

# Determination of the Disciplinary Tribunal of Chartered Accountants Australia and New Zealand 20 December 2016

**Case Number:** D-1149

**Member:** Phillip Bruce Hey CA of Victoria

**Hearing Date:** 20 December 2016

**Tribunal:** David Fairlie (Chair)  
Ross Gavin FCA  
Bronwyn Morris FCA

**Legal Adviser:** Zoe Taylor

**Counsel:** Jessica Vartuli for the Professional Conduct Committee (PCC)  
The Member neither appeared nor was represented at the hearing

**Case description:**

1. Member failed to have adequate Professional Indemnity Insurance.
2. Member failed to respond to correspondence.

## **1. DECISIONS**

### **1.1 DECISION ABOUT THE PCC'S ALLEGATIONS WHICH ARE SET OUT IN FULL IN SCHEDULE 1**

At a hearing of the Disciplinary Tribunal not attended by the Member the Tribunal found that allegations 1 and 2 were established.

### **1.2 DECISION ABOUT SANCTIONS**

The Tribunal considered that the appropriate sanctions in these circumstances were that:

- the Certificate of Public Practice held by the Member be cancelled
- the Member be severely reprimanded.

### **1.3 DECISION ABOUT COSTS SANCTION**

The Tribunal determined that the Member pay to Chartered Accountants ANZ the sum of \$8,480 being the full costs and expenses of the proceedings (paragraph 10.12(l) of By-Law 40). No GST is payable.

### **1.4 DECISION ABOUT PUBLICATION**

This decision will not take effect while the Member remains entitled to appeal.

The Tribunal will publish its decision, mentioning the Member's name and locality, on the website and in the journal of Chartered Accountants ANZ (paragraphs 12.3 and 12.4 of By-Law 40).

### **1.5 NOTIFICATION TO OTHER BODIES**

The Tribunal was informed that the Member holds no registrations and/or memberships with any other professional bodies.

## **2. RIGHT OF APPEAL**

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

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

- Decision about the PCC's allegations
- Decision about sanctions
- Decision about costs sanction.

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

### **3. CONTACT WITH MEMBER**

The Member did not attend the hearing of the Disciplinary Tribunal. Chartered Accountants ANZ sent the Notice of Disciplinary Action and gave notice of the hearing date of these proceedings to the Member at the last residential address and email address nominated by him. Chartered Accountants ANZ produced evidence of the considerable efforts that it had undertaken to contact him, including leaving messages on his mobile telephone and contacting his family, all of which had proved unsuccessful. The Tribunal was satisfied that the hearing could proceed in his absence.

### **4. REASONS FOR DECISION**

#### **4.1 ALLEGATION 1**

- The Tribunal considered the material submitted by the PCC which indicated that the Member had failed to hold a contract of professional indemnity insurance for the 2015 year which at least met the minimum requirement of \$2 million as set out in Regulation CR2A.
- The Member's Liability Capping Questionnaire, submitted on 1 July 2015, stated that the Member had cover less than \$2 million.
- Having considered the material, the Tribunal determined that the allegation was established.

#### **4.2 ALLEGATION 2**

- The Tribunal considered the material submitted by the PCC which indicated that the Member had failed to respond to correspondence from Chartered Accountants ANZ sent to him between 19 February 2016 and 19 July 2016 concerning the information provided in his Liability Capping Questionnaire and his professional indemnity insurance arrangements.
- The Tribunal was satisfied that the Member received at least some of this correspondence at his home address and/or at his email address.
- Having considered the material, the Tribunal determined that the allegation was established.

### **5. REASONS FOR SANCTIONS**

- The PCC submitted that:
  - operating without sufficient professional indemnity insurance is a serious offence and that the Member should be severely reprimanded
  - failure to respond to numerous communications from Chartered Accountants ANZ is also a serious matter and the Member should be severely reprimanded
  - the Member's Certificate of Public Practice, which had been suspended on 31 July 2015, be cancelled because of the inadequacy of his Professional Indemnity Insurance
  - the costs incurred by Chartered Accountants ANZ in relation to the proceedings should be payable by the Member.
- The Tribunal determined that the Member's Certificate of Public Practice be cancelled, that he be severely reprimanded and that the Member be required to pay costs for the following reasons:

- operating without adequate professional indemnity insurance is a serious matter, exposing the public to possible loss if a claim is made against an inadequately insured member
- these proceedings could have been avoided had the Member responded to the requests for details of his professional indemnity insurance arrangements.



Chair  
Disciplinary Tribunal

## **SCHEDULE 1 - THE PCC'S ALLEGATIONS**

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

1. By-Law 40(2.1)(h), in that whilst holding a Certificate of Public Practice the Member did not have, or ensure that his practice has, a contract of professional indemnity insurance which is valid and binding and meets at least the minimum requirements set out in Regulation CR2A - Professional Indemnity Insurance, in breach of paragraph 2.19 of Regulation CR2 - Certificates of Public Practice (previously paragraph 713 of Regulation CR2).
2. By-Law 40(2.1)(i), in that the Member failed to comply with a reasonable and lawful direction by an officer of Chartered Accountants ANZ acting within the powers conferred by the By-Laws of Chartered Accountants ANZ, by failing to respond to the correspondence sent to him or enquiries made by Professional Conduct and Complaints on 19 February 2016, 7 March 2016, 23 March 2016, 21 April 2016, 1 June 2016, 3 June 2016, 5 July 2016 and 19 July 2016.

## **SCHEDULE 2 - RELEVANT BY-LAWS**

40. Except as provided by By-Law 41, the By-Laws in this Section 5, including the following paragraphs of this By-Law 40, do not apply to Members who are also members of NZICA in respect of disciplinary matters over which NZICA has jurisdiction and which relate to the practice of the profession of accountancy by NZICA's members in New Zealand. Nothing in this By-Law 40 excludes from the operation of this Section 5, conduct of a Member:

- (a) who was, but is no longer, a member of NZICA; or
- (b) who has subsequently also become a member of NZICA.

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

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### **2 Disciplinary action**

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

...

- (h) has committed any breach of the Supplemental Charter, these By-Laws or the Regulations, any pronouncements issued by the Accounting Professional and Ethical Standards Board, Australian Accounting Standards Board and Auditing and Assurance Standards Board (or their successor entities) including the Code of Ethics, or any applicable pronouncements, instruments, technical or professional standards or guidance issued by any similar body whether in Australia or in a foreign jurisdiction;
- (i) has failed to comply with any reasonable and lawful direction of any officer or organ of CA ANZ acting within the powers conferred by CA ANZ's Supplemental Charter, these By-Laws or the Regulations and which relates to a matter concerning the good order and management of CA ANZ;

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