



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

## Written decision dated 1 December 2020

- Case Number:** D-1234
- Member:** Jacob Padrotta CA of the Australian Capital Territory
- Hearing Date:** 12 November 2020
- Tribunal:** Simon Wallace-Smith FCA (Chair)  
Anita Hargreaves CA  
Elizabeth Gavey, lay member of the Tribunal
- Tribunal Legal Adviser:** Jamesina McLeod
- Representation:** Michael Bradley for the Professional Conduct Committee (PCC)  
The Member was not required to appear
- Decisions:**
1. Pursuant to By-Law 40(10.13) and with the written consent of the PCC and the Member, the Tribunal determined to dispense with the procedures in By-Law 40(10).
  2. The Tribunal determined that the Member:
    - (a) had been the subject of adverse or unfavourable findings by the Commissioner of Taxation in relation to his professional or business conduct and competence;
    - (b) failed to observe a proper standard of professional care, skill and competence in the course of carrying out his professional duties;
    - (c) had brought, or could bring, discredit on the Member, CA ANZ and the profession of accountancy.
  3. The Tribunal imposed a censure on the Member.
  4. The Tribunal imposed a cost sanction in the sum of \$9,692 for the full costs and expenses of the proceedings.
  5. The Tribunal made the following directions regarding the conduct of the hearing and the publication of its reasons for decision:
    - (a) its decision with reasons, mentioning the Member's name and locality, be published on the CA ANZ website (the **Published Decision**);

- (b) a summary of the Published Decision mentioning the Member's name and locality with a web address for the Published Decision be published in the CA ANZ official publication, *Acuity*;
- (c) notification of the Tribunal's decision be given to any bodies with whom the Member holds a registration or membership;
- (d) except for the content of the Disciplinary Tribunal written decision with reasons, all written and oral evidence and submissions related to this determination are to remain confidential;
- (e) the decision regarding confidentiality takes effect immediately from 12 November 2020.

The date of effect of this decision is 23 December 2020 (By-Law 40(10.18)).



## 1. Introduction

- (a) On 10 September 2018 the Australian Taxation Office (**ATO**) gazetted a Notice of Disqualification pursuant to subsection 126A(3) of the *Superannuation Industry (Supervision) Act 1993* (the **SISA**) to the Member, effective 6 September 2018 (the **ATO Disqualification**).
- (b) On becoming aware of the ATO Disqualification, the PCC initiated a complaint pursuant to the powers conferred by By-Laws 40(4.1) and 40(5.1) (the **Complaint**).
- (c) After investigating the Complaint including conducting a Case Conference on 17 June 2020, on 14 July 2020 the PCC offered to enter into a Consent Agreement with the Member (the **Consent Agreement**). The Member signed the Consent Agreement and returned it by post, but it was received by the PCC after the consent period had expired. By-Law 40(7.6) states that if a member does not deliver an executed consent agreement within the consent period, the PCC will refer the complaint to the Tribunal for hearing.
- (d) The PCC referred the Member to the Tribunal by way of Notice of Disciplinary Action (set out in full in Schedule 1) (the **NDA**) which in summary alleged that the Member:
  1. had been disqualified by the Commissioner of Taxation on the basis that he was not a fit and proper person to be a trustee, or a responsible officer of a body corporate that is a trustee, of a superannuation entity;
  2. failed to observe a proper standard of professional care, skill and competence in the course of carrying out his professional duties; and
  3. had brought or could bring discredit on the Member, CA ANZ or the profession of accountancy.
- (e) The PCC and the Member subsequently reached an agreement as to sanctions for the Tribunal's consideration pursuant to By-Law 40(10.13) which states:

...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 By-Law 40(10) and impose any of the sanctions permitted in By-Law 40(10.12)...

## 2. Proposed agreement as to sanctions

- (a) Effective 6 November 2020 the PCC and the Member reached an agreement as to sanctions (the **Agreement as to Sanctions**) in the following terms:

*The Member ... and the [PCC] consent to the Disciplinary Tribunal of Chartered Accountants ANZ dispensing with the procedures in By-Law 40 (10) of the By-Laws of Chartered Accountants ANZ in relation to complaint D-1234 made against the Member and proceeding directly to the imposition of sanctions on the following terms:*

1. *The [PCC] will appear at the scheduled hearing of the matter at 10.00am on 12 November 2020. The Member will not be required to attend the hearing.*
2. *The [PCC] will present to the Disciplinary Tribunal a signed copy of this Agreement including the annexed Agreed Statement of Facts.*
3. *The Member admits to the allegations contained in the Notice of Disciplinary Action dated 29 September 2020.*
4. *The Disciplinary Tribunal may determine the matter without further submissions or evidence being required from either the [PCC] or the Member and impose the following sanctions:*
  - (a) *A censure;*

- (b) The Member will pay a contribution to Chartered Accountants ANZ of \$9,692.00 towards the costs and expenses of the disciplinary action;
- (c) The Disciplinary Tribunal's decision with reasons, mentioning the Member's name and locality, will be published on the CA ANZ website (the **Published Decision**);
- (d) A summary of the Published Decision mentioning the Member's name and locality with a web address for the Published Decision will be published in the CA ANZ official publication, Acuity; and
- (e) The Disciplinary Tribunal will notify its decision to any bodies with whom the Member holds a professional registration or membership.
5. If the Disciplinary Tribunal is not prepared to dispense with the procedures in By-Law 40 (10) on the terms above then the Member and the [PCC] jointly seek and will consent to the hearing of the complaint being adjourned for a period of not less than 14 days.

Signed

Signed

[The Member]

Chair of the [PCC]

2 November 2020

6 November 2020

Annexed to the Agreement as to Sanctions was a statement of agreed facts:

#### Statement of Agreed Facts

Date	Event	Case File Page
2018.10.17	Chartered Accountants ANZ (CA ANZ) advises the Member of the complaint made against him in relation to his disqualification, requesting a response by 31 October 2018.	72-73
2018.11.26	CA ANZ sends the Member a reminder letter noting a response has not been received. CA ANZ requested a response by no later than 10 December 2018.	86
2018.12.10	The Member provided his response noting his intentions to appeal the ATO decision.	94-101
2018.12.11	CA ANZ requested that the Member provide the status of the appeal by 28 February 2019.	102
2019.04.17	CA ANZ followed up the Member noting he had not provided a status update of the appeal. A response was requested by no later than 1 May 2019.	106
2019.05.01	The Member emailed CA ANZ stating that, on the advice of his lawyer, he wrote to the ATO requesting further particulars regarding the ramifications of the decision and the basis for the decision.	107 (line 5-7)
2019.06.19	CA ANZ wrote to the Member requesting an update on any response from the ATO subsequent to his email dated 1 May 2019.	109 (line 3-4)
2019.09.25	Due to the Member's lack of response, CA ANZ wrote to the Member advising of the PCC meeting scheduled to consider the matter.	115
2019.10.09	The Member advised CA ANZ that he had not received CA ANZ's correspondence and therefore could not respond. CA ANZ provided the Member with its email dated 19 June 2019 and letters dated 17 April 2019 and 15 August 2019 via email.	118-119
2019.10.14	The Member advised CA ANZ of personal circumstances that preventing him from providing an update by the requested time. CA ANZ granted the Member an extension to 18 October 2019.	122-123

<b>Date</b>	<b>Event</b>	<b>Case File Page</b>
2019.10.18	<i>The Member provided his response noting that no appeal had been lodged due to a concurrent legal dispute being prioritised over the ATO decision.</i>	124-126
2020.02.13	<i>CA ANZ wrote to the Member advising of the PCC's decision to hold a Case Conference to better understand the circumstances surrounding the ATO decision and subsequent actions by the Member.</i>	144-146
2020.06.17	<i>Case Conference occurred.</i>	N/A
2020.07.14	<p><i>The Member was advised of the PCC's decision to propose a consent agreement on terms that:</i></p> <ul style="list-style-type: none"> <li><i>- He receive a reprimand;</i></li> <li><i>- He pay to CA ANZ the sum of \$1,575 towards costs; and</i></li> <li><i>- The decision be published on CA ANZ's Website and "Acuity," without disclosing the Member's name or location.</i></li> </ul> <p><i>The Member was provided until 29 July 2020 to return a signed copy of the Consent Agreement. The Member was advised that if the Consent Agreement was not returned on that date, the matter would be referred to the Disciplinary Tribunal in accordance with the decision of the PCC.</i></p>	154-157
2020.07.28	<i>The Member advised that he had sent the Deed via mail and requested confirmation of receipt by CA ANZ.</i>	160 (lines 2-3)
2020.07.31	<i>The Consent Agreement was delivered and received by CA ANZ; i.e. two days after the expiry of the Consent Period.</i>	164
2020.08.28	<i>The Member was advised that as the Consent Agreement has not been provided by 29 July 2020, the PCC would have to refer the matter to the Disciplinary Tribunal.</i>	169
2020.09.01	<p><i>CA ANZ received a phone call from the Member querying the reason for the matter being referred to the Disciplinary Tribunal. The Member was advised that the Deed had not been received within the requisite timeframe and thus must be heard by the Disciplinary Tribunal.</i></p> <p><i>The Member noted that he had sent the Deed days prior to his email of 28 July 2020 notifying CA ANZ that he had sent the Deed. As a result, he stated that he could not be responsible for the delay once he had posted the Deed. CA ANZ requested any receipt of proof of the date in which he had posted the Deed. The Member confirmed he would search for such receipt and forward it to CA ANZ as soon as possible.</i></p>	174
2020.09.09	<i>CA ANZ attempted to contact the Member to follow up on any evidence that demonstrated the date in which the Member posted the Deed, to no avail.</i>	175
2020.09.17	<i>CA ANZ emailed the Member following attempts to contact him via telephone. CA ANZ noted the previous conversation of 1 September 2020 and requested that he provide any evidence to support his assertion that he had posted the Deed days prior to his email of 28 July 2020.</i>	178

### 3. The issues for determination

- (a) Should the Tribunal dispense with the procedures in By-Law 40(10)?
- (b) Had the Member been the subject of adverse or unfavourable findings by the Commissioner of Taxation in relation to his professional or business conduct, competence or integrity, in breach of By-Law 40(2.1)(e)? (allegation 1)
- (c) Did the Member fail to observe a proper standard of professional care, skill and competence in the course of carrying out his professional duties, in breach of By-Law 40(2.1)(a)? (allegation 2)
- (d) If the answer to (b) was yes, had those acts, omissions or defaults brought, or could they bring, discredit upon the Member, CA ANZ or the profession of accountancy? (allegation 3)
- (e) If the answer to (b), (c) or (d) was yes, what sanctions should be imposed on the Member?
- (f) Should the Member be required to pay costs and if so, in what amount?
- (g) Was there any reason to suppress the Member's name from the published decision?
- (h) Should other parties be notified of the Tribunal's decision?
- (i) Should any confidentiality orders be made?

### 4. Should the Tribunal dispense with the procedures in By-Law 40(10)?

Pursuant to By-Law 40(10.13) and with the written consent of the PCC and the Member, the Tribunal determined to dispense with the procedures in By-Law 40(10).

### 5. Had the Member been the subject of adverse or unfavourable findings by the Commissioner of Taxation in relation to his professional or business conduct, competence or integrity, in breach of By-Law 40(2.1)(e) (allegation 1)

#### 5.1 Agreed facts

The PCC alleged and the Member admitted, that the Member had been the subject of adverse or unfavourable findings in relation to his professional or business conduct, competence or integrity by the Commissioner of Taxation in circumstances where he was disqualified on the basis that he was not a fit and proper person to be a trustee, or a responsible officer of a body corporate that was a trustee, of a superannuation entity.

#### 5.2 Tribunal decision and reasons

The Tribunal was satisfied the allegation was established because:

- (a) the Tribunal considered the ATO Disqualification included adverse and unfavourable findings against the Member;
- (b) the decision in the ATO Disqualification demonstrated failures in the Member's professional or business conduct and competence;
- (c) the Member admitted the allegation.

The Tribunal noted that there had been previous correspondence with the PCC in which the Member mentioned he was disputing the ATO Disqualification. However no evidence had been provided to the Tribunal that it was in the process of being, or had been, overturned.

**6. Did the Member fail to observe a proper standard of professional care, skill and competence in the course of carrying out his professional duties and obligations, in breach of By-Law 40(2.1)(a)? (allegation 2)**

**6.1 Agreed facts**

The PCC alleged and the Member admitted, that the Member failed to observe a proper standard of professional care, skill and competence in the course of carrying out his professional duties, in the circumstances set out in allegation 1.

**6.2 Tribunal decision and reasons**

The Tribunal was satisfied the allegation was established because:

- (a) the Member in the PCC Case Conference and in correspondence with the PCC admitted that he had prepared various returns for his superannuation fund and they were available to be audited but he had neglected to lodge them;
- (b) the Member had prepared returns for the 2014, 2015 and 2016 financial years which had not been lodged, and was unable to lodge returns for the 2017, 2018 and 2019 financial years as he had been disqualified. The Member admitted in the PCC Case Conference that he could not blame anyone else for having prepared and lodged returns late;
- (c) due to the non-lodgement of the returns, the Member failed to observe a proper standard of professional care, skill and competence in relation to the matter;
- (d) even though there were no clients involved and the Member was acting for his own superannuation fund, the Member was still bound to observe a proper standard of professional care, skill and competence;
- (e) the Member admitted the allegation.

**7. Had the Member committed an act, omission or default which brought, or could bring, discredit upon the Member, CA ANZ or the profession of accountancy, in breach of By-Law 40(2.1)(k)? (allegation 3)**

**7.1 Agreed facts**

The PCC alleged and the Member admitted, that the acts, omissions and defaults associated with the matters in allegation 1 brought or could bring discredit on the Member, CA ANZ or the profession of accountancy.

**7.2 Tribunal decision and reasons**

The Tribunal was satisfied the allegation was established because:

- (a) the Tribunal considered the ATO Disqualification to be a serious matter which did bring discredit, not only to himself but also to CA ANZ and the profession of accountancy;
- (b) the Tribunal noted the ATO Disqualification was gazetted and was a publicly available document;
- (c) the Member admitted the allegation.

## 8. What sanctions should be imposed on the Member?

- (a) Regulation CR 8.11, *Guidelines for the imposition of sanctions (Guidelines)* sets out the matters that may be considered by the Tribunal in deciding what sanctions to impose. In this regard the Guidelines refer to:
- (a) ... (i) the seriousness of the conduct;
  - (ii) whether the conduct has occurred before and, if so, the nature, extent and frequency of the conduct;
  - (iii) the Member's responsibility and accountability for the conduct in the context of that Member's Practice Entity ...
  - (iv) whether the Member has failed to comply with any undertaking or agreement to remedy the conduct;
  - (v) any aggravating or mitigating factors raised which are relevant to the conduct in question;
  - (vi) the personal circumstances of the Member to the extent they are raised and relevant to the conduct;
  - (vii) any character and/or other references provided in writing in support of the good standing of the Member;
  - (viii) the maintenance of public confidence in the profession;
  - (ix) the maintenance of proper standards of professional conduct;
  - (x) deterrence; and
  - (xi) any other circumstances relevant to the practice of the Member and the profession.
- (b) However, the Guidelines are not an exhaustive list of the matters that may be considered when deciding what sanction to impose and the Tribunal may have regard to any other relevant matters that are before it.
- (c) The PCC and the Member agreed to the imposition of a censure on the Member.
- (d) The Tribunal determined that this was an appropriate sanction because:
- (i) the Tribunal considered this to be a serious matter however it was noted that the offences were in relation to the Member's own superannuation fund which had a very low balance;
  - (ii) the actions of the Member did not impact on any client;
  - (iii) the Member had shown contrition and was honest and open in his dealings with the PCC. The Member had also shown an understanding during the PCC Case Conference of where he had failed to meet his obligations as a Chartered Accountant;
  - (iv) the Member was very aware of the value of his CA ANZ membership and the desirability of maintaining it;
  - (v) the Member was not currently practising as an accountant;
  - (vi) the Member had consented to the sanction.

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

- (a) Regulation CR 8.12, *Costs awards* states that when determining whether or not to require a Member to pay Costs, and the amount of such Costs, the Tribunal:
- ...must require the Member to pay all of the Costs claimed by CA ANZ unless it determines that, having regard to the following matters, it is appropriate that the Member be required to pay only part or none of the claimed Costs:
- (a) whether and to what extent the complaint against the Member is found to have merit and whether or not there is ultimately a finding in favour of the Member;



- (b) the substance or seriousness of the complaint;
  - (c) the conduct of the Member in relation to the investigation and disciplinary process, including whether the Member was open, honest and timely in the Member's dealings with the Professional Conduct Committee, Disciplinary Tribunal or Appeals Tribunal in relation to the complaint and whether the Member complied with the provisions of Section 5 of the By-Laws and any applicable Regulations during the conduct of the disciplinary process;
  - (d) the extent to which the final sanctions determined differ from those that the Professional Conduct Committee or Disciplinary Tribunal gave the Member the opportunity to agree by consent;
  - (e) whether to do so is reasonable in the circumstances;
  - (f) the amount of the Costs incurred by CA ANZ in the conduct of the investigation and proceedings;
  - (g) whether and to what extent the Member has previously been required to pay Costs to CA ANZ in respect of the complaint, its investigation, hearing and determination; and
  - (h) whether the amount is reasonable in the circumstances.
- (b) The PCC and the Member agreed that the Member should pay \$9,692 towards the costs and expenses of the disciplinary action.
- (c) Having considered the matters in Regulation CR 8.12, the Tribunal determined that the Member should pay \$9,692 for the full costs and expenses of the disciplinary action because:
- (i) the costs schedule provided by the PCC showed that the costs were not excessive and had been properly incurred;
  - (ii) no factors that mitigate the imposition of costs were presented to the Tribunal;
  - (iii) notwithstanding the Member had made attempts to accept the Consent Agreement offered by the PCC, he had not done so within time and therefore further unavoidable costs were incurred;
  - (iv) the Member agreed to pay a contribution in the amount of \$9,692.

## 10. Should the Member's name be suppressed?

- (a) By-Law 40 states:
- 12.3 Where the Disciplinary Tribunal ... determines that a complaint is established or imposes a sanction adverse to the Member ... it must direct that a notice be published by CA ANZ of its decision and the sanctions imposed (if any). Any such publication must disclose the name of the relevant Member unless the Disciplinary Tribunal ... considers that there are exceptional circumstances for not doing so. [emphasis added]
- 12.4 Publication ... may be in such form and publication as the ... Disciplinary Tribunal ... considers appropriate, including in CA ANZ's official publication, on CA ANZ's website or in any other manner that it may in its discretion direct.
- (b) The Tribunal was satisfied that there were no exceptional circumstances and that the Member's name should be published.
- (c) The Member had agreed to the publication of his name and locality.

## 11. Should other parties be notified of the Tribunal decision?

- (a) By-Law 40(10.16) states:
- The Disciplinary Tribunal may notify interested parties including other professional bodies, regulatory authorities, the Member's current and/or former employers, partners, clients of the Member or the Member's Practice Entity who are or may be affected by the Member's

conduct to which the disciplinary action relates, of so much of a decision ..., the reasons for it and/or the sanctions imposed, as it thinks fit ...

- (b) The Tribunal was not advised of any registrations or memberships held by the Member and as a consequence no interested parties were identified by the Tribunal.

## 12. Should any details be kept confidential?

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

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

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

## 13. RIGHTS OF APPEAL

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

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

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

- (a) breach of the By-Laws
- (b) sanction
- (c) costs sanction
- (d) publication
- (e) notification.

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



**Chair  
Disciplinary Tribunal**

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

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

1. By-law 40(2.1)(e), in that the Member has been the subject of adverse or unfavourable findings in relation to his professional or business conduct, competence or integrity by a statutory or regulatory authority or statutory body, in circumstances where on 6 September 2018, the Commissioner of Taxation disqualified the Member under subsection 126A(3) of the *Superannuation Industry (Supervision) Act 1993* (SISA) on the basis that he is not a fit and proper person to be a trustee, or a responsible officer of a body corporate that is a trustee, of a superannuation entity.
2. By-law 40(2.1)(a), in that the Member failed to observe a proper standard of professional care, skill and competence in the course of carrying out his professional duties in the circumstances set out in paragraph 1 above.
3. By-law 40(2.1)(k), in that the acts, omissions and defaults associated with the matters set out in paragraph 1 above bring, or may bring, discredit on the Member, CA ANZ or the profession of accountancy.

## SCHEDULE 2: RELEVANT BY-LAWS

### Section 5 - Professional Conduct

...

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

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

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

...

#### **40(2) Disciplinary action**

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

- (a) 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;

...

- (e) has been the subject of an adverse or unfavourable finding in relation to that Member's professional or business conduct, competence or integrity by any court of law, professional body, royal commission, statutory authority, regulatory authority, statutory body, commission or inquiry in any jurisdiction in Australia or elsewhere;

...

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

...

#### **40(10) Disciplinary Tribunal**

...

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

...

- (g) censure the Member

...

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

...

- 40(10.13) Subject to By-Law 40(9.3)(c) 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 By-Law 40(10) and impose any of the sanctions permitted in By-Law 40(10.12) or accept a written undertaking under By-Law 40(13.8).

...

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

...

- 40(10.18) A determination of the Disciplinary Tribunal shall take effect from the day immediately after the expiry of the period during which an appeal may be notified, if no appeal has been notified within that period.

#### **40(11) Appeals Tribunal**

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

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

#### **40(12) Publication of investigations and decisions**

...

- 40(12.3) Where the Disciplinary Tribunal or Appeals Tribunal determines that a complaint is established, imposes a sanction adverse to the Member (including one with the

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

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

...

## **SCHEDULE 3: REGULATION CR8 - DISCIPLINARY PROCEDURES**

Issued 8 October 2019

### **8.1 Purpose**

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

### **8.2 Definitions**

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

### **8.3 By-Laws**

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

### **8.4 Charter**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

### 8.14 Confidentiality Obligations

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

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

### **Commentary**

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