



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

## Written decision dated 28 February 2020

- Case Number:** D-1217
- Member:** Achilles Constantinidis CA of New South Wales
- Hearing Date:** 20 February 2020
- Tribunal:** David Fairlie (Chair and lay member of the Tribunal)  
David Gibbs FCA  
Anita Hargreaves CA
- Representation:** Michael Bradley for the Professional Conduct Committee (PCC)  
The Member neither appeared nor was represented
- Decisions:**
1. The Tribunal determined that the Member failed to comply with reasonable and lawful directions of CA ANZ officers which related to a matter concerning the good order and management of CA ANZ.
  2. The Tribunal imposed the following sanctions on the Member:
    - (a) a suspension from membership of CA ANZ for a period of five years and removal of the Member's name from the Registers on which it appears;
    - (b) a fine in the amount of \$5,000; and
    - (c) a censure.
  3. The Tribunal imposed a cost sanction in the sum of \$5,180 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) that 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 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";
    - (d) the Tax Practitioners Board and Australian Securities and Investments Commission be notified of this decision;

- (e) except for the content of the Disciplinary Tribunal written decision with reasons, all written and oral evidence and submissions related to this determination are to remain confidential;
- (f) the decision regarding confidentiality takes effect immediately; ie 20 February 2020.

The date of effect of this decision is 21 March 2020 (By-Law 40(10.18)).



## 1. Introduction

- (a) In November 2018 CA ANZ received a complaint from the Australian Government Department of Jobs and Small Business (the **Complainant**) which:
- (i) advised that, as part of its ongoing investigation into a company in liquidation, the Member was required to give evidence at a liquidator's examination on 24 September 2018 in relation to the use of a trust account held in the name of Constantinidis Accountants Pty Ltd; and
  - (ii) stated *"our initial findings give rise to concerns about [the Member's] conduct and performance"* and listed serious allegations of misconduct based on evidence provided by the Member during examination;
- (the **Complaint**).
- (b) After investigating aspects of the Complaint, the PCC wrote to the Member in September 2019 seeking his response to the Complaint. The PCC also sought to clarify the Member's 30 May 2018 advice to CA ANZ that his practice does not operate a trust account.
- (c) The Member did not provide a response to the PCC other than to say he was overseas on vacation and would respond by 20 October 2019, and the PCC decided to refer the matter to the Tribunal because:

*"CA ANZ has made multiple requests for a response to the [C]omplaint, from 27 September until 13 November 2019 (4 requests). Notwithstanding this, the Member has failed to provide a response to CA ANZ.*

*The PCC considers that the allegations in the [C]omplaint are very serious and demanded an urgent and complete response by the Member and his failure in this regard warrants disciplinary action."*

## 2. The issues for determination

- (a) Should the hearing proceed in the absence of the Member?
- (b) Did the Member fail to comply with a reasonable and lawful direction of an officer of CA ANZ? (allegation 1)
- (c) If the answer to (b) was yes, what sanctions should be imposed on the Member?
- (d) Should the Member be required to pay costs and if so, in what amount?
- (e) Should other parties be notified of the Tribunal's decision?
- (f) Should any confidentiality orders be made?

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

- (a) The Member did not attend the hearing of the Disciplinary Tribunal.
- (b) The PCC informed the Member of its decision to refer him directly to the Disciplinary Tribunal without convening a Case Conference, and provided its reasons for that referral, by letter dated 13 December 2019 sent to the Member's email addresses (one of which he had

communicated from as recently as 29 September 2019), work address and residential address as recorded on the General Register (the **Member's addresses**).

- (c) On 18 December 2019 the Member was served via the Member's addresses with the Notice of Disciplinary Action (**NDA**). The Member was also notified of the hearing date, time and location at the time of the NDA service.
- (d) The Member did not respond to any of the communication listed in 3(b) and (c) above.
- (e) The Tribunal was satisfied that the Member had notice that the hearing would take place on 20 February 2020. The Tribunal was also satisfied that the Member had notice that the Tribunal would be considering the allegation in the NDA at the hearing and, if the allegation was established, would be making a decision on whether to impose any sanctions on the Member. Accordingly the Tribunal determined that the hearing should proceed in the absence of the Member.
- (f) In making this decision the Tribunal noted:
  - (i) the Member had also failed to respond to communications from CA ANZ prior to being referred to the Tribunal; and
  - (ii) the PCC had provided a file note of a telephone conversation with a lawyer who said he represented the Member, in which the lawyer confirmed that the Member was aware of the hearing date.

#### **4. Did the Member fail to comply with a reasonable and lawful direction of an officer of CA ANZ? (allegation 1)**

##### **4.1 PCC submissions**

- (a) The PCC submitted that:
  - (i) the Member had breached By-Law 40(2.1)(i);
  - (ii) the initial Complaint raised a serious allegation of misconduct;
  - (iii) numerous attempts were made by the PCC to contact the Member, both in writing and by telephone.
- (b) In making this submission, the PCC referred to the following evidence:
  - (i) the PCC's letters to the Member dated 27 September, 30 October, 8 November, 13 November and 13 December 2019, to which no substantive response was received; and
  - (ii) the only direct contact from the Member which was by email sent on 29 September 2019 stating he was "*currently overseas on vacation*" but that he would attend to responses "*by the 20th October 2019*".

##### **4.2 Member submissions**

The Tribunal did not receive any submissions from the Member or from any representative on his behalf.

### 4.3 Tribunal decision and reasons

- (a) The Tribunal determined that the allegation was established. The Member had failed to respond to the PCC's investigation of the Complaint in breach of his obligations as a CA ANZ member. Relevantly, By-Law 40(4.4) states:

A Member must respond in writing to the Professional Conduct Committee within such period of time as the Professional Conduct Committee specifies in its notification. The Member's written response must address all matters raised in the notification to the satisfaction of the Professional Conduct Committee

and Regulation 2.23, *Dealing with Client Monies (Trust Accounts)* states:

- (a) Where a CPP holder establishes a trust account or where they act as a signatory on a client bank account they must:
- (i) comply with APES 310 Dealing with Client Monies (APES 310); and
  - (ii) respond in a timely manner, to all reasonable requests made by the Board, any committee or officer of CA ANZ to produce documents or other materials as may be required to by any such person, in order to verify the Chartered Accountant's compliance with APES 310

and the Member's failure to respond constituted a breach of By-Law 40(2.1)(i).

- (b) The Member's failure to respond undermines CA ANZ's authority and its ability to regulate its members. It is a fundamental requirement of CA ANZ membership that members respond to reasonable and lawful requests from the organisation and failure to do so is a breach of the By-Laws.

### 5. 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 this was a serious case of misconduct and they sought serious sanctions accordingly, namely:
- (i) suspension of membership, which served the dual function of being both a punitive and a protective sanction;
  - (ii) a censure; and
  - (iii) a fine of not less than \$5,000.
- (d) The PCC submitted that the matters arising from the Complaint, which they had endeavoured to investigate, were of the utmost seriousness. The Member's failure or refusal to cooperate in that investigation and failure to provide any substantive response was a very serious matter. The PCC submitted that the Tribunal should also have regard to the following matters:
- (i) a punitive sanction was appropriate where there was no excuse or reason for the Member's failure to respond;
  - (ii) the Member's behaviour which:
    - (1) demonstrated that he had no serious intention of complying with his obligations as a member; and
    - (2) undermined the authority of CA ANZ and its ability to regulate its own members; and
  - (iii) it was important to send a strong signal that, regardless of the context and regardless of what is going on for a member, it is unacceptable to ignore reasonable directions from CA ANZ.
- (e) The Tribunal did not receive any submissions from the Member or from any representative on his behalf.
- (f) The Tribunal determined to:
- (i) suspend the Member from membership of CA ANZ for a period of five years and remove the Member's name from the Registers on which it appears;
  - (ii) fine the Member an amount of \$5,000; and
  - (iii) censure the Member;
- because of the:
- (iv) seriousness of the conduct;
  - (v) Member's complete failure to assist or respond to the PCC;
  - (vi) undermining of the authority and ability of CA ANZ to regulate its members; and
  - (vii) protection of the public and the reputational damage to CA ANZ and the profession generally.

## 6. 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 Member should pay the full costs of the proceedings, noting they were less than the costs estimated in the interim costs schedule.
- (c) The Tribunal did not receive any submissions from the Member or from any representative on his behalf.
- (d) The Tribunal determined that the Member should bear the full costs of the proceedings in the sum of \$5,180 because:
  - (i) Regulation CR8.12 states that the Member must pay the full costs claimed unless any of the matters set out in subparagraphs (a) to (h) justify a reduction;
  - (ii) none of the factors set out in subparagraphs (a) to (h) provided any reason for the Tribunal to not require the Member to pay the full costs in this matter. Relevantly:
    - (1) the allegation made against the Member was established in full;
    - (2) the Member's conduct alleged in the Complaint underpinning this hearing was very serious;
    - (3) the Member had not cooperated with the CA ANZ investigation and disciplinary process;
    - (4) it was reasonable that the full costs be borne by the Member; and
    - (5) the costs were incurred properly and the amount was reasonable.

## 7. Should the Member's name be suppressed?

(a) By-Law 40 states:

12.3 Where the Disciplinary Tribunal ... determines that a complaint is established or imposes a sanction adverse to the Member ... it must direct that a notice be published by CA ANZ of its decision and the sanctions imposed (if any). Any such publication must disclose the name of the relevant Member unless the Disciplinary Tribunal ... considers that there are exceptional circumstances for not doing so. [emphasis added]

12.4 Publication ... may be in such form and publication as the ... Disciplinary Tribunal ... considers appropriate, including in CA ANZ's official publication, on CA ANZ's website or in any other manner that it may in its discretion direct.

(b) The Tribunal determined there were no exceptional circumstances and therefore the Member's name should be disclosed in the publication.

## 8. Should other parties be notified of the Tribunal decision?

(a) By-Law 40(10.16) states:

The Disciplinary Tribunal may notify interested parties including other professional bodies, regulatory authorities, the Member's current and/or former employers, partners, clients of the Member or the Member's Practice Entity who are or may be affected by the Member's conduct to which the disciplinary action relates, of so much of a decision ..., the reasons for it and/or the sanctions imposed, as it thinks fit ...

(b) The PCC notified the Tribunal that the Member holds a registration with the Tax Practitioners Board and the Tribunal noted that the Complainant had notified the Australian Securities and Investments Commission of the issues underlying the Complaint.

(c) The Tribunal determined that the Tax Practitioners Board and Australian Securities and Investments Commission be notified of the decision, as interested parties.

## 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

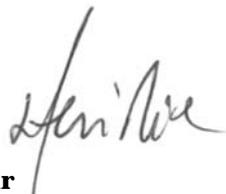
The Member may, within 21 days after the notification of the written decision with reasons to the Member of this Tribunal's decision, appeal in writing to the CA ANZ Appeals Tribunal against the decision (By-Law 40(11.1)).

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 ALLEGATION**

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)(i), in that the Member failed to provide a response to CA ANZ to its letters dated 27 September 2019, 30 October 2019, 8 November 2019, 13 November 2019 and 13 December 2019; and thereby failed to comply with a reasonable and lawful direction of an officer or organ of CA ANZ acting within the powers conferred by the By-Laws.

## **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:

...

- (i) has failed to comply with any reasonable and lawful direction of any officer or organ of CA ANZ acting within the powers conferred by CA ANZ's Supplemental Charter, these By-Laws or the Regulations and which relates to a matter concerning the good order and management of CA ANZ;

...

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

...

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

...

- (b) suspend the Member from membership of CA ANZ for a period not exceeding 5 years and remove the Member's name from the Registers on which it appears

...

- (f) fine that Member an amount not exceeding \$50,000

- (g) censure the Member

...

40(10.16) The Disciplinary Tribunal may notify interested parties including other professional bodies, regulatory authorities, the Member's current and/or former employers, partners, clients of the Member or the Member's Practice Entity who are or may be affected by the Member's conduct to which the disciplinary action relates, of so much

of a decision (including a decision to suspend on an interim basis), the reasons for it and/or the sanctions imposed, as it thinks fit. The Disciplinary Tribunal will not do so until the day following the last date on which an appeal may be notified in accordance with paragraph 11.1. If an appeal is notified in accordance with paragraphs 11.1 or 11.2, the Disciplinary Tribunal will not make such a notification until that appeal is heard or otherwise determined.

...

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

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

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

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

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

...

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

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

...

#### **40(13.12) Public and private hearings**

...

(b) Subject to By-Laws 40(13.12)(c) and 40(13.12)(d), and unless the Disciplinary Tribunal or Appeals Tribunal determine otherwise, each shall hold its hearings in public.

## **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.*