Council may determine to hear any part of a hearing in private.
- (d) The Disciplinary Tribunal or Appeals Council may:
  - (i) make an order prohibiting the publication of all or any of the following:

- (A) a report of any proceedings before it or any part of those proceedings;
  - (B) any document, or any part of any document, produced at any hearing before it; and
  - (C) the name of, or any matter that may identify, the person to whom any hearing relates or any other person; and
- (ii) 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.
- (e) An order made under this Conduct Rule shall continue in force for the period specified in the order or, if no period is specified, until the order is revoked by the Disciplinary Tribunal or the Appeals Council, as the case may be.
- (f) An order prohibiting publication made under this Conduct Rule shall not apply to communications by, to or between any or all of the following:
- (i) the Regulatory Board or CA ANZ;
  - (ii) the CA ANZ and NZICA investigative or disciplinary bodies; or
  - (iii) an employee or officer of CA ANZ and NZICA.

### **13.36 Appearance as an expert witness**

A person who is a current member of the Professional Conduct Committee, Disciplinary Tribunal or Appeals Council may not appear as an expert witness, or as a representative of a Member, before any of the Professional Conduct Committee, the Disciplinary Tribunal or the Appeals Council.

### **13.37 Disclosure of Information to Statutory Oversight Bodies or external bodies**

NZICA, CA ANZ, the Professional Conduct Committee, the Disciplinary Tribunal, and the Appeals Council may in the performance of their respective functions under the Act, these Rules, the Auditor Regulation Act, the Insolvency Practitioners Act, or any other enactment or obligation:

- (a) upon the request of the Statutory Oversight Body or on its own volition, disclose to the Statutory Oversight Body any information or document held or obtained or any prescribed information required to be disclosed in accordance with the relevant legislation; and/or
- (b) notify any relevant regulatory authority, professional body or other external body of the status and/or outcome of any complaint or investigation and may disclose information or document held or obtained for the purposes of such complaint or investigation as permitted or required by any legislative or obligation to do so.

### **13.38 Confidentiality**

- (a) Subject to Rule 13 of these Rules and any Appendix to the Rules:
  - (i) the complaints and disciplinary process in Rule 13 of these Rules is confidential. All information, correspondence and other documentation sent and/or received by CA ANZ or NZICA, the Professional Conduct Committee, Disciplinary Tribunal, Appeals Council or Reviewer of Complaints or any person engaged on their behalf, in connection with a complaint, its investigation and outcome, any review of that outcome (including the

Reviewer of Complaints' report, recommendation and/or any directions) and any disciplinary hearings or appeal (including decisions) is confidential (Confidential Information) and may not be disclosed to any person except and until in accordance with Rule 13 of these Rules;

(ii) Members and, by acceding to these terms in writing, complainants, must:

(A) keep any Confidential Information disclosed to them in accordance with Rule 13 of these Rules confidential;

(B) securely store and not disclose or permit disclosure of the Confidential Information;

(C) comply with any directions by CA ANZ or NZICA, the Professional Conduct Committee, Disciplinary Tribunal or Appeals Council or Reviewer of Complaints 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 Conduct Rule 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 the confidentiality obligations under Rule 13 of these Rules); or

(B) details of complaints, investigations and/or decisions that CA ANZ or NZICA, the Professional Conduct Committee, Disciplinary Tribunal or Appeals Council have published or made available to the public in accordance with Rule 13 of these Rules.

(b) The obligations contained in this Conduct Rule do not prevent the disclosure of Confidential Information:

(i) that is required to be disclosed by the Member or the Notifying Principal to comply with any applicable statute or regulation or where the Member is lawfully entitled to receive such information;

(ii) to the Member's or complainant'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;

(v) if required, and with the consent of CA ANZ or NZICA, for the purpose of the complaint, investigation and any disciplinary hearings or other related proceedings; or

(vi) otherwise made in accordance with Rule 13 of these Rules.

(c) Any disclosure of Confidential Information pursuant to this Conduct Rule to the Member's employer or business partners, insurer or with CA ANZ or NZICA consent, can only be made by Members if the person to whom disclosure is made is subject to the equivalent confidentiality obligations as Members.

### **13.39 Transitional provisions**

(a) All matters, complaints and investigations must be handled by the Professional Conduct Committee and each disciplinary body in accordance with the applicable Rules set out in Rule 13 at the time the complaint was received by the Professional Conduct Committee or Disciplinary Body.

(b) Save with the consent of a Member under Rule 13 of these Rules or otherwise, nothing in this Conduct Rule shall operate so as to increase the Sanction imposed on a Member beyond those applicable to such Offence or to make a Member liable to a Sanction which that Member would not otherwise have been under Rule 13 of these Rules which were in force at the time when the Offence occurred.

## **15. EXCLUSION FROM MEMBERSHIP**

15.1 The Board may exclude a person or entity from being a Member if:

(a) under any legislation, law, regulation or policy relating to mental health, the Member is certified, declared or found to be mentally ill or in need of treatment, care or control or incapable of managing their own affairs or is admitted to and remains in a hospital or other institution for the treatment of mental illness or a guardian is appointed to the Member or a trustee or administrator is appointed to the Member; or

(b) the Member fails to pay any subscription, fee or other amount payable by the Member to NZICA, including fees, fines and costs, within 3 months after the same has become due; or

(c) the Member fails to fulfil CPD requirements as prescribed to the extent applicable in the CA ANZ Regulations and the Rules or (whether or not those requirements have been fulfilled) fails to notify NZICA of their compliance or otherwise for 2 consecutive years; or

(d) the Member fails, without just cause, to comply with any sanction ordered pursuant to Rule 13 of the NZICA Rules or Section 5 of the CA ANZ By-Laws.

15.2 Such a Member may be readmitted to Membership in accordance with Rule 3.3, having met the requirements for admittance set out in Rule 3.2.

