



Disciplinary Tribunal of Chartered Accountants Australia and New Zealand (CA ANZ) Written decision dated 17 August 2020

- Case Number:** D-1223
- Member:** Peter Mark Dunham, interim suspended FCA of South Australia
- Hearing Date:** 4 August 2020
- Tribunal:** Richard Rassi FCA (Chair)
Ross Haslam FCA
Jenni Millbank, lay member of the Tribunal
- Tribunal Legal Adviser:** Julian Hammond
- Representation:** Michael Bradley for the Professional Conduct Committee (PCC)
The Member neither appeared nor was represented
- Decisions:**
1. The Tribunal determined that the Member:
 - (a) pleaded guilty to criminal offences before the District Court of South Australia;
 - (b) had been the subject of adverse and unfavourable findings in relation to his professional or business conduct and integrity by the District Court of South Australia;
 - (c) suffered an Insolvency Event;
 - (d) committed acts, omissions or defaults which, in the opinion of the Disciplinary Tribunal brought, or may bring, discredit upon the Member, CA ANZ and the profession of accountancy.
 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 \$26,459 for the full costs and expenses of these disciplinary proceedings as well as the costs of the interim suspension hearing.
 4. The Tribunal made the following directions regarding the conduct of the hearing and the publication of its reasons for decision:
 - (a) the hearing proceed in the absence of the Member;
 - (b) its decision with reasons, mentioning the Member's name and locality, be published on the CA ANZ website (the **Published Decision**);

- (c) a summary of the Published Decision mentioning the Member's name and locality with a web address for the Published Decision be published in the CA ANZ official publication, "Acuity";
- (d) 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 identities of the Member's victims be kept confidential;
- (f) the decisions regarding confidentiality take effect immediately from 4 August 2020.

The date of effect of this decision is 9 September 2020 (By-Law 40(10.18)).



1. Introduction

- (a) This matter arose from the conduct of the Member between 2008 and 2015 during which time he solicited funds from a number of his clients and friends purportedly for investment purposes but in fact for his own personal use.
- (b) As a result, a number of criminal charges of theft and fraud were filed against the Member in 2016 and ultimately the Member pleaded guilty to nine counts on 16 March 2020.
- (c) On 1 December 2016 the Disciplinary Tribunal determined to suspend the Member on an interim basis until the earlier of:
 - (i) three months after the full and final resolution of all criminal proceedings against the Member; or
 - (ii) further investigation and determination of the complaints referred to in the PCC's Notice of Disciplinary Action dated 14 November 2016.
- (d) On 10 June 2020 the PCC referred the Member to the Tribunal by way of Notice of Disciplinary Action dated 9 June 2020 to be heard on 22 July 2020.
- (e) On 18 June 2020, following an application by the PCC, the Disciplinary Tribunal scheduled a hearing date for 4 August 2020.
- (f) On 19 June 2020 the PCC served the Member with an Amended Notice of Disciplinary Action dated 19 June 2020 (set out in full in Schedule 1) (the **Amended NDA**) to be heard on 4 August 2020 which in summary alleged that the Member:
 - 1. pleaded guilty to nine counts of deception and theft amounting to more than \$1.3 million;
 - 2. the Member was the subject of an adverse or unfavourable finding in relation to his professional or business conduct, competence or integrity by the District Court of South Australia;
 - 3. on 5 October 2016 the Member became bankrupt; and
 - 4. the acts, omissions and defaults as set out in allegations 1 and 2 bring, or may bring, discredit on the Member, CA ANZ or the profession of accountancy.
- (g) On 27 June 2020 the Member admitted the allegations and advised he would not attend the hearing.

2. The issues for determination

- (a) Should the hearing proceed in the absence of the Member?
- (b) Did the Member plead guilty to criminal offences? (allegation 1)
- (c) Was the Member the subject of an adverse or unfavourable finding in relation to his professional or business conduct, competence or integrity by the District Court of South Australia which has not been set aside on appeal? (allegation 2)
- (d) Did the Member suffer an Insolvency Event? (allegation 3)
- (e) If the answer to (b) or (c) 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 4)
- (f) If the answer to (b), (c), (d) or (e) was yes, what sanctions should be imposed on the Member?
- (g) Should the Member be required to pay costs and if so, in what amount?
- (h) Was there any reason to suppress the Member's name from the published decision?
- (i) Should any confidentiality orders be made?

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

- (a) On 27 June 2020 the Member returned a completed questionnaire pursuant to By-Law 40(10.4) in which he advised:
 - (i) he would not attend the hearing and understood it may proceed in his absence;
 - (ii) no representatives would attend the hearing;
 - (iii) he admitted all allegations;
 - (iv) there were no facts or circumstances that the Member wished to bring to the attention of the Disciplinary Tribunal.
- (b) The PCC advised that no subsequent correspondence had been received from the Member.
- (c) The Tribunal noted that, although the Member's By-Law 40(10.4) response was given in answer to the 9 June 2020 Notice of Disciplinary Action with hearing date of 22 July 2020, and not the Amended NDA, the allegations were the same in both. The Tribunal determined the hearing should proceed in the absence of the Member because:
 - (i) the Tribunal was satisfied that the Member had received proper notice of the hearing;
 - (ii) the Member had expressed his intention to not attend the hearing or make any submissions on the complaint or potential sanctions;
 - (iii) the Member had provided no information to suggest that he would attend a hearing on a rescheduled date;

and the Tribunal concluded that no procedural or substantive injustice would arise.

4. Did the Member plead guilty to criminal offences? (allegation 1)

4.1 Agreed facts

The PCC alleged that the Member pleaded guilty to nine counts of deception and theft pursuant to sections 134(1) and 139(a) of the *Criminal Law Consolidation Act 1935*, which had not been set aside on appeal, being:

- (a) one count of deception involving \$150,000 (Count 4);
- (b) one count of deception involving \$50,000 (Count 7);
- (c) one count of deception involving \$150,000 (Count 12);
- (d) one count of deception involving \$50,000 (Count 24);
- (e) one count of deception involving \$200,000 (Count 33);
- (f) one count of aggravated theft involving \$343,030.31 (Count 13); and
- (g) three counts of theft involving a total of \$360,000 (Counts 3, 15 and 34, with Counts 15 and 34 being aggravated offences);

and the Member admitted this allegation.

4.2 Tribunal decision and reasons

- (a) In addition to the Member's admission, the Tribunal had regard to:
 - (i) the District Court of South Australia (**District Court**) Sentencing Remarks of His Honour Judge Muscat dated 5 May 2020 (the **Sentencing Remarks**) in which it was stated:

“Those counts to which you have pleaded guilty are one count of deception ... involving \$150,000 (Count 4); one count of deception ... involving \$50,000 (Count 7); one count of ... involving \$150,000 (Count 12); one count of deception ... involving \$50,000 (Count 24); one count of deception ... involving \$200,000 (Count 33); one count of aggravated theft from ... involving \$343,030.31 (Count 13) and three counts of theft ... involving a total of \$360,000 (Counts 3, 15 and 34, with Counts 15 and 34 being aggravated offences)”
 - (ii) the District Court Certificate of Record dated 2 June 2020 which recorded that the Member was convicted and imprisoned for 8½ years commencing 5 May 2020;
 - (iii) By-Law 40(2.1)(j) which provides that a member is liable to disciplinary sanctions if that member:

has, before any court of law in any jurisdiction in Australia or elsewhere pleaded guilty to, or been found guilty of, any criminal offence which has not been set aside on appeal
- (b) The Tribunal determined that the allegation was established. In reaching this determination the Tribunal also considered the PCC's submission that the breach of By-Law 40(2.1)(b) was automatically engaged by reason of the evidence including the Court's findings.

5. Was the Member the subject of an adverse or unfavourable finding in relation to his professional or business conduct, competence or integrity by the District Court which has not been set aside on appeal? (allegation 2)

5.1 PCC submissions

- (a) The PCC submitted that the Sentencing Remarks noted that the Member had made admissions of numerous offences with which the prosecution had not proceeded and that those matters indicated that the Member's criminal offending was not isolated and took place as part of a much longer course of dishonest behaviour in which he abused his position of trust.
- (b) The PCC submitted that this established a distinct breach of the By-Laws in addition to the adverse findings that arose from the guilty pleas of criminal conduct.
- (c) In making this submission, the PCC referred to paragraph 4 of the Sentencing Remarks:
- "In pleading guilty to those counts [the Member has] also admitted committing a number of other similar offences charged in the same Information which were not proceeded with by the prosecution. While [he] cannot be punished for those other offences, the conduct that was the subject of those other offences remains relevant to sentencing [the Member], as it places the counts to which [he has] pleaded guilty into their proper context and reveals that they were not isolated instances of dishonest offending on [the Member's] part but, rather, those offences were part of a much lengthier course of dishonest behaviour by [him], which reduces the leniency that can be afforded to [him]."*

5.2 Member submissions

The Member admitted the allegation and provided no further information for the Tribunal's consideration.

5.3 Tribunal decision and reasons

- (a) The Tribunal accepted the PCC's submissions that the Sentencing Remarks outlined in 5.1(c) above constituted unfavourable findings in relation to the Member's professional conduct and integrity and were therefore sufficient to establish a breach of By-Law 40(2.1)(e).
- (b) In addition to the paragraph identified by the PCC, the Tribunal was of the view that the following Sentencing Remarks constituted adverse and unfavourable findings in relation to the Member's professional or business conduct and integrity:

"It is not to [the Member's] credit that [he] only decided to plead guilty so many years after [his] arrest, especially in the face of such a strong case against [him]. Over that time, [the Member's] victims have had to endure the emotional and financial stress so many of them have spoken about in their victim impact statements. [The Member's] claimed remorse for [his] offending behaviour is tempered by the lengthy delay involved in [him] finally admitting to [his] guilt. It was put to the court that [the Member] had hoped to make restitution, as an explanation for the lengthy delay, but when questioned, I was told nothing had been repaid by [him] since [his] arrest.

As I outlined earlier, many of [the Member's] victims are still owed vast amounts of money, which they will now never see."

"[The Member's] victims have informed the court of the devastating financial and emotional impact [his] offending behaviour has had upon them. They have experienced embarrassment, shame, anger, despair and anxiety. These were people who knew [the Member] for many years. They regarded [him] as their

friend and trusted [him] implicitly. Many of them are in their 70s and are now financially burdened. Having worked hard and saved their entire lives in order to enjoy their well-earned retirement, they are instead living under strain.”

“As one of [his] other victims so pertinently observed, [the Member’s] offending behaviour was calculated, deliberate and repetitive. The court cannot overlook the devastating effects [the Member’s] dishonesty has had upon the victims of his offending.”

6. Did the Member suffer an insolvency event? (allegation 3)

6.1 Agreed facts

The PCC alleged that on 5 October 2016 the Member became bankrupt, and the Member admitted the allegation.

6.2 Tribunal decision and reasons

- (a) In addition to the Member’s admission, the Tribunal had regard to:
- (i) the 9 June 2020 extract from the National Personal Insolvency Index which recorded the following information for the Member:

<i>“Type</i>	<i>BANKRUPTCY - Debtors Petition”</i>
<i>“Date of Bankruptcy</i>	<i>05-Oct-2016”</i>
<i>“Summary</i>	<i>This individual is no longer bankrupt under this administration”</i>
 - (ii) By-Law 40(2.1)(j) which states that a member is liable to disciplinary sanctions if that member:
 - suffers an Insolvency Event
 - and By-Law 39(m)(i)(3) which 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 Member had suffered an Insolvency Event, in breach of By-Law 40(2.1)(j).

7. Had the Member’s acts, omissions or defaults brought, or could they bring, discredit upon the Member, CA ANZ or the profession of accountancy? (allegation 4)

7.1 PCC submissions

- (a) The PCC submitted that:
- (i) the Member’s conduct was in the highest category of seriousness for a member. He had been convicted and imprisoned for very serious offences of theft, aggravated theft and deception, perpetrated on clients and friends from the Member’s position of trust;

- (ii) *“it doesn’t get a lot worse in terms of offending that directly goes to a member’s position as a chartered accountant”* and discredit followed from those offences.
- (b) In making this submission the PCC referred to the following Sentencing Remarks:
- “[The Member’s] offending behaviour is egregious. [He] engaged in a lengthy course of deliberate, dishonest conduct over which [the Member] abused [his] position of trust in order to benefit [himself].”*

7.2 Member submissions

The Member admitted the allegation and provided no further information for the Tribunal’s consideration.

7.3 Tribunal decision and reasons

- (a) The Tribunal determined that the allegation was established. In reaching this determination the Tribunal considered:
- (i) the Member’s lengthy course of deception involving multiple parties and serious breaches of trust;
 - (ii) was of the highest gravity;
 - (iii) resulted in imprisonment;
 - (iv) flowed from a position of trust;
 - (v) the following media articles which referred prominently to the Member’s position as an accountant:
 - (1) *SA accountant jailed for fleecing clients*, 7NEWS.com.au 5 May 2020;
 - (2) *SA accountant jailed for fleecing clients*, The Advocate - Hepburn | Hepburn, Vic undated;
 - (vi) the following Sentencing Remarks which referred directly to CA ANZ and the Member’s profession:

“...[The Member has] been a practising accountant for all of [his] working life...

All of the victims of [the Member’s] alleged offending involved either clients of [his] accounting practice, many of whom were also [his] friends, or an incorporated body that [the Member was] the treasurer of...

[The Member] then studied accounting at the Institute of Chartered Accountants and later became a partner in the firm [he was] employed at...”

8. 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 no sanction other than termination of the Member's membership would be appropriate (and that they had notified the Member that they would seek that sanction). In support, the PCC submitted that the Tribunal should have regard to the following matters:
- (i) this was a serious case of misconduct in one of the worst categories of offence;
 - (ii) the Member's conduct involved gross breaches of trust and manipulation of his clients for personal benefit;
 - (iii) the conduct occurred over a long period of time, seven years, and involved four separate breaches of the By-Laws;
 - (iv) the Member's offending involved a large amount of money;
 - (v) the gravity and seriousness of the Member's offending was clearly reflected in the custodial sentence imposed on him, which was at the higher end of the scale for this type of offending.
- (d) The Member provided no submissions in relation to potential sanctions nevertheless the Tribunal had regard to the submissions in mitigation made by the Member's counsel recorded in the Sentencing Remarks.
- (e) The Sentencing Remarks noted the submission that the Member had repaid a substantial proportion of the funds and intended to repay the remainder. However the sum of \$493,030.81 remained unpaid at the time the Sentencing Remarks were made.
- (f) The Member pleaded guilty in the criminal matter and made full admissions to the allegations in these proceedings however the Tribunal noted the guilty plea in the criminal

proceedings was made very shortly before the trial and the Sentencing Remarks noted that the victims had to endure a prolonged period of emotional and financial stress.

- (g) The Tribunal determined to terminate the Member's membership and to remove his name from the Registers on which it appears. In reaching this determination the Tribunal had regard to:
- (i) the Sentencing Remarks which set out the seriousness of the charges that the Member pleaded guilty to, as well as other offences he had admitted but which were not prosecuted, and the impact upon the Member's victims;
 - (ii) the PCC's submissions in relation to the gravity of the Member's conduct and that termination of membership was the only appropriate sanction.
- (h) The Tribunal determined that the Member's conduct as a whole was a calculated course of dishonest and fraudulent conduct that abused the trust that he held as a Chartered Accountant and which the Tribunal regarded was conduct of the most serious kind.

9. 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 required to order that members pay all of the costs of a matter unless it finds, having regard to the factors in Regulation 8.12, that there are reasons militating against that outcome. The PCC submitted that the Member should bear all of the costs in the sum of \$26,459 having regard to:
- (i) the most important factor of this matter, being the seriousness of the complaint and the finding against the Member;
 - (ii) the seriousness of this matter meant that the PCC would seek termination of membership and that sanction could only be determined by the Tribunal at hearing;

- (iii) the CA ANZ disciplinary proceedings were an inevitable consequence of the Member's own actions, which led to his criminal prosecution and conviction and then on to this matter.
- (c) The Member provided no submissions in relation to potential costs.
- (d) The Tribunal determined that the Member should pay the full amount of costs because, having regard to Regulation 8.12:
 - (i) all of the allegations were established;
 - (ii) the Member's conduct was of the most serious kind;
 - (iii) it was reasonable that the Member, and not the membership as a whole, should bear the costs of the proceedings which arose solely from the Member's serious misconduct;
 - (iv) while the Member admitted all allegations that admission was not timely and to the extent those admissions streamlined these proceedings, that was reflected in a shorter hearing;
 - (v) the costs included the costs of the 2016 hearing of the PCC's application for interim suspension, which had been contested by the Member;
 - (vi) these proceedings were conducted expeditiously. The complaint was returned to the Disciplinary Tribunal within three months of the criminal proceedings being resolved in the relevant forum. The criminal proceedings were protracted because of the Member's late guilty pleas;
 - (vii) none of the criteria in Regulation 8.12 that might allow for a reduction in costs had been satisfactorily met in this matter.

10. 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.

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. The Tribunal further directed that the identities of the Member's victims be kept 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 decisions 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)(b), in that on 16 March 2020 the Member pleaded guilty to nine counts of deception and theft pursuant to sections 134(1) and 139(a) of the *Criminal Law Consolidation Act 1935*, which have not been set aside on appeal, being:
 - a) one count of deception of [name suppressed] involving \$150,000 (Count 4);
 - b) one count of deception of [name suppressed] involving \$50,000 (Count 7);
 - c) one count of deception of [name suppressed] involving \$150,000 (Count 12);
 - d) one count of deception of [name suppressed] involving \$50,000 (Count 24);
 - e) one count of deception of [name suppressed] involving \$200,000 (Count 33);
 - f) one count of aggravated theft from [name suppressed] involving \$343,030.31 (Count 13);
and
 - g) three counts of theft from [name suppressed] involving a total of \$360,000 (Counts 3, 15 and 34, with Counts 15 and 34 being aggravated offences).
2. By-Law 40(2.1)(e), in that on 5 May 2020 the Member was the subject of an adverse or unfavourable finding in relation to his professional or business conduct, competence or integrity by the District Court of South Australia with regard to admissions made by the Member of offences he had committed but for which he had not been prosecuted.
3. By-Law 40(2.1)(j) in that on 5 October 2016 the Member became bankrupt.
4. By-Law 40(2.1)(k), in that the acts, omissions and defaults as set out in paragraphs 1 and 2 above bring, or may bring, discredit on the Member, CA ANZ or the profession of accountancy.

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:

...

- (b) has, before any court of law in any jurisdiction in Australia or elsewhere pleaded guilty to, or been found guilty of, any criminal offence which has not been set aside on appeal;

...

- (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

...

- (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(10.18) 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.