



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

Written decision dated 17 December 2020

- Case Number:** D-1237
- Member:** Mathew Nolan Cassidy CA of Victoria
- Hearing Date:** 2 December 2020
- Tribunal:** Simon Wallace-Smith FCA (Chair)
Anita Hargreaves CA
Elizabeth Gavey (Lay member of the Tribunal)
- Tribunal Legal Adviser:** Jamesina McLeod
- Representation:** Paul Forbes and Charlotte Hendriks for the Professional Conduct Committee (PCC)
There was no appearance by or on behalf of the Member
- Decisions:**
1. The Tribunal determined that the Member committed a breach of Regulation 2.6 *Members Required to Hold a CPP*, in breach of By-Law 40(2.1)(h).
 2. The Tribunal imposed the following sanctions:
 - (a) a suspension of the Member's membership for a period of six months;
 - (b) a censure;
 - (c) a fine in the sum of \$3,000.
 3. The Tribunal imposed a cost sanction in the sum of \$9,500 towards the costs and expenses of the proceedings.
 4. The Tribunal made the following directions regarding the conduct of the hearing and the publication of its reasons for decision:
 - (a) the hearing proceed in the absence of the Member;
 - (b) its decision with reasons, mentioning the Member's name and locality, be published on the CA ANZ website (the **Published Decision**);
 - (c) 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*;
 - (d) the Australian Securities and Investments Commission and Tax Practitioners Board be notified of this decision;

- (e) 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;
- (f) the decision regarding confidentiality takes effect immediately from 2 December 2020.

The date of effect of this decision is 8 January 2021 (By-Law 40(10.18)).



1. Introduction

- (a) In January 2019 CA ANZ received a Practice Entity Membership application in respect of an entity of which the Member was a director and, based on the information contained in that application, determined that the Member's circumstances required that he hold a Certificate of Public Practice (**CPP**).
- (b) Between 22 January and 26 April 2019 CA ANZ and the Member corresponded in relation to the steps required to obtain a CPP.
- (c) On 20 May 2019 when the Member had still not obtained a CPP, the matter was referred and the PCC initiated a complaint pursuant to the powers conferred by By-Laws 40(4.1) and 40(5.1) (the **Complaint**).
- (d) After investigating the Complaint, including corresponding with the Member from 30 May 2019 to 11 September 2020 and conducting a Case Conference on 4 June 2020 (the **Case Conference**), 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 was required to hold a CPP and had not obtained one.

2. The issues for determination

- (a) Should the hearing proceed in the absence of the Member?
- (b) Was the Member required to hold a CPP and if so, had he failed to obtain one as required by Regulation CR 2.6 *Members Required to Hold a CPP* (**Regulation CR 2.6**), thereby breaching By-Law 40(2.1)(h)? (allegation 1)
- (c) If the answer to (b) was yes, what sanctions should be imposed on the Member?
- (d) Should the Member be required to pay costs and if so, in what amount?
- (e) Was there any reason to suppress the Member's name from the published decision?
- (f) Should other parties be notified of the Tribunal's decision?
- (g) Should any confidentiality orders be made?

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

- (a) The Member did not attend the Disciplinary Tribunal hearing.
- (b) On 30 October 2020 the Member sought to resign his CA ANZ membership however on 12 November 2020 CA ANZ advised the Member:
"...in accordance with By-Law 21, your resignation has not been accepted on the basis that there are matters concerning you which are the subject of disciplinary action or professional conduct proceedings..."
- (c) On 24 November 2020 the Member's legal representative wrote to the PCC's legal advocate:
"...Your client has not provided any proper outline to our client of the matters alleged against our client. Our client has no intention of dignifying your client's hearing by his presence. He is no longer a member of your client's organisation. Your client has no right to compel him to do anything in relation to any hearing."

For the record, our client denies that there has been any infraction of your client's rules".

- (d) The PCC submitted that the hearing should proceed in the absence of the Member because:
- (i) the NDA, particulars and its casefile had been properly served on the Member in accordance with the CA ANZ By-Laws and the Member had acknowledged receipt;
 - (ii) the Board had not accepted the Member's resignation request;
 - (iii) the Member's legal representative had stated he would not attend the hearing and did not intend to further engage with the disciplinary process.
- (e) The Tribunal determined to hear the matter in the absence of the Member. In reaching this determination the Tribunal:
- (i) considered the Member:
 - (1) had been notified of the time and date for his hearing on 30 September, 22 October, 17, 19 and 27 November, and 1 December 2020;
 - (2) had, through his representative, indicated that he would not attend this hearing and had no satisfactory reason for not attending;
 - (ii) considered that the Member was still in membership with CA ANZ and was therefore still subject to the CA ANZ disciplinary processes. The By-Laws provide that members may seek approval to resign their membership by submitting a resignation request in writing to the CEO:

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

(a) Provided that no resignation shall take effect unless and until it has been accepted by the Board. The Board may decline to accept the resignation of a Member who is the subject of disciplinary action or professional conduct proceedings by either CA ANZ or NZICA or whose conduct, in the opinion of the Board, by virtue of matters brought to the attention of CA ANZ, may become the subject of professional conduct proceedings or who has been requested to provide information, given notice of or is undergoing a review or any follow up process arising from a review, investigation or professional conduct proceedings

and that approval had not been given to the Member.

4. Was the Member required to hold a CPP and if so, had he failed to obtain one as required by Regulation CR 2.6, thereby breaching By-Law 40(2.1)(h)? (allegation 1)

4.1 Preliminary issue

There were two parts to the PCC's allegation:

- (a) that the Member failed to hold a CPP while a public accountant (allegation 1(a)); and/or
- (b) that the Member failed to hold a CPP while a Principal of a Practice Entity (allegation 1(b)).

4.2 PCC submissions

- (a) The PCC submitted in relation to allegations 1(a) and 1(b) that:
 - (i) the Member was in breach of Regulation CR 2.6 as a result of his failure to hold a CPP for a considerable period of time. The Member was expressly informed from at least

23 January 2019 and the requirement was subsequently communicated to the Member on numerous occasions after that date;

- (ii) the Member is a Public Accountant as defined in Article 2(z) of the Supplemental Charter because he was clearly personally involved in the business of providing wealth management and financial advisory services which fall within the meaning of public accountancy services;
 - (iii) the Member is and has been a Principal of Practice Entities which provide public accountancy services, namely wealth management services in the case of his firm's parent company (the **Firm**) and superannuation services in the case of a subsidiary of the firm (the **Subsidiary**).
- (b) In making this submission, the PCC referred to the following evidence:
- (i) website of the Firm and in particular the Member's profile which stated that he is "Managing Director of [the Firm]" and "engage[s] with all aspects of the [Firm's] business, providing financial advice directly to a number of high net wealth clients and family groups";
 - (ii) transcript of the Case Conference and in particular page 5 at [53] to page 6 at [46]:
 - “CHAIR: Mr Cassidy, before we go onto (3) and (4), are you aware of the definition of accounting services in the CA ANZ Regulations?*
 - MR CASSIDY: No, I can't recite those today.*
 - CHAIR: [Secretary], are you able to read out that Regulation?*
 - [SECRETARY]: I'm reading from Regulation CR 2 2.6 which says that:*
 - "A Chartered Accountant who:*
 - (a) is a public accountant, as defined in ... the Charter; or*
 - (b) is a Principal of a Practice Entity which includes a public accountant(s)*
 - ... must apply for and hold a CPP."*
 - A public accountant is defined as:*
 - "A person who maintains as a principal an office for the provision of one or more public accountancy services and places those services at the disposal of the community for remuneration, and"--*
 - Forgive me for all the multiple definitions. Public accountancy services are defined as:*
 - "Such services as the board may from time to time determine and currently determined as any service or activity undertaken by a chartered accountant to a member of the community for remuneration requiring accountancy or related skills, including but not limited to, accounting, assurance, taxation, financial management, management consulting, insolvency, valuation, financial advice and corporate advisory services."*
 - MR CASSIDY: Sure, thank you.*
 - CHAIR: Mr Cassidy, the area that you've been working in, which I think you called wealth management or financial advisory, it's in there.*
 - MR CASSIDY: Sure. Okay, so that's my oversight";*
 - (iii) the Member's registration with the Australian Securities and Investments Commission (**ASIC**) as an Australian Financial Services Representative (**AFSR**);
 - (iv) the Member's registration with the Tax Practitioners Board (**TPB**) as an Individual Tax (financial) adviser (**Tax Adviser**).

4.3 Member submissions

The Member did not attend the hearing. In correspondence to the PCC prior to the hearing the Member and the Member's legal representative wrote:

- (a) he was initially of the view that he would obtain a CPP but due to the pressures of the COVID-19 pandemic and his personal circumstances, as well as his dealings with CA ANZ during the process, he subsequently decided not to do so;
- (b) the PCC had not fully particularised its allegations against the Member;
- (c) the PCC had never tried to ascertain what the Member was doing within the Firm or the services it was providing;
- (d) he did not and had never carried out services which required a CPP;
- (e) on 18 May 2020 he resigned as a director of the Subsidiary. From that point on he was not in any way directly or indirectly involved in any day to day operations or the management of the Subsidiary and there was no longer any possibility that he was a Principal of a Practice Entity for the purposes of the By-Laws;
- (f) on 30 October 2020 the Member resigned his CA ANZ membership. Although CA ANZ had refused to accept the Member's resignation, the Member was entitled to resign whether or not CA ANZ accepted the resignation;
- (g) the investigation which led to the matters alleged against him did not arise out of any client complaint but rather was initiated by the PCC. There was no purpose to referring the matter for disciplinary action when there was no external complaint that needed to be resolved or redress required to any third party;
- (h) there was not enough evidence in the Member's view to establish the allegations. The Member's statements at the Case Conference should not be relied on as an acknowledgment that the Member understood he needed to obtain a CPP as the Member was not legally represented at the Case Conference and was not able to comment on legal definitions.

4.4 Tribunal decision and reasons

- (a) In considering whether the Member was a public accountant and therefore obliged to hold a CPP, the Tribunal had regard to the following:
 - (i) Regulation CR 2.6 which states:

A Chartered Accountant who ... is a public accountant, as defined in Article 2(z) of the Supplemental Charter ... must apply for and hold a CPP

and the Commentary to Regulations CR 2.6 and CR 2.7 (see [Schedule 3](#));
 - (ii) Article 2(z) of the CA ANZ Supplemental Royal Charter dated 30 July 2019 (**Supplemental Charter**) which states:

public accountant means a natural person:

 - (i) who maintains as a principal, whether on his or her own behalf or as a trustee and whether alone or with others, an office for the provision of 1 or more public accountancy services and who places that service or those services at the disposal of the community for remuneration, and not solely at the disposal of any individual, firm, trust or body of persons, corporate or unincorporated body; or
 - (ii) who is a shareholder in, or a director of, a body corporate which, whether on its own behalf or as a trustee and whether alone or with others, maintains an office for the provision of 1 or more public accountancy services and which places that service or those services at the disposal of the community for remuneration, and

not solely at the disposal of any individual, firm, trust or body of persons, corporate or unincorporated body, and who, as an officer or employee of such body corporate or otherwise, provides or participates in the provision of such service or services on behalf of such body corporate; or

- (iii) who is a beneficiary under a trust the trustee of which, whether alone or with others, maintains an office for the provision of 1 or more public accountancy services and places that service or those services at the disposal of the community for remuneration, and not solely at the disposal of any individual, firm, trust or body of persons, corporate or unincorporated body, and who, as an officer or employee of such trustee or otherwise, participates in the provision of such service or services on behalf of such trustee.

(Article 2(z)).

- (b) The Tribunal determined that allegation 1(a) was not established because, although the material before the Tribunal inferred the Member may have been carrying out work as a public accountant, there was no conclusive evidence that he was actually doing the work himself given that:
- (i) the Tribunal did not find the statements on the Member's company website relied on by the PCC to be clear evidence that the Member was carrying out work as a public accountant, as websites are generally used for marketing and not necessarily clear evidence of work that is being performed;
 - (ii) the Case Conference transcript did not go into sufficient detail regarding the work the Member was actually undertaking in regard to public accounting and the Member's description of his role was general in nature;
 - (iii) the fact that the Member was a registered AFSR and Tax Adviser did not necessarily prove that he was carrying out public accountancy work;
 - (iv) the Member had repeatedly denied in correspondence between his legal representative and the PCC that he was in practice as a public accountant.
- (c) In considering whether the Member was a Principal of a Practice Entity and therefore obliged to hold a CPP, the Tribunal had regard to the following:
- (i) Regulation CR 2.6 which states:

A Chartered Accountant who ... is a Principal of a Practice Entity which includes a public accountant(s) as defined in Article 2(z) of the Supplemental Charter ... must apply for and hold a CPP

and the Commentary to Regulations CR 2.6 and CR 2.7 (see [Schedule 3](#));
 - (ii) Article 2(z);
 - (iii) Regulation CR 2.2 *Definitions* which states:

...

(c) **Principal** in this CR2 has the same meaning given to that term in By-Law 39(r), namely it means any person, who is a principal of the Practice or a principal, partner, director, officer or trustee of a Related Entity of the Practice and includes:

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

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

and the Commentary to Regulation CR 2.2 (see [Schedule 3](#));

(iv) Article 2(y) of the Supplemental Charter which states:

public accountancy services means such services as the Board may from time to time determine to be "public accountancy services".

(d) The Tribunal determined that allegation 1(b) was established because:

- (i) there was evidence, including the Member's statements made during the Case Conference, that the services provided by the Firm included wealth management and financial advisory services and the Subsidiary is a service provider to self-managed superannuation funds, and this evidence satisfied the definition of public accountancy services under Regulation CR 2;
- (ii) the Member is the managing director of the Firm which provides public accountancy services, and until recently he was a director of the Subsidiary which provides public accountancy services;
- (iii) in view of the positions held by the Member in the Firm and the Subsidiary and the services provided by those two entities, the Member is therefore a Principal under Regulation CR 2.6 and required to hold a CPP;
- (iv) the Member did not hold a CPP however he had accepted the requirement on 22 March 2019, 7 November 2019, 4 June 2020 and 17 August 2020 that he was required to undertake the relevant course of workshops to hold a CPP.

(e) The Tribunal noted the Member's concerns that the PCC's allegations had not been properly or fully particularised however was of the view that the Member was provided with sufficient details of the allegations against him and the reasons for those allegations. The Tribunal noted that, since January 2019, there had been a series of correspondence from CA ANZ to the Member setting out the requirement for the Member to hold a CPP. By 30 October 2019 at the latest the Member had been fully informed of this requirement and the reasons for it. The PCC became aware that the Member had appointed legal representation on 18 November 2020 and from that point the Member's legal adviser was informed of those requirements and reasons by the PCC's legal representative in correspondence dated 19 and 27 November 2020.

(f) In any event the purported admission by the Member at the Case Conference that he needed a CPP (see paragraph 4.2(b)(ii)) was not the critical factor in the Tribunal's decision as there was sufficient other evidence that the Member was a Principal of a Practice Entity and required a CPP.

5. 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 submitted that appropriate sanctions were:
- (i) suspension of the Member's membership for a period of six months;
 - (ii) a censure; and
 - (iii) a fine in the sum of \$5,000;
- and that the Tribunal should have regard to the following matters:
- (iv) it was a serious matter and serious misconduct;
 - (v) it was an ongoing breach;
 - (vi) the Member's conduct was directly linked to his role and position as Principal of Practice Entities;
 - (vii) the Member had not taken any responsibility or accountability for his conduct and has had a blatant disregard for the Regulations;
 - (viii) it was an aggravating factor that the Member had continued to deny that he was required to hold a CPP;
 - (ix) the Member had been given significant and extensive opportunities to obtain a CPP;
 - (x) public confidence in the profession could only be maintained if an appropriate sanction was imposed as there is a clear public interest in members of CA ANZ having a CPP when they are involved in providing accountancy services to the public.
- (d) The Member provided no submissions with respect to potential sanctions.
- (e) The Tribunal determined to suspend the Member's membership for six months, censure the Member and impose a fine of \$3,000 because:
- (i) the Member's conduct in not holding a CPP was serious because the certification, which was required, protects the public interest and the reputation of CA ANZ by ensuring its members meet the high standards expected of them;
 - (ii) the Member's subsequent conduct of consciously failing to obtain a CPP was serious having regard to the ample opportunity, including extensions of time, he was provided to obtain a CPP and remedy the breach;

- (iii) he was told by the PCC on numerous occasions the reasons why a CPP was required;
- (iv) the Member had shown a total disregard to the CA ANZ Regulations in relation to obtaining a CPP. Although the Member had taken steps towards obtaining the required CPP he ultimately did not do so and was not able to provide satisfactory reasons for that failure, and subsequently denied any responsibility or accountability to obtain a CPP;
- (v) it is important for Chartered Accountants that they comply with the relevant Regulations and By-Laws. The holding of a CPP is also important for maintaining professional standards and public confidence in the profession of accountancy and Chartered Accountants;
- (vi) the Tribunal noted that, as set out in paragraph 4.4(e) above, since January 2019, there had been a series of correspondence from CA ANZ to the Member setting out the requirement for the Member to hold a CPP. It was not desirable for a member to remain in breach of their obligation to hold a CPP for such a considerable period of time.

6. 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 submitted that the Member should pay the full costs of the proceedings in the sum of \$12,022 because:
 - (i) the complaint was established, at least in part;
 - (ii) it was a serious matter to refuse to hold a CPP in circumstances where it is required;
 - (iii) the Member had delayed at times in responding to CA ANZ;
 - (iv) the Member had refused to participate in the hearing;

- (v) the Member did not comply with his obligations under By-Law 40(10.4) to respond to the NDA;
 - (vi) there had not been proper cooperation by the Member in relation to the progression of the complaint;
 - (vii) given the seriousness of the conduct and the Member's disregard of the requests of CA ANZ and the PCC an award of full costs was fair and reasonable.
- (c) The Member provided no submissions with respect to potential costs.
- (d) The Tribunal determined that the Member be required to pay a reduced amount of \$9,500 towards the costs of the proceedings because:
- (i) the Member's breach of By-Law 40(2.1)(h) had been established in that allegation 1(b) had been made out;
 - (ii) due to allegation 1(a) not being established, the Tribunal reduced the costs that the PCC were seeking.
- (e) Having considered the matters set out in Regulation CR 8.12, the Tribunal determined that it was reasonable for the Member to pay these costs as:
- (i) the complaint was serious;
 - (ii) the Member had refused to participate in the hearing and had not complied with By-Law 40(10.4), amongst others;
 - (iii) CA ANZ had provided a number of extensions and repeatedly communicated the reasons why the Member was required to hold a CPP;
 - (iv) the Member had not been cooperative or timely in his dealings with the PCC;
 - (v) it was not fair for the costs to be borne by the membership as a whole when the proceedings were a direct result of the Member's failure to comply with his obligations as a member;
 - (vi) the Tribunal was of the opinion that the amount was reasonable in the circumstances of this case.

7. 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 determined there were no exceptional circumstances and therefore the Member's name should be disclosed in the publication.

8. 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 determined that ASIC and the TPB were interested parties and would be notified of this decision.

9. 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.

10. 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)(h) in that you have committed a breach of paragraph 2.6 of CA ANZ Regulation CR2 by failing to hold a Certificate of Public Practice while:
 - a. a public accountant; and/or
 - b. a Principal of a Practice Entity which includes a public accountant (as defined in the Regulation),

during the period from at least 17 January 2019.

SCHEDULE 2: RELEVANT BY-LAWS

Section 1 - Preliminary

...

Definitions

- 2.** In the interpretation of these By-Laws, unless the context or subject matter otherwise indicates or requires:

...

(ddd) **Practice Entity** means any partnership, trust or body corporate or unincorporated body in or through which persons who are Members, or include a Member or Members, practise as public accountants;

...

Section 2 - Membership

...

Resignation

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

...

Section 4 – Rights and Obligations of Members

Certificates of Public Practice

...

- 34.** (a) An Individual Member shall not, without the consent of the Board, practise as a public accountant unless he or she has been issued with a current certificate of public practice or his or her application thereof has been approved or he or she is exempt from the obligation to hold such a certificate.
- (b) The Board may prescribe Regulations for the issue and renewal of certificates of public practice and for any exemption from the obligation to hold such a certificate. Without limitation of the foregoing, the Board may prescribe the form of any application for such issue, renewal or exemption, any fee payable in respect thereof, the form and duration of any certificate of public practice and any conditions attaching thereto or to the issue or renewal thereof.

...

...

Compliance Obligations

38A. A Member must at all times comply with the Supplemental Charter, these By-Laws and:

- (a) for all Members who are not subject to the NZICA Rules, 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, and any applicable pronouncements, instruments, technical or professional standards or guidance issued by any similar body whether in Australia or in a foreign jurisdiction;

...

Section 5 - Professional Conduct

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

...

- (c) **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 By-Law 40(7.1);

...

- (h) **Costs** means any costs and expenses incurred by or on behalf of CA ANZ in relation to the investigation and determination of a complaint (whether through the Professional Conduct Committee, Disciplinary Tribunal, Appeals Tribunal or otherwise) and any other taxes, fees 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;

...

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

...

- (r) **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;

- (s) **Registers** means the General Register, Regional Register and/or Overseas Regional Register;
- (t) **Related Entity** means any partnership, company, corporation or trust carrying on the whole or any part of practice as a Practice Entity;

...

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(1) Committees and Tribunals

40(1.1) For the implementation of the procedures referred to in this Section 5, there shall be the following committees and tribunals:

...

- (b) a Professional Conduct Committee which shall receive, initiate, investigate, determine and refer complaints;
- (c) a Disciplinary Tribunal which shall hear and determine complaints made to it by the Professional Conduct Committee; and
- (d) an Appeals Tribunal which shall hear and determine appeals of decisions of the Disciplinary Tribunal.

...

40(1.3) Subject to these By-Laws, the Regulations and the Charters, each committee and tribunal shall regulate its own affairs and may delegate any of its functions.

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:

...

- (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;

...

40(10) Disciplinary Tribunal

40(10.1) Subject to By-Laws 40(9.3)(a) and 40(9.3)(b), when a complaint is referred by the Professional Conduct Committee to the Disciplinary Tribunal, the Professional Conduct Committee must, unless the Member otherwise consents, give to the Member concerned a notice (**Notice of Disciplinary Action**) no less than 35 days before the Disciplinary Tribunal hearing setting out:

- (a) details of the complaint made against the Member and any particulars and information in support;
- (b) the date, time and place of the hearing before the Disciplinary Tribunal; and
- (c) where the Professional Conduct Committee's case against the Member will be presented at the Disciplinary Tribunal hearing by an independent Australian legal practitioner, a statement to that effect and, if known, the legal practitioner's name and firm, organisation or chambers.

...

40(10.4) The Member receiving a Notice of Disciplinary Action or an amended Notice of Disciplinary Action shall, unless the Professional Conduct Committee otherwise consents, not less than 14 days before the date of the hearing, state in writing to the Professional Conduct Committee:

- (a) whether the Member will attend the hearing and, if represented, by whom (including details of that representative's name and firm, organisation or chambers);
- (b) the matters the Member admits or disputes in the Notice of Disciplinary Action;
- (c) whether the Member intends to adduce any evidence at the hearing, and the names, qualifications and organisations of any witnesses the Member intends to call; and
- (d) any relevant fact or circumstance the Member wishes to bring to the attention of the Disciplinary Tribunal and the reasons for doing so.

...

40(10.7) Failure by the Member to comply with any or all of the above requirements (or to attend) shall not preclude the Disciplinary Tribunal from proceeding to hear and determine a Notice of Disciplinary Action at the appointed time.

...

40(10.9) At every hearing before the Disciplinary Tribunal, the Professional Conduct Committee shall be responsible for the presentation of the case against the Member. The Professional Conduct Committee may appoint an independent Australian legal practitioner to present the case on its behalf.

40(10.10) The Disciplinary Tribunal shall give the Member concerned or that Member's representative a reasonable opportunity of being heard and shall give due consideration to any material that Member may submit.

40(10.11) The Disciplinary Tribunal shall determine whether or not the complaint contained in the Notice of Disciplinary Action, or any part thereof, is established.

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:

...

(b) suspend the Member from membership of CA ANZ for a period not exceeding 5 years and remove the Member's name from the Registers on which it appears

...

(f) fine that Member an amount not exceeding \$50,000

(g) censure the Member

...

...

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.

...

40(13) General

...

40(13.3) Conduct and provision of information

Members must be open and honest in their dealings with the Professional Conduct Committee, Disciplinary Tribunal and Appeals Tribunal. Members must provide such information as is required of them by CA ANZ, the Professional Conduct Committee, Disciplinary Tribunal or Appeals Tribunal 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 the time prescribed in this Section 5 and any applicable Regulations. Each of the Professional Conduct Committee, Disciplinary Tribunal and Appeals Tribunal may record its meetings, interviews, investigations, proceedings and hearings in any manner it decides, including by the use of stenography and sound recording technology.

40(13.4) Termination and suspension

If the name of a Member is removed from any Registers on termination or suspension in accordance with this Section 5, 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 to CA ANZ.

...

40(13.6) Guidelines for the imposition of sanctions

In determining the sanctions to be imposed on a Member under this Section 5 (with or without the consent of that Member) the Professional Conduct Committee, Disciplinary Tribunal and Appeals Tribunal must have regard to the guidelines set out in any applicable Regulations.

40(13.7) Costs awards

When the Professional Conduct Committee, Disciplinary Tribunal or Appeals Tribunal determines whether or not to require a Member to pay Costs under this Section 5, and

the amount of such Costs a Member is required to pay, it must have regard to the guidelines set out in any applicable Regulations.

...

40(13.12) Public and private hearings

...

- (b) Subject to By-Laws 40(13.12)(c) and 40(13.12)(d), and unless the Disciplinary Tribunal or Appeals Tribunal determine otherwise, each shall hold its hearings in public.
- (c) The Disciplinary Tribunal or Appeals Tribunal may determine to hear any part of a hearing in private.
- (d) The Disciplinary Tribunal or Appeals 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.

SCHEDULE 3: EXCERPTS FROM REGULATION CR2 - CERTIFICATES OF PUBLIC PRACTICE

2.1 Purpose

This Regulation sets out the requirements for Certificates of Public Practice (CPPs) for Members of CA ANZ.

2.2 Definitions

- (a) Unless expressly defined in this Regulation, capitalised terms used in this Regulation are defined in By-Law 2.
- (b) References to Chartered Accountant in CR 2.4 to 2.28 are applicable to both Chartered Accountants and Chartered Accountant Fellows.

Issued 23 August 2018

- 2.2 (c) Principal** in relation to a Practice means any person, who is a principal of the Practice or a principal, partner, director, officer or trustee of a Related Entity of the Practice and includes:
- (i) in the case of a Practice Entity or a Related Entity of the Practice which is a partnership, a partner of that partnership;
 - (ii) in the case of a Practice Entity or a Related Entity of the Practice 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 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; and
 - (iv) in the case of a Practice Entity or a Related Entity of the Practice an individual who, as an officer or employee or otherwise, of the Practice Entity or Related Entity of the Practice, provides or participates as a Principal in the provision of the services provided by the Practice.

Commentary

Factors to consider in determining whether a person is a Principal of a Practice Entity includes whether:

- *they have responsibility for the standard of professional work undertaken by the Practice Entity and management of the Practice Entity's activities including client selection and retention, determining the terms of the professional engagement, the type and quality of professional services provided, risk management, the exercising of professional judgement in ethical and technical matters and signing of engagements;*
- *their individual acts are binding on the Practice or other Principals of the Practice;*
- *they have the potential for personal liability for the Practice's liabilities;*
- *they have a role in the governance of the Practice;*
- *they have responsibility for signing off on professional engagements;*
- *they are acknowledged in the professional indemnity policy of the Practice as a person responsible for professional engagements;*
- *the perception of clients and suppliers of the Member is of a person who is able to bind the*

Practice;

- *a Principal, partner, director, officer or trustee of a Related Entity of the Practice may also be considered to be a Principal of a Practice Entity.*

The absence of an equity holding in the Practice by the Member is not a conclusive factor in determining whether a Member is a Principal. Similarly, an ownership interest in a Practice is not necessarily the sole factor in determining whether a Member is a Principal of a Practice Entity. For example, an employee is not considered to be a Principal merely where a share in ownership is incorporated into their employee remuneration package.

...

2.6 Members Required to Hold a CPP

A Chartered Accountant who

- (a) is a public accountant, as defined in Section 2(g) of the Supplemental Royal Charter; or
- (b) is a Principal of a Practice Entity which includes a public accountant(s) as defined in Section 2(g) of the Supplemental Royal Charter

must apply for and hold a CPP.

- 2.7** Where a Chartered Accountant holds a CPP issued in accordance with the NZICA Rules, and additionally has a requirement to hold a CPP only by virtue of CR 2.6(b) above the CPP issued in accordance with the NZICA Rules will be considered to satisfy the requirement to hold a CPP for the purposes of this Regulation.

Commentary

The intent of this Regulation is to ensure that CA ANZ has a record of all Chartered Accountants who are principals in a Practice Entity where that Practice Entity provides or, may reasonably be inferred, to provide accounting services to the public for reward.

In accordance with clause 2.1 of the CA ANZ Professional Standards Schemes (the Schemes), a Chartered Accountant who holds a CPP is a participating member of the Schemes, to the extent that the relevant Scheme applies. A Chartered Accountant who does not comply with this Regulation will not be a participating member of the Schemes. Only participating members of the Schemes will benefit from liability capping in the event of a claim against them.

The Supplemental Royal Charter defines "public accountant" to mean a natural person:

- (i) *who maintains as a principal, whether on his or her own behalf or as a trustee and whether alone or with others, an office for the provision of one or more public accountancy services and who places that service or those services at the disposal of the community for remuneration, and not solely at the disposal of any individual, firm, trust or body of persons, corporate or unincorporated; or*
- (ii) *who is a shareholder in, or a director of, a body corporate which, whether on its own behalf or as a trustee and whether alone or with others, maintains an office for the provision of one or more public accountancy services and which places that service or those services at the disposal of the community for remuneration, and not solely at the disposal of any individual, firm, trust or body of persons, corporate or unincorporate, and who, as an officer or employee of such body corporate or otherwise, provides or participates in the provision of such service or services on behalf of such body corporate; or*

- (iii) *who is a beneficiary under a trust the trustee of which, whether alone or with others, maintains an office for the provision of one or more public accountancy services and places that service or those services at the disposal of the community for remuneration, and not solely at the disposal of any individual, firm, trust or body of persons, corporate or unincorporate, and who, as an officer or employee of such trustee or otherwise, participates in the provision of such service or services on behalf of such trustee.*

The Supplemental Royal Charter defines "public accountancy services" to mean such services as the Board may from time to time determine to be "public accounting services". The Board has determined such services include, but are not limited to,

- *accounting,*
- *auditing,*
- *management consulting,*
- *taxation,*
- *financial management,*
- *insolvency*
- *forensic accounting (from 1 July 2005),*
- *risk management (from 1 July 2005)*
- *corporate advisory services (from 1 July 2005)*
- *financial planning services (from 1 January 2015)*
- *business valuation services (from 1 January 2018)*

Public accountancy services also includes:

- *When a Chartered Accountant undertakes any services which require the holding of any one of the following registrations/licences:*
 - o *registered company auditor;*
 - o *registered company liquidator;*
 - o *registered trustee in bankruptcy;*
 - o *registered tax agent;*
 - o *registered tax (financial) adviser;*
 - o *registered BAS agent;*
 - o *Australian Financial Services (AFS) licence;*
 - o *authorised representative of an AFS licensee; and*
 - o *approved self-managed super fund (SMSF) auditor; or*
- *When a Chartered Accountant completes a review of a financial report of a company limited by guarantee in accordance with the Corporations Act 2001 (Cth); or*
- *When a Chartered Accountant is required under legislation or other statutory authority to undertake a role, for example, the role of:*
 - *an appropriately qualified accountant under the Estate Agents (General Accounts and Audit) Regulations 1997; or*

- a person approved to undertake an audit in accordance with the Residential Care Subsidy Principles 1997 of the Aged Care Act 1997.

A Chartered Accountant must obtain a CPP when they, or a Practice Entity of which they are a principal,

- displays the description Chartered Accountant/s and/or the Chartered Accountants logo on letterhead, promotional material, electronic communications or websites; or
- is included in a listing or directory as a chartered firm or with the Chartered Accountants logo; or
- conducts their practice in a manner from which it may be reasonably inferred that the individual Chartered Accountant or firm is obtaining a commercial benefit from membership of CA ANZ.

The following are **not** considered to be situations requiring a Chartered Accountant to obtain a CPP;

- providing services on a pro bono or honorary basis as it is not considered to be for reward;
- when a Chartered Accountant provides financial planning or other accountancy services as an employee or officer of an Australian Prudential Regulation Authority regulated entity (<http://www.apra.gov.au/Pages/default.aspx>);
- when a Chartered Accountant holds an investment interest in a Practice Entity but would not

otherwise be considered a Principal of the Practice Entity,

- using the post nominals CA, FCA on their business card;
- using a specialist designation authorised under these Regulations; or
- referring to membership of CA ANZ on their curriculum vitae or professional profile.

...

Issued 8 October 2019

- 2.2 (c) Principal** in this CR2 has the same meaning given to that term in By-Law 39(r), namely it means any person, who is a principal of the Practice or a principal, partner, director, officer or trustee of a Related Entity of the Practice and includes:
- (i) in the case of a Practice Entity or a Related Entity of the Practice which is a partnership, a partner of that partnership;
 - (ii) in the case of a Practice Entity or a Related Entity of the Practice 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 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; and
 - (iv) in the case of a Practice Entity or a Related Entity of the Practice an individual who, as an officer or employee or otherwise, of the Practice Entity or Related Entity of the Practice, provides or participates as a Principal in the provision of the services provided by the Practice.

Commentary

Factors to consider in determining whether a person is a Principal of a Practice Entity includes whether:

- *they have responsibility for the standard of professional work undertaken by the Practice Entity and management of the Practice Entity's activities including client selection and retention, determining the terms of the professional engagement, the type and quality of professional services provided, risk management, the exercising of professional judgement in ethical and technical matters and signing of engagements;*
- *their individual acts are binding on the Practice or other Principals of the Practice;*
- *they have the potential for personal liability for the Practice's liabilities;*
- *they have a role in the governance of the Practice;*
- *they have responsibility for signing off on professional engagements;*
- *they are acknowledged in the professional indemnity policy of the Practice as a person responsible for professional engagements;*
- *the perception of clients and suppliers of the Member is of a person who is able to bind the Practice;*
- *a Principal, partner, director, officer or trustee of a Related Entity of the Practice may also be considered to be a Principal of a Practice Entity.*

The absence of an equity holding in the Practice by the Member is not a conclusive factor in determining whether a Member is a Principal. Similarly, an ownership interest in a Practice is not necessarily the sole factor in determining whether a Member is a Principal of a Practice Entity. For example, an employee is not considered to be a Principal merely where a share in ownership is incorporated into their employee remuneration package.

...

2.6 Members Required to Hold a CPP

A Chartered Accountant who:

- (a) is a public accountant, as defined in Article 2(z) of the Supplemental Charter; or
- (b) is a Principal of a Practice Entity which includes a public accountant(s) as defined in Article 2(z) of the Supplemental Charter,

must apply for and hold a CPP.

- 2.7** Where a Chartered Accountant holds a CPP issued in accordance with the NZICA Rules, and additionally has a requirement to hold a CPP only by virtue of CR 2.6(b) above, the CPP issued in accordance with the NZICA Rules will be considered to satisfy the requirement to hold a CPP for the purposes of this Regulation.

Commentary

The intent of this Regulation is to ensure that CA ANZ has a record of all Chartered Accountants who are principals in a Practice Entity where that Practice Entity provides or, may reasonably be inferred, to provide accounting services to the public for reward.

*In accordance with clause 2.1 of the CA ANZ Professional Standards Scheme (the **Scheme**), a Chartered Accountant who holds a CPP is a participating member of the Scheme, to the extent that the relevant Scheme applies. A Chartered Accountant who does not comply with this*

Regulation will not be a participating member of the Scheme. Only participating members of the Scheme will benefit from liability capping in the event of a claim against them.

The Supplemental Charter defines "public accountant" to mean a natural person:

- (i) who maintains as a principal, whether on his or her own behalf or as a trustee and whether alone or with others, an office for the provision of 1 or more public accountancy services and who places that service or those services at the disposal of the community for remuneration, and not solely at the disposal of any individual, firm, trust or body of persons, corporate or unincorporated; or*
- (ii) who is a shareholder in, or a director of, a body corporate which, whether on its own behalf or as a trustee and whether alone or with others, maintains an office for the provision of one or more public accountancy services and which places that service or those services at the disposal of the community for remuneration, and not solely at the disposal of any individual, firm, trust or body of persons, corporate or unincorporated body, and who, as an officer or employee of such body corporate or otherwise, provides or participates in the provision of such service or services on behalf of such body corporate; or*
- (iii) who is a beneficiary under a trust the trustee of which, whether alone or with others, maintains an office for the provision of 1 or more public accountancy services and places that service or those services at the disposal of the community for remuneration, and not solely at the disposal of any individual, firm, trust or body of persons, corporate or unincorporated body, and who, as an officer or employee of such trustee or otherwise, participates in the provision of such service or services on behalf of such trustee.*

The Supplemental Charter defines "public accountancy services" to mean such services as the Board may from time to time determine to be "public accountancy services". On 31 July 2019, the Board determined that "Public Accountancy Services" means any service or activity, undertaken by a Chartered Accountant to a member of the community for remuneration, requiring accountancy or related skills, including but not limited to, accounting, assurance, taxation, financial management, management consulting, insolvency, valuation, financial advice and corporate advisory services."

Public accountancy services also includes:

- when a Chartered Accountant undertakes any services which require the holding of any one of the following registrations/licences:

 - o registered company auditor;*
 - o registered company liquidator;*
 - o registered trustee in bankruptcy;*
 - o registered tax agent;*
 - o registered tax (financial) adviser;*
 - o registered BAS agent;*
 - o Australian Financial Services (AFS) licence;*
 - o authorised representative of an AFS licensee; and*
 - o approved self-managed super fund (SMSF) auditor; or**
- when a Chartered Accountant completes a review of a financial report of a company limited by guarantee in accordance with the Corporations Act 2001 (Cth); or*

- *when a Chartered Accountant is required under legislation or other statutory authority to undertake a role, for example, the role of:*
 - *an appropriately qualified accountant under the Estate Agents (General Accounts and Audit) Regulations 1997; or*
 - *a person approved to undertake an audit in accordance with the Residential Care Subsidy Principles 1997 of the Aged Care Act 1997.*

A Chartered Accountant must obtain a CPP when they, or a Practice Entity of which they are a principal,

- *displays the description Chartered Accountant/s and/or the Chartered Accountants logo on letterhead, promotional material, electronic communications or websites; or*
- *is included in a listing or directory as a chartered firm or with the Chartered Accountants logo; or*
- *conducts their practice in a manner from which it may be reasonably inferred that the individual Chartered Accountant or firm is obtaining a commercial benefit from membership of CA ANZ.*

*The following are **not** considered to be situations requiring a Chartered Accountant to obtain a CPP;*

- *providing services on a pro bono or honorary basis as it is not considered to be for reward;*
- *when a Chartered Accountant provides financial planning or other accountancy services as an employee or officer of an Australian Prudential Regulation Authority regulated entity (<http://www.apra.gov.au/Pages/default.aspx>);*
- *when a Chartered Accountant holds an investment interest in a Practice Entity but would not otherwise be considered a Principal of the Practice Entity,*
- *using the post nominals CA, FCA on their business card;*
- *using a specialist designation authorised under these Regulations; or*
- *referring to membership of CA ANZ on their curriculum vitae or professional profile.*

...

SCHEDULE 4: 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.