



# Disciplinary Tribunal of Chartered Accountants Australia and New Zealand (CA ANZ) Written decision dated 24 November 2020

- Case Number:** D-1238
- Member:** Nigel Edmund Tolley FCA of New South Wales
- Hearing Date:** 17 November 2020
- Tribunal:** Simon Wallace-Smith FCA (Chair)  
Ross Haslam FCA  
Elizabeth Gavey (Lay member of the Tribunal)
- Tribunal Legal Adviser:** Jamesina McLeod
- Representation:** Paul Forbes for the Professional Conduct Committee (PCC)  
Matt Sherman and Kim Nguyen for the Member
- Decisions:**
1. The Tribunal determined to suspend the Member from membership of CA ANZ on an interim basis pending further investigation and determination of the complaint.
  2. Costs were reserved until final determination of the complaint. The Tribunal noted the PCC estimate of costs to date of \$9,237.
  3. The Tribunal made the following directions regarding the conduct of the hearing and the publication of its reasons for decision:
    - (a) to accept the Member's late By-Law 40(10.4) response and outline of submissions, which was consented to by the PCC;
    - (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 Tax Practitioners Board and Australian Securities and Investments Commission 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 on 17 November 2020.

With the exception of the appealed decisions regarding publication and notification to interested parties, the date of effect of this decision is 9 December 2020 (By-Law 40(10.18)).

The date of effect of the decisions regarding publication and notification to interested parties is 4 March 2021 (By-Law 40(11.12)).



## 1. Introduction

- (a) On 18 May 2020 CA ANZ received a complaint from a member of CA ANZ (the **Complainant**) which claimed that the Member had *“been charged by the NSW Police for Fraud and Money Laundering”* (the **Complaint**).
- (b) After commencing its investigation of the Complaint, the PCC sought a determination by the Tribunal for the interim suspension of the Member’s membership on the basis of the allegation that the Member, on or about 24 March 2020, was charged with the following criminal offences:
  - (i) eleven counts of dishonestly obtaining financial advantage or causing financial disadvantage by deception, contrary to section 192E(1)(b) of the *Crimes Act 1900* (NSW); and
  - (ii) two counts of knowingly dealing with the proceeds of crime, intending to conceal that it is proceeds of crime, contrary to section 193B(1) of the *Crimes Act 1900* (NSW).
- (c) The Member did not oppose the PCC’s application for interim suspension of his membership however stated that he *“strenuously denies the allegations against him, and intends to defend ... the criminal charges”*.

## 2. The issues for determination

- (a) Was it necessary or desirable to suspend the Member from membership of CA ANZ on an interim basis, having regard to the urgency of the matter, the interests of the public, the reputation of CA ANZ, or the integrity of the profession of accountancy? (By-Law 40(9.1))
- (b) If the answer to (a) was yes, for what period should the Member be interim suspended?
- (c) Should the Member be required to pay costs and if so, in what amount?
- (d) Should the decision be published?
- (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?
- (h) Should the Tribunal accept the documents provided to it on the day before the hearing day?

**3. Was it necessary or desirable to suspend the Member from membership of CA ANZ on an interim basis, having regard to the urgency of the matter, the interests of the public, the reputation of CA ANZ, or the integrity of the profession of accountancy? (By-Law 40(9.1))**

**3.1 PCC submissions**

- (a) The PCC submitted that all four factors for consideration were present in this matter, given that:
- (i) it had been eight months since the Member was charged with serious offences and CA ANZ must be seen to act promptly, especially as the matter had received publicity in the news media;
  - (ii) in relation to public interest, these charges strike at the heart of the public dealing with a member of CA ANZ who they expect to be a person of high integrity and honesty concerning financial affairs;
  - (iii) confidence in both the profession and CA ANZ could only be maintained if the Member was suspended;
  - (iv) interim suspension of the Member's membership was necessary because it was unknown when the criminal proceedings would conclude and those proceedings could take several years. The PCC could not wait for the outcome of the criminal proceedings and therefore applying for an interim suspension was an appropriate approach in this situation.
- (b) The PCC noted that the Member denied the charges and acknowledged that it did not ask the Tribunal to make any findings of fact in relation to the charges.
- (c) The PCC provided the following evidence in support of its submission:
- (i) the Complaint which annexed a copy of *New South Wales Crime Commission v Tolley* [2020] NSWSC 431;
  - (ii) New South Wales Police facts sheet dated 24 March 2020 (**Police Facts Sheet**); and
  - (iii) news media article by Ava Benny-Morrison 'Sleuths put freeze on Coca-Cola trustee', The Sunday Telegraph 19 July 2020.

**3.2 Member submissions**

The Member did not oppose the PCC's application for interim suspension. However the Member submitted that:

- (a) he strenuously denied the allegations and intended to defend the charges;
- (b) no findings of fact had been made so far in respect of the underlying charges in the Police Facts Sheet or the Complaint, and the Tribunal should not make any findings of fact regarding the allegations in its consideration of whether an interim suspension was appropriate. There could be no finding regarding the Member's honesty or integrity when criminal charges were yet to be determined;
- (c) the Member was currently in separate commercial dispute with the Complainant, and each had lodged complaints with regulatory bodies about the other.

### 3.3 Tribunal decision and reasons

- (a) In determining whether to suspend membership on an interim basis, the Tribunal is not required to make a determination as to guilt or innocence or to determine the facts. The power of interim suspension is intended as a protective provision for the benefit of the public and the reputation of CA ANZ and the profession generally.
- (b) The Tribunal considered the factors it must take into account when determining an application for interim suspension. Those factors are set out in By-Law 40(9.1) which states:

On application by the Professional Conduct Committee for the interim suspension of a Member, if the Disciplinary Tribunal is satisfied that it is necessary or desirable to do so, having regard to the urgency of the matter, the interests of the public, the reputation of CA ANZ, or the integrity of the profession of accountancy, the Disciplinary Tribunal may suspend the Member from Membership of CA ANZ on an interim basis pending further investigation and determination of the complaint. [emphasis added]

- (c) The Tribunal was satisfied, having regard to the factors of By-Law 40(9.1) and the parties' submissions, that it was both necessary and desirable to suspend the Member on an interim basis because:
- (i) of the seriousness of the criminal charges, if established, against the Member;
  - (ii) the Member and his profession had been named publicly in a national newspaper;
  - (iii) it was unknown when the criminal proceedings would be finalised;
  - (iv) the reputation of the profession and CA ANZ could be adversely affected if the Member was permitted to remain a member of CA ANZ whilst the investigation and the outcome of those criminal charges were still outstanding;
  - (v) the PCC's investigation of the Complaint was on hold until any court proceedings had been finalised;
  - (vi) the Member consented to the interim suspension of his membership.

The Tribunal noted the Member's submissions as to the genesis of the Complaint and the separate dispute the Member currently had with the Complainant, but was of the view that the issue for determination arose from the fact that the Member had been charged with criminal offences.

## 4. For what period should the Member be interim suspended?

### 4.1 PCC submissions

- (a) The PCC sought that the interim suspension apply until *"the earlier of:*
- (a) *six months after the full and final resolution of the later of:*
    - i. all civil and criminal proceedings against the Member; and*
    - ii. all regulatory investigations into the Member's conduct; or*
  - (b) *further investigation and determination of the complaints arising from the matters referred to in paragraphs 1-2" of the Notice of Disciplinary Action.*
- (b) With respect to the Member's submission that he be at liberty to apply to the Tribunal for the variation of the interim suspension, the PCC submitted that:

- (i) there is an established process for the Member to communicate with the PCC in respect of the status of any proceedings and regulatory investigations in order to arrange for the interim suspension to be lifted, and the PCC would act reasonably in interpreting whether or not the satisfaction of the conditions required to lift the suspension had occurred;
- (ii) it was appropriate to follow the usual process and if there was a dispute the Member could apply to the Board of CA ANZ for readmission under By-Law 22, or the PCC could refer the matter back to the Tribunal.

#### 4.2 Member submissions

- (a) The Member did not oppose the PCC's application but sought a limitation to the scope of paragraph (a) so that it limited the subject matter of the proceedings and investigations to the matters referred to in paragraphs 1 and 2 of the Notice of Disciplinary Action.
- (b) The Member submitted that he should be afforded liberty to approach the Tribunal to have his interim suspension varied on seven days' notice if the circumstances changed in order to have the interim suspension lifted.

#### 4.3 Tribunal decision and reasons

The Tribunal determined that the period of interim suspension should end on the earlier of:

- (a) six months after the full and final resolution of the later of:
  - (i) all civil and criminal proceedings against the Member; and
  - (ii) all regulatory investigations into the Member's conduct;
 in connection with the matters referred to in paragraphs 1 and 2 of the Notice of Disciplinary Action; or
- (b) further investigation and determination of the complaints arising from the matters referred to in paragraphs 1 and 2 of the Notice of Disciplinary Action.

Having had regard to the parties' submissions, the Tribunal made this decision on the basis that:

- (c) the PCC did not contest the first amendment proposed by the Member and the Tribunal considered the wording to be appropriate;
- (d) the Tribunal was satisfied that there was already an established process in place by which a member the subject of an interim suspension and the PCC would usually communicate regarding the status of that suspension. The Tribunal was satisfied this process was appropriate in the circumstances and would give the Member the opportunity to communicate the finalisation of any proceedings and investigations or changes in the Member's circumstances warranting the lifting of the suspension.

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

The PCC did not seek a determination on costs however noted that the estimated costs to date were \$9,237.

## 6. Should the decision be published?

- (a) The Member submitted that:
- (i) the By-Laws did not require the Tribunal to publish its reasons for decision, and so it was appropriate in this instance to only give notice of the Tribunal's decision and the Member's name and location;
  - (ii) however if the Tribunal did determine to publish reasons, they should be brief and circumspect in light of the fact that this was an interim decision, and so there was no evidence before the Tribunal regarding the allegations underlying the Police Facts Sheet and the Complaint;
  - (iii) publicity of matters that are the subject of a criminal proceeding may, depending on the circumstances, affect an individual's right to a fair trial.
- (b) The PCC submitted that it was nonetheless appropriate for the Tribunal to publish the written reasons for the decision. The PCC submitted that the reasons should be published as it was in the interests of the profession that members of CA ANZ and the public understood the consequences if a member is charged with a serious offence.
- (c) Having had regard to the parties' submissions, the Tribunal decided it was appropriate to publish the written reasons for its decision given the seriousness of the criminal charges and the need to inform the public and members of CA ANZ. The Tribunal acknowledged that criminal proceedings were on foot and no final determination had been made.

## 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 was informed that the Member holds registrations and/or memberships with the Tax Practitioners Board, the Australian Securities and Investments Commission and a third organisation.

- (c) The Tribunal determined that the Tax Practitioners Board and the Australian Securities and Investments Commission would be notified of its decision, as interested parties. The Tribunal did not determine that the third organisation was an interested party.

## 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. Should the Tribunal accept the documents provided to it on the day before the hearing day?

- (a) On 16 November 2020, the Tribunal Secretary drew the Member's attention to his obligations under By-Law 40(10.4), which had been notified to him by the PCC under cover of letter dated 30 October 2020.
- (b) On 16 November 2020, the Member's legal representative confirmed the Member's By-Law 40(10.4) responses and provided an outline of submissions.
- (c) On the day of the hearing, the Member's legal representative confirmed reliance was sought on the outline of submissions.
- (d) The PCC did not object to the Member's submission of these documents.
- (e) The Tribunal determined to accept the Member's documents.

## 11. RIGHTS OF APPEAL

The Member may, within 14 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-Laws 40(9.4)(a) and (11.1)).

The PCC may, within 14 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-Laws 40(9.4)(a) and (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) interim suspension
- (b) publication
- (c) notification.

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



**Chair**  
**Disciplinary Tribunal**

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

The Professional Conduct Committee seeks a determination that the Member's membership of Chartered Accountants Australia and New Zealand (Chartered Accountants ANZ) be suspended on an interim basis.

It is alleged that on or about 24 March 2020, while a Member of Chartered Accountants ANZ, the Member was charged with the following criminal offences:

1. Eleven counts of dishonestly obtaining financial advantage or causing financial disadvantage by deception, contrary to section 192E(1)(b) of the *Crimes Act 1900* (NSW); and
2. Two counts of knowingly dealing with the proceeds of crime, intending to conceal that it is proceeds of crime, contrary to section 193B(1) of the *Crimes Act 1900* (NSW).

The Professional Conduct Committee is seeking an interim suspension on the basis that it is necessary or desirable having regard to the criteria in By-Law 40(9.1), being the urgency of the matter, interests of the public, reputation of Chartered Accountants ANZ or the integrity of the profession of accounting, which are likely to be satisfied by reason of the Member's alleged conduct.

The time period for which the Professional Conduct Committee is seeking that the interim suspension apply is the earlier of:

- (a) six months after the full and final resolution of the later of:
  - i. all civil and criminal proceedings against the Member; and
  - ii. all regulatory investigations into the Member's conduct; or
- (b) further investigation and determination of the complaints arising from the matters referred to in paragraphs 1-2 above.

## 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(9) Interim suspension of Membership**

40(9.1) On application by the Professional Conduct Committee for the interim suspension of a Member, if the Disciplinary Tribunal is satisfied that it is necessary or desirable to do so, having regard to the urgency of the matter, the interests of the public, the reputation of CA ANZ, or the integrity of the profession of accountancy, the Disciplinary Tribunal may suspend the Member from Membership of CA ANZ on an interim basis pending further investigation and determination of the complaint.

40(9.2) For the period of a Member's suspension on an interim basis:

- (a) that Member's name shall be removed from the Registers on which it appears; and
- (b) that Member:
  - (i) loses the rights and privileges of Membership;
  - (ii) must surrender to CA ANZ that Member's certificate of Membership, certificate(s) of public practice and any other documents specified in By-Law 40(13.4); and
  - (iii) remains subject to the disciplinary processes and sanctions under these By-Laws (including this Section 5) as if still a Member.

40(9.3) The provisions of By-Law 40(10) apply to the procedures for a hearing on an application for interim suspension under this By-Law 40(9), except that:

- (a) the Notice of Disciplinary Action to be given in accordance with By-Law 40(10.1) must specify that the hearing is on an application by the Professional Conduct Committee for interim suspension;
- (b) the minimum 35 day time periods in By-Laws 40(10.1) and 40(10.3) are shortened to 14 days;
- (c) without prejudice to By-Law 40(13.8) , By-Laws 40(10.12)(a) to (j), and 40(10.13) (sanctions) do not apply; and

- (d) the maximum period within which the Disciplinary Tribunal is to notify its decision and give reasons in accordance with By-Law 40(10.15) is reduced to 7 days.

40(9.4) The provisions of By-Law 40(11) apply to the procedures for an appeal of a decision by the Disciplinary Tribunal in respect of the hearing of an application for interim suspension under this By-Law 40(9), except that:

- (a) the maximum 21 day time periods in By-Laws 40(11.1) and 40(11.2) (time for notifying appeal) are shortened to 14 days;
- (b) the minimum 28 day time period in By-Law 40(11.6) (notice of hearing) is reduced to 14 days; and
- (c) the maximum period within which the Appeals Tribunal is to notify its decision and give reasons in accordance with By-Law 40(11.15) is reduced to 7 days.

...

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

...

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(10.12) 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:

...

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

...

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

...

40(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(13.12) 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: 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.*