



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

Written decision dated 27 November 2020

- Case Number:** D-1229
- Member:** Shane Andrew Bicknell CA of Victoria
- Hearing Date:** 12 November 2020
- Tribunal:** Simon Wallace-Smith FCA (Chair)
Anita Hargreaves CA
Elizabeth Gavey, lay member of the Tribunal
- Tribunal Legal Adviser:** Julian Hammond
- Representation:** Paul Forbes and Charlotte Hendriks for the Professional Conduct Committee (PCC)
The Member represented himself
- Decisions:**
1. The Tribunal determined that the Member:
 - (a) had been the subject of adverse or unfavourable findings by the Commissioner of Taxation in relation to his professional or business conduct and competence;
 - (b) became bankrupt;
 - (c) committed acts, omissions or defaults which bring, or may bring, discredit upon that Member, CA ANZ and the profession of accountancy.
 2. The Tribunal determined to suspend the Member from membership of CA ANZ for the period of his bankruptcy.
 3. The Tribunal imposed a cost sanction in the sum of \$8,860 for the full 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) to grant the Member's adjournment request;
 - (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 Taxation Office 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 12 November 2020.

The date of effect of this decision is 19 December 2020 (By-Law 40(10.18)).



1. Introduction

- (a) On 1 August 2019 the Australian Taxation Office (**ATO**) gazetted a Notice of Disqualification pursuant to subsections 126A(1) and (3) of the *Superannuation Industry (Supervision) Act 1993* (the **SISA**) to the Member, effective 30 July 2019 (the **ATO Disqualification**).
- (b) On becoming aware of the ATO Disqualification, the PCC initiated a complaint pursuant to the powers conferred by By-Laws 40(4.1) and 40(5.1) and commenced its investigation.
- (c) During its investigation of the complaint, the Member notified the PCC he had “*entered voluntary bankruptcy*” and the PCC initiated a second complaint pursuant to the powers conferred by By-Laws 40(4.1) and 40(5.1).
- (d) After investigating the complaints, the PCC referred the Member to the Tribunal by way of Notice of Disciplinary Action (set out in full in Schedule 1) (the **NDA**) which in summary alleged that the Member:
 1. had been the subject of adverse or unfavourable findings in relation to his professional or business conduct, competence or integrity;
 2. became bankrupt; and
 3. had brought or could bring discredit on the Member, CA ANZ or the profession of accountancy.

2. The issues for determination

- (a) Should the Member’s adjournment request be granted?
- (b) Had the Member been the subject of an adverse or unfavourable finding by the Commissioner of Taxation in relation to his professional or business conduct, competence or integrity, in breach of By-Law 40(2.1)(e)? (allegation 1)
- (c) Had the Member become bankrupt, in breach of By-Law 40(2.1)(j)? (allegation 2)
- (d) If the answer to (b) was yes, had those acts, omissions or defaults brought, or could they bring, discredit upon the Member, CA ANZ or the profession of accountancy? (allegation 3)
- (e) If the answer to (b), (c) or (d) was yes, what sanctions should be imposed on the Member?
- (f) Should the Member be required to pay costs and if so, in what amount?
- (g) Was there any reason to suppress the Member’s name from the published decision?
- (h) Should other parties be notified of the Tribunal’s decision?
- (i) Should any confidentiality orders be made?

3. Should the Member’s adjournment request be granted?

- (a) On 15 September 2020 the Member requested an adjournment because:
 - *I am awaiting a Tax Office response to a review of my trustee Removal*
 - *Trustee removal is a major part of the action*
 - *I hope to have a resolution to my Tax Office Request within 30 days (I have limited control over this)*”.

(b) The PCC consented to the Member's adjournment request.

(c) Pursuant to By-Law 40(13.11)(c) which states:

Each of the Disciplinary Tribunal and Appeals Tribunal may set, change or cancel the date of a hearing before it, or adjourn a hearing after it has commenced.

the Tribunal rescheduled the hearing from 23 September to 12 November 2020.

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

4.1 Agreed facts

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

4.2 PCC submissions

In making this allegation, the PCC referred to the ATO Disqualification which, it submitted, showed that the Member had contravened the SISA on more than one occasion and that the seriousness of those contraventions provided grounds for the Member's disqualification.

4.3 Member submissions

The Member made no substantive submissions in the hearing in relation to the allegation that he had been the subject of adverse or unfavourable findings due to his disqualification.

The Member had provided a response to the PCC on 31 January 2020 to this allegation in which he stated he had experienced difficult personal circumstances while dealing with taxation and financial issues with respect to his accounting practice, in addition to dealing with enquiries from the Tax Practitioners Board and taking on additional family responsibilities.

4.4 Tribunal decision and reasons

The Tribunal determined that the allegation was established because:

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

5. Had the Member suffered an Insolvency Event, in breach of By-Law 40(2.1)(j)? (allegation 2)

5.1 Agreed facts

The PCC and the Member agreed that the Member was bankrupt.

5.2 PCC submissions

In making this allegation, the PCC provided to the Tribunal the following evidence:

- (a) 17 March 2020 extract from the National Personal Insolvency Index (**Insolvency Index**) which recorded the following information:
- | | |
|----------------------------|---|
| <i>“Type</i> | <i>BANKRUPTCY - Debtor’s Petition”</i> |
| <i>“Date of Bankruptcy</i> | <i>20-Dec-2019”</i> |
| <i>“Summary</i> | <i>This individual is an undischarged bankrupt”</i> |
- (b) 31 January 2020 letter from the Member to the PCC in which he advised he had entered into voluntary bankruptcy.

5.3 Member submissions

The Member made no substantive submissions in relation to the allegation of bankruptcy.

5.4 Tribunal decision and reasons

- (a) A member is liable to disciplinary sanctions pursuant to By-Law 40(2.1)(j) if that member:
- suffers an Insolvency Event.
- By-Law 39(m)(i)(3) defines Insolvency Event in relation to a natural person as meaning that person:
- presenting (as a debtor) a declaration to the Official Receiver under section 54A of the Bankruptcy Act of that person’s intention to present a debtor’s petition or that person’s presentation (as a debtor) of such a petition under section 55 of that Act.
- (b) The Tribunal was satisfied that the Insolvency Index established that the Member had suffered an Insolvency Event on 20 December 2019.
- (c) The Member admitted the allegation.

On these bases the Tribunal was satisfied that the allegation was established.

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

6.1 Agreed facts

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

6.2 PCC submissions

The PCC submitted that:

- (a) in circumstances of a disqualification such as this, public confidence in the profession and in CA ANZ could only be maintained if adequate steps were taken to protect the public from such misconduct;
- (b) the seriousness of the ATO Disqualification and the bankruptcy was conduct which strikes at the heart of the public's expectation that they are dealing with a professional and, in relation to a member of CA ANZ, that they are dealing with a professional of high integrity and honesty concerning financial affairs; and
- (c) to hold a position as a trustee, an investment manager or a custodian entails a special level of responsibility and a disqualification of this nature was a serious matter which impacted significantly upon the reputation and integrity of the profession of accountancy.

6.3 Member submissions

The Member made no substantive submissions in relation to the allegation of discredit.

6.4 Tribunal decision and reasons

The Tribunal was satisfied the allegation was established because:

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

7. 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 suspension of membership for the period of the Member's bankruptcy was an appropriate sanction, and that the Tribunal should have regard to the following matters:
- (i) the seriousness of the misconduct, in that being disqualified to act as a trustee represented serious misconduct for an accountant;
 - (ii) suspension for the duration of the Member's bankruptcy was appropriate for public confidence;
 - (iii) the Member had failed to provide any specific details as to the circumstances of his disqualification or reasons for it despite requests from the PCC for same;
 - (iv) the PCC was unaware whether a review of the ATO Disqualification was underway, and had not been updated by the Member on this despite requests;
 - (v) a somewhat aggravating factor was the Member's failure to provide a substantive response to the PCC as to whether he accepted or did not accept the ATO's decision to disqualify him, or the impact that his bankruptcy may have on his, CA ANZ and the profession's reputation until only recently;
 - (vi) the only explanation the Member had provided concerning his disqualification related to health issues suffered by a family member and other personal issues, however the PCC had no evidence as to those matters other than the Member's statements;
 - (vii) a mitigating factor in considering sanctions was the fact that the Member had admitted the allegations;
 - (viii) it was a mitigating factor that the Member's appeal of the ATO Disqualification may be successful, however whether this would occur could not be known at this point in time.
- (d) The Member submitted that:
- (i) he was appealing one of the ATO decisions but was awaiting notification of whether he would be allowed to appeal out of time;
 - (ii) he was no longer a tax agent;
 - (iii) his disqualification was specifically in relation to his personal superannuation and taxation affairs;
 - (iv) none of his past conduct in relation to clients had been the subject of disciplinary action;
 - (v) he was no longer using his Certificate of Public Practice and was currently working in another accountancy firm as an employee.

In addition, the Member:

- (vi) apologised for not responding to the PCC and submitted this had occurred due to the health concerns of his family member;
- (vii) made reference to his significant involvement in community service.

- (e) The Tribunal determined to suspend the Member's membership for the duration of his bankruptcy because:
- (i) it accepted the PCC's submissions regarding the seriousness of the Member's conduct underlying the breach;
 - (ii) the sanction was appropriate for the maintenance of public confidence;
 - (iii) the Member did not provide any substantive reason to not suspend him from membership;
 - (iv) although the Member did provide evidence about his significant community involvement, this did not outweigh the other factors about the seriousness of the Member's conduct underlying the breach;
 - (v) the Member's disqualification was in relation to his own superannuation fund and taxation affairs and not that of any clients, and therefore a more serious sanction was not warranted.

8. 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 amount of \$8,860 because:
- (i) the complaint was admitted and was a serious breach of the By-Laws;
 - (ii) although the Member was responsive, he did not actually address the questions raised by the PCC during its investigation and did not give a substantive response until he admitted the allegations after the matter had been referred to the Tribunal;
 - (iii) the amount was reasonable and fair, and CA ANZ had already borne the costs of the investigation.
- (c) The Member submitted that he may not have capacity to pay costs.

- (d) The Tribunal determined that the Member should pay the full costs of the proceedings because:
- (i) the costs schedule provided by the PCC showed that the costs were not excessive and had been properly incurred;
 - (ii) no factors that mitigated the imposition of costs were presented to the Tribunal; and
 - (iii) the disciplinary proceedings were a direct result of the Member's conduct alone. The alternative proposition to the Member paying the costs was that the CA ANZ membership body would bear the costs and the Tribunal did not consider that this was reasonable.

9. 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.

10. 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 asked the Member to confirm any affiliations or registrations. In response the Member advised he only had a Certificate of Public Practice which he had not yet resigned and he otherwise had no further affiliations or registrations.
- (c) The Tribunal determined that the Tax Practitioners Board and Australian Taxation Office were interested parties and should be notified of this decision.

11. 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.

12. RIGHTS OF APPEAL

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

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

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

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

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



Chair
Disciplinary Tribunal

SCHEDULE 1: THE PCC'S ALLEGATIONS

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

1. By-law 40(2.1)(e), in that the Member has been the subject of adverse or unfavourable findings in relation to his professional or business conduct, competence or integrity by a statutory or regulatory authority or statutory body, in circumstances where on 30 July 2019, the Commissioner of Taxation disqualified the Member under subsection 126A(1) and 126A(3) of the *Superannuation Industry (Supervision) Act 1993* (SISA) on the basis that he was not a fit and proper person to be a trustee, or a responsible officer of a body corporate that is a trustee, of a superannuation entity.
2. By-law 40(2.1)(j), in that on 20 December 2019 the Member became bankrupt.
3. By-law 40(2.1)(k), in that the acts, omissions and defaults associated with the matters described in paragraph 1 above bring, or may bring, discredit on the Member, CA ANZ or the profession of accountancy.

SCHEDULE 2: RELEVANT BY-LAWS

Section 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 5 - Professional Conduct

...

- 40.** Except as provided by By-Law 41, the By-Laws in this Section 5, including the following paragraphs of this By-Law 40, do not apply to Members who are also members of NZICA in respect of disciplinary matters over which NZICA has jurisdiction and which relate to the practice of the profession of accountancy by NZICA's members in New Zealand. Nothing in this By-Law 40 excludes from the operation of this Section 5, conduct of a Member:
- (a) who was, but is no longer, a member of NZICA; or
- (b) who has subsequently also become a member of NZICA.

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

...

40(2) Disciplinary action

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

...

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

...

- (j) suffers an Insolvency Event;
- (k) has committed any act, omission or default which, in the opinion of the Professional Conduct Committee, Disciplinary Tribunal or Appeals Tribunal

brings, or may bring, discredit upon that Member, CA ANZ or the profession of accountancy;

...

40(10) Disciplinary Tribunal

...

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

...

(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

...

(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.