

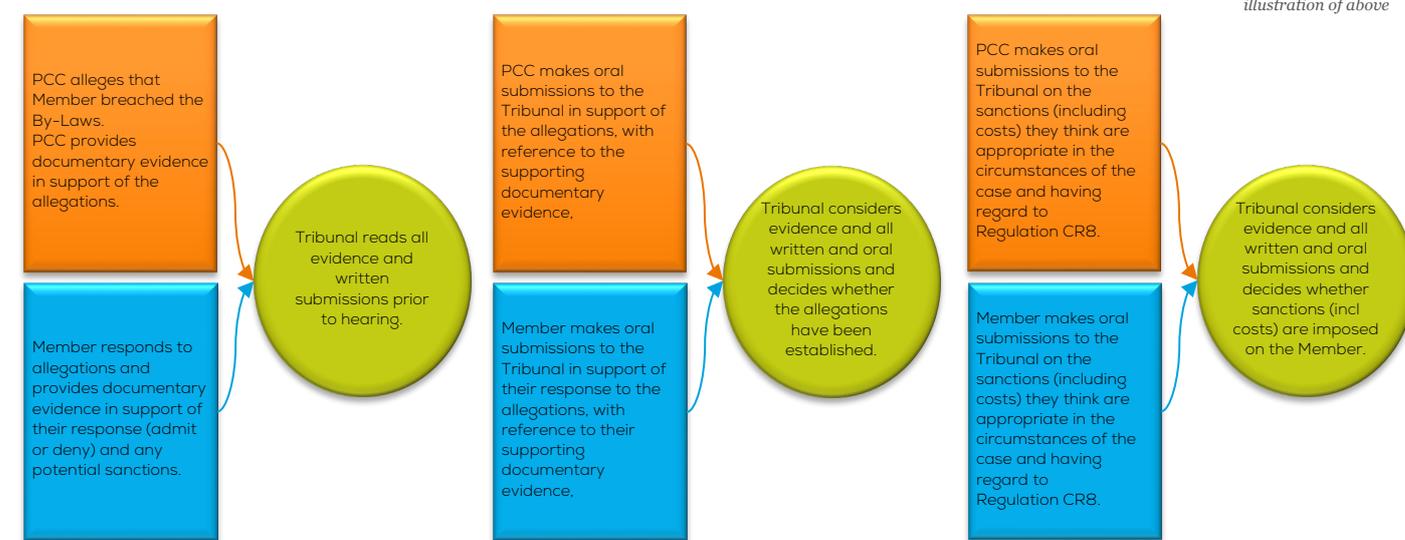


Notes for guidance about Disciplinary Tribunal hearings in Australia

Background summary

- The Chartered Accountants Australia and New Zealand (CA ANZ) Professional Conduct Committee (PCC) investigates complaints about a Member. If after investigation the PCC determines that the complaint is sufficiently serious to warrant referral to the Disciplinary Tribunal, the PCC will:
 - allege that the Member has breached the By-Laws (done by way of a Notice of Disciplinary Action) and is liable to disciplinary sanctions
 - prepare a file supporting their case against the Member. This casefile will include copies of all relevant information gathered during the PCC's investigation
 - arrange for service on the Member of the Notice of Disciplinary Action and casefile supporting the PCC's allegations, usually through the Tribunal Secretary.
- On receipt of a Notice of Disciplinary Action and casefile the Member should:
 - respond to the allegations (ie admit or deny)
 - provide any further documents or evidence supporting their response to the allegations. Written submissions may also be made in support or explanation of their response to the allegations.
- At the Tribunal hearing:
 - the PCC will make oral submissions to the Tribunal setting out why it says that the Member has breached the allegations and will support their arguments by referring to the supporting evidence in the casefile
 - the Member should make oral submissions to the Tribunal either (as appropriate) admitting the allegations or arguing that the allegations are incorrect and should support those arguments by referring to the supporting evidence in the casefile or provided by the Member prior to the hearing
 - the Tribunal will consider the evidence and submissions presented by the PCC and the Member and will then determine (a) whether there has been a breach of the By-Laws and (b) if there has been a breach, whether to impose sanctions and whether to notify interested parties.

Diagram: High-level illustration of above



General

- Disciplinary Tribunal hearings are formal processes and Members should attend their hearing. Members may attend in person, or by telephone or videoconference with the leave of the Tribunal.
- The Disciplinary Tribunal panel is comprised of (i) Members of CA ANZ who have at least ten years' relevant experience in either practice or commerce with a sound and current knowledge of business management, of the governance framework of CA ANZ, and of the professional standards required of its Members under the co-regulatory system, as well as (ii) lay members with business or professional experience that makes them suitable to hear and determine complex professional conduct matters which are of significance to the public, to CA ANZ and to the Members who are the subject of hearings. All members of the Disciplinary Tribunal must comply with the CA ANZ Code of Conduct. Complaints are determined by a quorum of the Tribunal which must be made up of at least two Members and one lay member.
- Disciplinary Tribunal hearings are public however the Member or the PCC may make an application to the Tribunal for all or part of the matter to be heard in private (By-Law 40(13.12)).
- In accordance with By-Law 40(13.3) the Disciplinary Tribunal may record its hearings in any manner it decides, including by the use of stenography and sound recording technology. With the exception of the official Tribunal transcript provider and sound recording for the Disciplinary Tribunal's record(s), the use of recording devices is not permitted.
- A transcript will be taken of the proceedings. The transcript will be provided to the Member if:
 - the Member did not attend the hearing; or
 - an appeal is lodged.

Outside of these circumstances, a Member may make submissions to the Tribunal requesting that a copy of the transcript be made available to them, and the Tribunal will make a determination at the hearing.

The hearing

- The parties (representatives of the PCC and of the Member), the Tribunal Secretary, the Tribunal's legal adviser (if present) (**Legal Adviser**), the transcript provider and any members of the public or media take their seats in the hearing room, in the presence of the Tribunal members.
- The Chair opens the hearing, introduces the members of the Tribunal and the Legal Adviser, explains the Legal Adviser's role and explains the nature of the proceedings. Unless an application is granted to hold all or part of the hearing in private, the Chair explains that the hearing will be held in public.
- The Chair will set out the conditions on which any member of the public is permitted to remain in the hearing. Any members of the public who wish to attend the hearing must sign confidentiality documentation signifying their agreement to those conditions.
- The Notice of Disciplinary Action, the PCC's casefile and other relevant documentation will be tabled by the Chair. Tribunal members will have read all of the material before the commencement of the hearing.
- The Chair asks the Member whether or not the Member admits the allegations contained in the Notice of Disciplinary Action.

Member admits all allegations

- The PCC representative will present a brief summary of the evidence in support of the allegations, call any witnesses and present on factors relevant to applicable sanction(s), including making a recommendation as to sanction(s) and notification to interested parties under By-Law 40(10.16). As part of their submission, the PCC will provide a final schedule of *Costs*¹ to the Tribunal and Member (updating the interim schedule distributed prior to the hearing).

¹ Defined in By-Law 39(h)

- The Member will then be given the opportunity to present submissions on sanctions and notification to interested parties under [By-Law 40\(10.16\)](#).
- If the Member seeks an order preventing publication of the Member's name and location pursuant to [By-Law 40\(12.3\)](#), the Member or their representative will present submissions supporting the claim of exceptional circumstances and the PCC representative will be given an opportunity to reply.
- The Tribunal members will ask both the PCC representative and the Member any questions in relation to the matters the subject of the hearing.
- The Tribunal will then deliberate on the questions of breach and sanction(s), including *Costs*, as well as notification to interested parties and publication. The Tribunal must be satisfied (even if the allegations are admitted) that the allegations have been made out before proceeding to consider the question of sanction(s).
- In the absence of all the parties and any members of the public or the media, the Tribunal members may consult with the Legal Adviser. Any advice so provided will remain confidential to Tribunal members.
- When the Tribunal has decided whether or not the allegations have been established in full or in part, the Chair will recall all the parties and any members of the public or the media and deliver the Tribunal's decision including, whenever possible, written reasons for the decision. The Tribunal's written decision with reasons, if not available on the day, will be provided to the PCC and the Member within 21 days (see [By-Law 40\(10.15\)](#)).
- Subject to any decision by the Tribunal restricting publication under [By-Laws 40\(13.12\)\(c\)](#) and [40\(13.12\)\(d\)](#) (including any decision prohibiting reporting of a decision until the Tribunal's written reasons have been delivered), the Tribunal's decision may be reported following the later of the conclusion of the appeal period under [By-Laws 40\(11.1\)](#) and [40\(11.2\)](#) or the determination of any appeal.

Member does not admit all allegations

- The Chair calls on the PCC representative to present the case for the PCC.
- The PCC representative presents the case for the PCC, summarising the nature of the allegations against the Member and the evidence in support of those allegations, including calling any witnesses.
- The Member, the Member's representative and the Tribunal may ask questions of any witness called on behalf of the PCC. If, as a result of questions asked by the Tribunal, the Member or the Member's representative or the PCC representative wishes to ask any additional questions, he or she may do so with the Chair's leave.
- The Member or the Member's representative presents the case for the Member, summarising any admissions made by the Member, the Member's defence to the allegations and the evidence in support of the defence, including calling any witnesses.
- The PCC representative and the Tribunal may ask questions of any witness called on behalf of the Member. If, as a result of questions asked by the Tribunal, the Member or the Member's representative or the PCC representative wishes to ask any additional questions, he or she may do so with the Chair's leave.
- The PCC representative and then the Member or the Member's representative present closing submissions on questions of breach.
- Members of the Tribunal may question the PCC representative, the Member and the Member's representative in relation to the matters the subject of the hearing.
- The Tribunal will then deliberate on the questions of breach. The Tribunal must be satisfied (even if the allegations are admitted) that the allegations have been made out before proceeding to consider the question of sanctions.
- In the absence of all the parties and any Members of the public or the media, the Tribunal members may consult with the Legal Adviser. Any advice so provided will remain confidential to Tribunal members.
- When the Tribunal has decided whether or not some or all of the allegations have been established, the Chair will recall all the parties and any members of the public or the media and deliver the decision of the Tribunal.

- If the Tribunal decides that any of the allegations have been established then:
 - the PCC representative makes submissions on sanction(s), *Costs* and notification to interested parties under By-Law 40(10.16). This will include a recommendation as to sanction(s). As part of their submission, the PCC provides a final schedule of *Costs* to the Tribunal and Member (updating the interim schedule distributed prior to the hearing)
 - the Member or the Member's representative makes submissions on sanctions, including *Costs*, and notification to interested parties under By-Law 40(10.16).
- If the Member seeks an order preventing publication of the Member's name and location pursuant to By-Law 40(12.3), the Member or their representative will present submissions supporting the claim of exceptional circumstances and the PCC representative will be given an opportunity to reply.
- The Tribunal will then deliberate on sanctions, *Costs*, notification to interested parties, and publication.
- When a decision is reached, the Chair recalls the parties, including members of the public and any media, and delivers the decision of the Tribunal. The Tribunal's written decision with reasons, if not available on the day, will be provided to the PCC and the Member within 21 days (see By-Law 40(10.15)).
- The Chair also advises the Member of the rights of appeal available to the Member and the PCC.
- Subject to any decision of the Tribunal restricting publication under By-Laws 40(13.12)(c) and 40(13.12)(d) (including any decision prohibiting reporting of a decision until the Tribunal's written reasons have been delivered), the Tribunal's decision may be reported following the later of close of business on the last day of the appeal period under By-Laws 40(11.1) and 40(11.2) or the determination of any appeal.

If Member not present

- If the Member does not attend the Tribunal hearing, the hearing will proceed as follows:
 - the PCC will provide information to the Tribunal in relation to the provision to the Member of the Notice of Disciplinary Action and supporting material and copies of any communications with the Member
 - if the communications with the Member do not clearly advise that the Member admits the allegations or any part of them, or if there has been no communication from the Member, the Tribunal will proceed on the basis that the Member has not made any admissions. In this case, the hearing will proceed as set out above under the heading Member does not admit all allegations (without the involvement of the Member)
 - if the communications with the Member clearly advise that the Member admits the allegations, then the hearing will proceed as set out above under the heading Member admits all allegations.

Witnesses

- Unless the Tribunal specifies otherwise, any witnesses, except the Member and CA ANZ Conduct & Discipline staff, will not be permitted to remain in the hearing room after the commencement of the hearing until they are called to give evidence. Witnesses must not discuss their evidence with other witnesses until after the conclusion of the hearing.
- If a Member is of the opinion that there is an individual who can provide evidence in support of their case, it is the Member's responsibility to either:
 - obtain written evidence from that individual and submit it to the Tribunal Secretary for distribution to the Tribunal and PCC, or
 - arrange for that individual to attend the hearing to provide oral evidence.

Costs

- As set out above, if any allegations are established by the Tribunal, the PCC will make submissions to the Tribunal in relation to sanctions, which may include an application that the Member should pay all, or a portion, of the *Costs* incurred by CA ANZ. The Member will be given an opportunity to make submissions to the Tribunal in relation to sanctions and *Costs*.
- To assist with the Member's submissions on *Costs*, an interim *Costs* schedule is sent to the Member prior to their hearing and, as set out above, a final version of that *Costs* schedule is distributed at the hearing.
- The schedule of *Costs* itemises all *Costs* incurred by CA ANZ in bringing the matter to the Tribunal. *Costs* do not include the internal overhead costs of CA ANZ.
- If the Tribunal is asked to make a determination relating to *Costs*, it will do so with reference to the [Costs Guidelines for Disciplinary Tribunals](#) and [Regulation CR8](#). It is strongly recommended that the Member read these documents as early as possible, and in particular paragraph 6.6 of the *Costs* Guidelines.

Reasons, publication and the appeals process

- The Tribunal written decision with reasons will be provided to the Member and PCC within 21 days of the hearing ([By-Law 40\(10.15\)](#)).
- The Tribunal decision may be published on the date it takes effect and may be in such form and publication as the Tribunal considers appropriate. Decisions are usually published in the CA ANZ journal (*Acuity*) and on the CA ANZ website, but may also be published in any other place decided by the Tribunal. The Tribunal may also direct that the decision be sent to other parties (eg statutory authorities).
- If the Member or PCC wish to appeal a decision of the Tribunal, notice must be given to the Tribunal Secretary within 21 days of receiving the written decision with reasons.

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