



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

## Written decision dated 30 December 2019

- Case Number:** D-1215
- Member:** Glenn Alexander Rosewall CA of New South Wales
- Hearing Date:** 11 December 2019
- Tribunal:** Ross Gavin FCA (Chair)  
Linda Hadfield FCA  
Jenni Millbank, lay member of the Tribunal
- Tribunal Legal Adviser:** Jamesina McLeod
- Representation:** Michael Bradley for the Professional Conduct Committee (PCC)  
The Member represented himself and was accompanied by a support person
- Decisions:**
1. The Tribunal determined that:
    - (a) 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;
    - (b) on 12 March 2019 the Member became bankrupt; and
    - (c) the acts, omissions and defaults associated with the adverse or unfavourable findings bring, or may bring, discredit on the Member and CA ANZ.
  2. The Tribunal determined to terminate the Member's membership and remove the Member's name from the Registers on which it appears.
  3. The Tribunal imposed a cost sanction in the sum of \$6,500 towards the costs and expenses of the proceedings.
  4. The Tribunal made the following directions regarding the conduct of the hearing and the publication of its reasons for decision:
    - (a) 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 Australian Securities and Investments Commission and Australian Taxation Office 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 11 December 2019.

The date of effect of this decision is 21 January 2020.



## 1. Introduction

- (a) In around April 2017 CA ANZ became aware of a Gazetted notice of disqualification made by the Commissioner of Taxation on 21 February 2017, in which the Member was notified that he had been disqualified from acting as a trustee of a self-managed super fund under subsection 12A(3) of the *Superannuation Industry (Supervision) Act 1993 (SISA)*. That determination involved a finding that the Member 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 (the **Commissioner of Taxation determination**). The PCC initiated a complaint pursuant to the powers conferred by By-Laws 40(4.1) and 40(5.1).

On 28 April 2017 the PCC wrote to the Member in relation to this complaint.

- (b) On 25 July 2017 CA ANZ received a request from the Member to resign his membership.
- (c) On 1 August 2017 CA ANZ notified the Member “*that in accordance with By-Law 19, your resignation has not been accepted on the basis that there are matters concerning you which are the subject of disciplinary action or professional conduct proceedings*” and because the Member’s conduct “*in the opinion of the Board, by virtue of matters brought to the attention of Chartered Accountants Australia and New Zealand, may become the subject of professional conduct proceedings*”.
- (d) In around July 2019 CA ANZ became aware that the Member had become bankrupt and the PCC initiated a complaint pursuant to the powers conferred by By-Laws 40(4.1) and 40(5.1) (collectively with the complaint set out at (a), the **Complaints**).
- (e) 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 had 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;
  2. on 12 March 2019 the Member became bankrupt;
  3. the acts, omissions and defaults associated with the matters described in allegation 1 brought or may bring discredit.

## 2. The issues for determination

- (a) Did the Commissioner of Taxation disqualify the Member under subsection 126A(3) of the SISA and was this an adverse or unfavourable finding, in breach of By-Law 40(2.1)(e)? (allegation 1)
- (b) Did the Member suffer an insolvency event in breach of By-Law 40(2.1)(j)? (allegation 2)
- (c) Did the acts, omissions and defaults associated with the matters described in allegation 1 bring, or might they bring, discredit upon the Member, CA ANZ or the profession of accountancy? (allegation 3)
- (d) If the answer to (a), (b) or (c) was yes, what sanctions should be imposed on the Member?
- (e) Should the Member be required to pay costs and if so, in what amount?
- (f) Should other parties be notified of the Tribunal’s decision?

### **3. Did the Commissioner of Taxation disqualify the Member under subsection 126A(3) of the SISA and was this an adverse or unfavourable finding, in breach of By-Law 40(2.1)(e)? (allegation 1)**

#### **3.1 Agreed facts**

The PCC and the Member agreed that the Commissioner of Taxation disqualified the Member from acting as a trustee of a self-managed super fund on 21 February 2017.

#### **3.2 PCC submissions**

The PCC submitted that a breach of By-Law 40(2.1)(e) was automatic on the making of an adverse or unfavourable finding, and that the Commissioner of Taxation determination constituted an adverse or unfavourable finding.

#### **3.3 Member submissions**

- (a) The Member admitted the allegation and also submitted that:
  - (i) he was the only member and trustee of the subject superannuation fund;
  - (ii) funds had been withdrawn from that superannuation fund contrary to regulations by a third party without his knowledge when he was overseas;
  - (iii) the relevant funds had been repaid within a ten day period;
  - (iv) on appeal, the Australian Taxation Office (ATO) had amended and withdrawn allegations against the Member and he received legal advice to close the fund and consequently did not attempt to contest the Commissioner of Taxation determination.
- (b) The Member did not provide any evidence in support of the above.

#### **3.4 Tribunal decision and reasons**

The Tribunal was not required to make findings about the background to the Commissioner of Taxation determination. The Member admitted the allegation and the Tribunal was satisfied it was established. There was nothing raised in submissions that suggested the Commissioner's determination was invalidly made or subsequently overturned.

### **4. Did the Member suffer an insolvency event in breach of By-Law 40(2.1)(j)? (allegation 2)**

#### **4.1 Agreed facts**

The PCC and the Member agreed that the Member had suffered an insolvency event.

#### **4.2 Member submissions**

The Member admitted the allegation but submitted that the insolvency event occurred after he had attempted to resign his membership of CA ANZ.

#### **4.3 PCC submissions**

- (a) In response to the Member's submission, the PCC submitted that the Board was empowered under the By-Laws to accept or reject a Member's resignation request. In this instance the Member was informed that the Board had rejected his request on the basis that there was

disciplinary action or professional conduct proceedings either on foot or which may occur, and this was standard procedure of the Board.

- (b) The PCC submitted that suffering an insolvency event was an automatic breach of By-Law 40(2.1)(j) and relied on the evidence from the Australian Financial Security Authority's National Personal Insolvency Index which recorded the following information for the Member:

“Type                                      *BANKRUPTCY - Debtors Petition*”  
 “Date of Bankruptcy    *12-Mar-2019*”  
 “Summary                                      *This individual is an undischarged bankrupt*”

#### 4.4 Tribunal decision and reasons

- (a) The Member admitted the allegation and the Tribunal was satisfied that it was established.
- (b) A member is liable to disciplinary sanctions pursuant to By-Law 40(2.1)(j) if that member:  
 suffers an Insolvency Event  
 and 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
- (c) The Tribunal was satisfied that the insolvency index established that the Member had suffered an Insolvency Event on 12 March 2019.

### 5. Did the acts, omissions and defaults associated with the matters described in allegation 1 bring, or might they bring, discredit upon the Member, CA ANZ or the profession of accountancy? (allegation 3)

#### 5.1 PCC submissions

- (a) The PCC submitted that discredit to the Member, CA ANZ and the profession of accountancy followed from allegation 1 because:
- (i) the Commissioner of Taxation had found that the Member was “*not a fit and proper person*” to be a trustee of a superannuation fund. Although there were no reasons published with the Commissioner of Taxation determination, the guidelines issued by the ATO indicated that, when considering if a person is fit and proper, a range of factors are taken into account which go directly to credit;
- (ii) the associated media coverage brought public attention and had brought consequential discredit.
- (b) The PCC did not allege that any discredit arose from the Member's bankruptcy.
- (c) In making this submission, the PCC referred to the following evidence:
- (i) the Commissioner of Taxation determination;
- (ii) ATO Practice Statement Law Administration 2006/17 (the **ATO guidelines**);
- (iii) media article *BBY's Glenn Rosewall has no idea about \$1.8m super withdrawal*, Australian Financial Review 23 September 2016.

## 5.2 Member submissions

The Member submitted that:

- (a) his insolvency event brought discredit upon himself but not the profession;
- (b) he had not held himself out as a Chartered Accountant for many years, despite having maintained his financial membership until 2017.

## 5.3 Tribunal decision and reasons

- (a) The Member admitted the allegation and the Tribunal was satisfied it was established.
- (b) At all relevant times the Member was a member of CA ANZ. The finding by the Commissioner of Taxation that the Member was not a fit and proper person brought discredit to the Member and CA ANZ.

## 6. 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 termination of membership was an appropriate sanction and submitted that the Tribunal should have regard to the following matters:
  - (i) the ATO guidelines and the fact that the Commissioner of Taxation had to have regard to the Member's general behaviour and conduct and his character in making the disqualification determination;
  - (ii) the Member had indicated that he no longer wanted to be a member of CA ANZ and had attempted to resign on a number of occasions.

- (d) The Member did not contest the PCC's suggestion that termination of membership was an appropriate sanction. The Member submitted that:
- (i) it was a relatively minor matter as there had been no harm done to anyone but himself;
  - (ii) there were no clients, superannuation fund members or other parties affected;
  - (iii) he no longer wished to remain a member of CA ANZ.
- (e) The Tribunal determined that the Member's membership should be terminated and his name removed from the Registers on which it appears. Both the PCC and the Member accepted that this was an appropriate outcome. In reaching this decision the Tribunal was of the view that termination was appropriate because:
- (i) the breaches were serious;
  - (ii) the nature of the breaches were inconsistent with the qualities required of a member of CA ANZ;
  - (iii) it was necessary to maintain public confidence in the profession and proper standards of professional conduct.
- (f) The Tribunal appreciated the Member's frustration at the time taken to resolve proceedings, particularly given his unsuccessful attempts to negotiate a resolution. The Tribunal noted that:
- (i) allegation 2 occurred during the course of proceedings;
  - (ii) the proceedings had been somewhat delayed while the PCC awaited the outcome of the Member's application for review of the Commissioner of Taxation determination.
- (g) However the Tribunal accepted the submission of the PCC that the Member was not unduly disadvantaged by a delay in the proceedings where:
- (i) allegation 2 did not lead to any more severe sanction or cost liability; and
  - (ii) it was appropriate for the PCC to await the outcome of the Member's application for review of the Commissioner for Taxation determination.

## 7. **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 Tribunal is bound by Regulation CR 8.12 in respect of cost determinations. The PCC submitted that the full costs of \$7,765 should be borne by the Member and not the membership as a whole because none of the criteria which would allow a lesser amount to be paid by the Member applied in this case, given that:
- (i) the proceedings arose from the Member's own actions;
  - (ii) the case against the Member was fully established, and on the Member's own admission;
  - (iii) although the Member submitted he had tried to resign, CA ANZ routinely exercises its power to decline a resignation request so that members cannot avoid disciplinary consequences from their conduct by resigning and taking themselves outside the jurisdiction of the membership body.
- (c) The Member accepted the PCC's submission except for the claim that the proceedings arose from his own actions. The Member submitted that he had not performed any action, but that money was taken out of his superannuation fund cash management account without his knowledge or authority, whilst overseas on holiday.
- (d) The Tribunal determined that the Member should pay \$6,500 towards the costs of the disciplinary proceedings because:
- (i) the PCC was successful in establishing the allegations;
  - (ii) the conduct was serious.
- (e) Having regard to CR 8.12 (e) and (f), the Tribunal determined that the full amount of costs should not be awarded against the Member because:
- (i) the Member ultimately admitted the allegations;
  - (ii) the Member had tried to expedite a resolution with the PCC through repeated communications;
  - (iii) although the parties did not succeed in coming to an agreement as to sanctions prior to the hearing, the issues in dispute were not substantive;
  - (iv) recognition should be given to attempts by members to resolve matters prior to a hearing.

## 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 PCC submitted that ASIC and the ATO should be notified of this decision and the Member did not object.
- (c) Given the nature of the findings, the Tribunal was of the view that it was appropriate to notify these bodies.

## 9. Should any details be kept confidential?

- (a) By-Law 40(13.12) states:
  - (d) The Disciplinary Tribunal ... may require, including as a condition of admission to a hearing, any person present to undertake to keep all or any part of a hearing, the evidence adduced at it or other information disclosed (including the identity of any persons present at or otherwise connected with the hearing) confidential on such terms as it determines.
- (b) The Tribunal directed that, except for the content of the Disciplinary Tribunal written decision with reasons, all written and oral evidence and submissions related to this determination are to remain confidential.

## 10. Rights of appeal

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

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

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

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

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



**Chair**  
**Disciplinary Tribunal**

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

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

1. By-law 40(2.1)(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 21 February 2017, the Commissioner of Taxation disqualified the Member under subsection 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 12 March 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:

...

- (a) terminate that Member's Membership and remove the Member's name from the Registers on which it appears
- (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
- (c) cancel or suspend any certificate of public practice held by the Member
- (d) declare that the Member is ineligible to hold a certificate of public practice for a period not exceeding 5 years and on such terms and conditions as to the earlier termination of such period of ineligibility as the Disciplinary Tribunal may prescribe
- (da) cancel any specialisation held by the Member
- (e) remove the Member's Membership status as of Fellow and alter it to that of Chartered Accountant, Associate Chartered Accountant, or Accounting Technician (as the case may be)
- (f) fine that Member an amount not exceeding \$50,000
- (g) censure the Member
- (h) require the Member, at the Member's own expense, to complete any professional development courses prescribed by the Disciplinary Tribunal within the time period and on the terms stipulated by the Disciplinary Tribunal
- (i) require the Member to engage an adviser or consultant or other person at the Member's own expense as directed by the Disciplinary Tribunal
- (j) require the Member or the Member's Practice Entity, at the Member's expense, to submit to an investigation or review or reviews, on such matters and on such terms as specified by the Disciplinary Tribunal, such terms to include that the results of such investigation or reviews are made available to the Professional Conduct Committee
- (k) require the Member to pay to CA ANZ all or any portion of the Costs incurred by or on behalf of CA ANZ (including by or on behalf of the Professional Conduct Committee) in investigating and dealing with the original complaint and the matters the subject of the Notice of Disciplinary Action as the Disciplinary Tribunal determines

...

40(10.13) Subject to By-Law 40(9.3)(c) the Disciplinary Tribunal may, with the written consent of the relevant Member and the Professional Conduct Committee, dispense with any or all of the procedures in this By-Law 40(10) and impose any of the sanctions permitted in By-Law 40(10.12) or accept a written undertaking under By-Law 40(13.8).

...

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

...

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

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

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

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

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

...

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

40(12.4) Publication under By-Laws 40(12.1) or 40(12.3) may be in such form and publication as the Professional Conduct Committee, Disciplinary Tribunal or Appeals Tribunal (as

applicable) considers appropriate, including in CA ANZ's official publication, on CA ANZ's website or in any other manner that it may in its discretion direct.

...

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

Issued 8 October 2019

### **8.1 Purpose**

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

### **8.2 Definitions**

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

### **8.3 By-Laws**

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

### **8.4 Charter**

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

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

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

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

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

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

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

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

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

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

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

- (a) An application made to CA ANZ to request the review of a Final Decision in accordance with By-Law 40(8.2) can be made by the original complainant or the relevant Member and must be made:
  - (i) within 21 days of notification of the Final Decision;
  - (ii) using and in the manner prescribed by the [Final Decision Review Form](#); and
  - (iii) accompanied by:
    - A. payment of the Application Fee (which is AUS\$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.*