



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

Written decision dated 14 February 2020

- Case Number:** D-1214
- Member:** Philip James Dowsley CA of Victoria
- Hearing Date:** 30 January 2020
- Tribunal:** David Fairlie (Chair and lay member of the Tribunal)
Simon Wallace-Smith FCA
Kathryn Brown CA
- Representation:** Michael Bradley for the Professional Conduct Committee (PCC)
The Member represented himself
- Decisions:**
1. The Tribunal determined that:
 - (a) the Member failed to maintain a proper standard of professional care, skill, competence or diligence in the course of carrying out his professional duties;
 - (b) the Member agreed to or had imposed a restriction on his ASIC registration as a company auditor; and
 - (c) the Member committed a breach of Auditing Standard ASA 230, *Audit Documentation*.
 2. The Tribunal determined that the Member's Certificate of Public Practice be cancelled with effect from 1 May 2020.
 3. The Tribunal imposed a cost sanction in the sum of \$16,031 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) its decision with reasons, mentioning the Member's name and locality, be published on the CA ANZ website (the **Published Decision**);
 - (b) a notice mentioning the Member's name and locality with a web address for the Published Decision be published in the CA ANZ digital and print magazine "Acuity";
 - (c) the Tax Practitioners Board, Australian Securities and Investments Commission, the Law Institute of Victoria and the identified CA ANZ member, be notified of this decision;

- (d) except for the content of the Disciplinary Tribunal written decision with reasons, all written and oral evidence and submissions related to this determination are to remain confidential;
- (e) the decision regarding confidentiality takes effect immediately; ie 30 January 2020.

The date of effect of this decision is 7 March 2020 (By-Law 40(10.18)).



1. Introduction

- (a) CA ANZ became aware:
- (i) in or about June 2018 that the Australian Securities and Investments Commission (**ASIC**) had cancelled the Member's company auditor registration with effect from 31 March 2018; and
 - (ii) in March 2019 that a follow-up quality review of the Member's practice completed in 2018 disclosed that the Member had fundamentally breached mandatory audit engagement requirements;
- and the PCC initiated complaints pursuant to the powers conferred by By-Laws 40(4.1) and 40(5.1) (the **Complaints**).
- (b) After investigating the Complaints, the PCC referred the Member to the Tribunal by way of Notice of Disciplinary Action which alleged that:
1. the Member failed to observe a proper standard of professional care, skill, competence or diligence in the course of carrying out his professional duties in that the Member:
 - (a) failed to comply with three undertakings he gave to the former Companies Auditors and Liquidators Disciplinary Board (**CALDB**), resulting in ASIC cancelling his registration as a registered company auditor;
 - (b) failed to comply with Australian Auditing Standards in four audits, which a peer reviewer concluded lacked sufficient appropriate audit evidence to support:
 - i. the audit conclusions about key audit assertions; and
 - ii. that certain mandatory audit procedures had not been performed; and
 - (c) failed in a number of audits to comply with Auditing Standards *ASA 230 Audit Documentation (ASA 230)*, *ASA 300 Planning an Audit of a Financial Report and Other Historical Financial Information (ASA 300)*, *ASA 500 Audit Evidence (ASA 500)* and *ASA 520 Analytical Procedures (ASA 520)*;
 2. the Member agreed to, or had imposed, a restriction on his registration as a company auditor when it was cancelled by ASIC; and
 3. by the Member's actions set out in 1(b) and (c), he committed a breach of ASA 230.

2. The issues for determination

- (a) Did the Member breach the By-Laws as alleged by the PCC?
- (b) If the answer to (a) was yes, what sanctions should be imposed on the Member?
- (c) Should the Member be required to pay costs and if so, in what amount?
- (d) Was there any reason to suppress the Member's name from the published decision?
- (e) Should other parties be notified of the Tribunal's decision?
- (f) Should any confidentiality orders be made?

3. Did the Member breach the By-Laws as alleged by the PCC?

The Member admitted the allegations in writing prior to the hearing and confirmed his admissions at the hearing. The Tribunal was satisfied the allegations were established, having regard to the decision of the CALDB, the termination of his status as a registered company auditor and the results of the last quality review by CA ANZ.

4. What sanctions should be imposed on the Member?

- (a) Regulation 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 the Member's Certificate of Public Practice (**CPP**) should be cancelled. In support of this submission the PCC stated that the Tribunal should have regard to the following matters:
- (i) the admitted allegations were wide-ranging and serious;
 - (ii) there was no basis for confidence in the Member's ability to carry out unsupervised audits based on his track record;
 - (iii) the CPP regime sits alongside CA ANZ membership and is an additional imprimatur of practice;
 - (iv) the public is entitled to a high degree of confidence and the expectation is that auditing standards be met, however onerous;
 - (v) the Member ought not be permitted to undertake audit work unsupervised but could still continue to be involved in this work under supervision of a member who holds a CPP or equivalent.

- (d) The Member submitted that he should maintain his CPP but be supervised by another member. In support of this the Member submitted:
- (i) his working arrangements as he had outlined to the PCC in the Case Conference held on 11 October 2019 remained unchanged;
 - (ii) he had transferred a large quantity of his audit clients to another firm where he was engaged as a contractor to assist with those audits;
 - (iii) he retained between 100 and 120 SMSF audit clients and seven law firm trust accounts;
 - (iv) he shared an office with another CA ANZ member (the **identified CA ANZ member**) and they assisted each other in their audit work on a commercial basis;
 - (v) his work could be checked by the identified CA ANZ member prior to the Member signing off under his own CPP.
- (e) The Tribunal determined that the Member's CPP be cancelled, effective as of 1 May 2020. In reaching this determination the Tribunal had regard to:
- (i) there was no alternative but to cancel the Member's CPP, to maintain the integrity of the profession and to protect the public interest;
 - (ii) the sanction was not punitive, it was a protective measure;
 - (iii) the other possible sanction under By-Law 40(10.12)(i), to:
 - require the Member to engage an adviser or consultant or other person at the Member's own expense as directed by the Disciplinary Tribunal
 was not an appropriate solution because there was no way to monitor the effectiveness of the advisor or consultant so appointed;
 - (iv) not cancelling the CPP until 1 May 2020 was for the purpose of allowing the Member time to transfer his remaining clients to another practitioner.

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

- (a) Regulation 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 full costs of \$16,031 should be borne by the Member. In support of this position the PCC drew to the Tribunal's attention the requirement that a member pay all of the costs unless it is appropriate to reduce that amount having regard to subparagraphs (a)-(h) of Regulation CR 8.12. The PCC further submitted that:
- (i) the Member was given the option of entering into an agreement in December which would have obviated the need for a full hearing. The Member did not respond to the offer set out in the agreement;
 - (ii) it was appropriate that he pay those costs and not the membership as a whole.
- (c) The Member acknowledged that he would have to pay some costs.
- (d) The Tribunal determined that it was appropriate for the Member to pay the full amount of costs because there was nothing in this matter which would warrant a departure from the default position that it should be the Member who bore the costs, and not the membership as a whole in the alternative. In particular:
- (i) the complaint had been fully established on the Member's own admission (Regulation CR8.12(a));
 - (ii) the conduct the subject of the complaint was serious and took place over a lengthy period (Regulation CR8.12(b));
 - (iii) the PCC had given the Member an opportunity to enter into an Agreement as to Sanctions in which his CPP would be cancelled but the Member did not respond to that offer (Regulation CR8.12(d));
 - (iv) the costs incurred in the conduct of the investigation and proceedings had been properly incurred (Regulation CR8.12(f));
 - (v) the Member had not paid any costs previously in relation to this matter (Regulation CR8.12(g));
 - (vi) the amount of costs claimed was reasonable because they included the costs of the complaint, the investigation which included a Case Conference, the hearing and determination at the hearing (Regulation CR8.12(h)).

6. 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 received written material on behalf of the Member suggesting that publication of the decision should not include the Member's name.

- (c) The PCC submitted that the Tribunal must publish notice of its decision as the material provided on behalf of the Member did not reach the threshold needed to meet the criteria of 'exceptional circumstances'. The PCC submitted that publicity is an unpleasant consequence of an adverse outcome but in the interests of transparency, it was an important principle that the membership and public be informed.
- (d) The Tribunal determined that publication should include the Member's name and locality because the exceptional circumstances threshold had not been met. Cancellation of a member's CPP is a matter of which the public should be aware.

7. 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 Member holds registrations, memberships or accreditations with the TPB, ASIC and Law Institute of Victoria. The Member also identified a member of CA ANZ to whom he would transfer certain files.
- (c) The Tribunal determined that the TPB, ASIC, Law Institute of Victoria and the identified CA ANZ member be notified of the decision, as interested parties.

8. 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.

9. 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)(a), in that the Member failed to observe a proper standard of professional care, skill, competence or diligence in the course of carrying out his professional duties in that the Member:
 - (a) failed to comply with three undertakings he gave to the former Companies Auditors and Liquidators Disciplinary Board (CALDB), as set out in paragraphs 267(2), (6) and (11) of the decision of the CALDB concerning the Member made on 15 October 2015 (CALDB Decision), resulting in the cancellation by the Australian Securities and Investments Commission (ASIC) of his registration as a registered company auditor with effect from 31 March 2018;
 - (b) failed to comply with Australian Auditing Standards in four audits, which were the subject of peer review as a result of the CALDB Decision, in that the peer reviewer concluded there was a lack of sufficient appropriate audit evidence to support:
 - i. the audit conclusions about key audit assertions; and
 - ii. that certain mandatory audit procedures had not been performed; and
 - (c) failed to comply with auditing standards in a number of audits, as follows:
 - i. ASA 230, *Audit Documentation*, in that you did not prepare audit documentation that is sufficient to enable an experienced auditor, having no previous connection with the audit, to understand the work performed and the conclusions reached;
 - ii. ASA 300, *Planning an Audit of a Financial Report and Other Historical Financial Information*, in that your documented audit plan did not contain all of the information required;
 - iii. ASA 500, *Audit Evidence*, in that you did not obtain evidence regarding the accuracy and completeness of entity-produced information used during the audit; and
 - iv. ASA 520, *Analytical Procedures*, in that there was no evidence that analytical procedures were performed prior to forming an overall conclusion on the financial report;
2. By-Law 40(2.1)(g), in that you agreed to, or had imposed, a restriction on your registration as a company auditor when it was cancelled by the ASIC with effect from 31 March 2018; and
3. By-Law 40(2.1)(h), in that by your actions set out in paragraph 1(b) and (c) above you have committed a breach of Auditing Standard ASA 230, *Audit Documentation*.

SCHEDULE 2: RELEVANT BY-LAWS

Section 5 - Professional Conduct

...

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

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

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

...

40(2) Disciplinary action

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

- (a) has failed to observe a proper standard of professional care, skill, competence or diligence in the course of carrying out that Member's professional duties and obligations;

...

- (g) has agreed to, or has had imposed, any condition or restriction on any professional membership, registration or licence in that Member's name;
- (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(10.12) 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:

...

- (c) cancel or suspend any certificate of public practice held by the Member

...

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

...

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

...

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

40(11) Appeals Tribunal

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

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

40(12) Publication of investigations and decisions

...

- 40(12.3) Where the Disciplinary Tribunal or Appeals Tribunal determines that a complaint is established, imposes a sanction adverse to the Member (including one with the consent of a Member or a written undertaking under By-Law 40(13.8)) or decides to suspend a Member on an interim basis, it must direct that a notice be published by CA ANZ of its decision and the sanctions imposed (if any). Any such publication must disclose the name and location of the relevant Member unless the Disciplinary Tribunal or Appeals Tribunal (as applicable) considers that there are exceptional circumstances for not doing so.

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

...

SCHEDULE 3: REGULATION CR8 - DISCIPLINARY PROCEDURES

Issued 8 October 2019

8.1 Purpose

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

8.2 Definitions

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

8.3 By-Laws

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

8.4 Charter

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8.14 Confidentiality Obligations

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

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

Commentary

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