

# Notes for guidance about Disciplinary Tribunal hearings in Australia

NB: this guide does not relate to complaints made about Members of NZICA

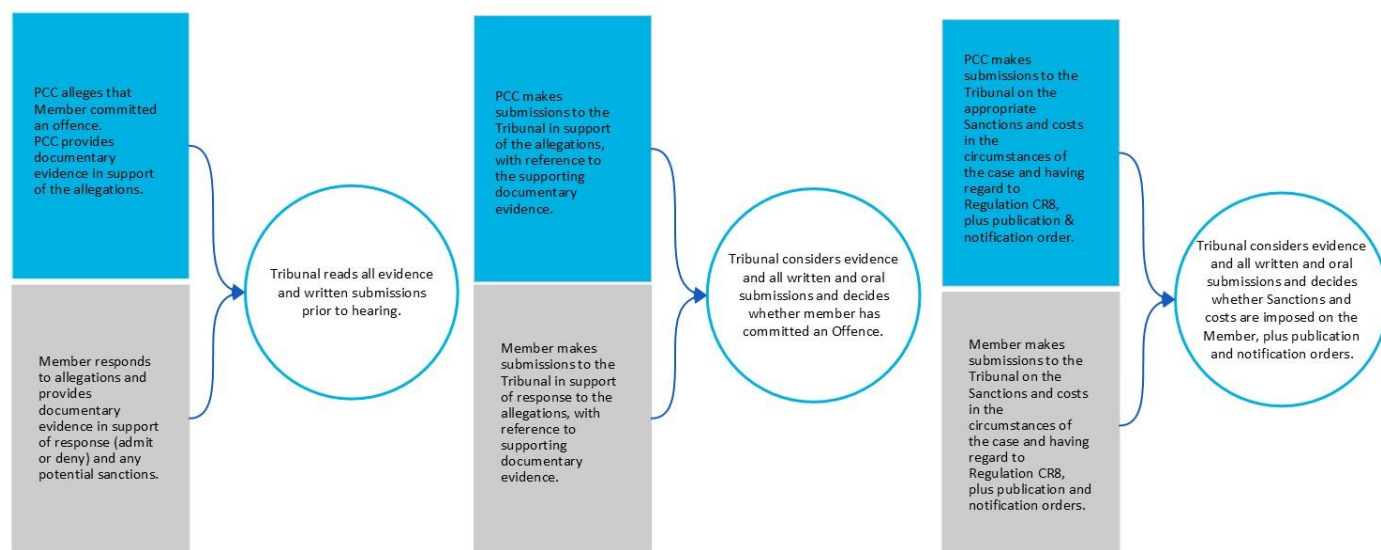
## Background

- The Professional Conduct Committee (**PCC**) of Chartered Accountants Australia and New Zealand (**CA ANZ**) investigates complaints about Members<sup>1</sup> and Former or suspended Members (referred to as Member).
- If the PCC determines that the complaint is sufficiently serious to warrant referral to the Disciplinary Tribunal (**Tribunal**), the PCC will provide written notice to the Tribunal of the Offences alleged against the Member (done by way of a **Notice of Disciplinary Action**) and all supporting documents and other evidence.
- The Tribunal Secretary must give the Member at least 35 days' notice of the date, time and place or virtual location of the hearing and all information provided to the Tribunal by the PCC.
- On receipt of the Notice of Disciplinary Action and casefile the Member must, at least 14 days before the date for hearing give written notice to the Tribunal of:
  - which Offences are admitted or disputed
  - whether the Member intends to attend the hearing
  - whether the Member intends to be represented by a legal representative at the hearing and, if so, their name and contact details
  - whether the Member intends to call any evidence at the hearing and, if so, the names of the witnesses and
  - copies of any documents or other evidence on which the Member proposes to rely at the hearing, (By-Law 40.20(a)(iii)).
- Written submissions may also be made in support or explanation of their response to the allegations.
- In the usual course, and unless determined otherwise by the Tribunal:
  - the PCC will make oral submissions to the Tribunal setting out the basis for its allegation that the Member has committed an Offence, including by reference to the supporting evidence in the casefile
  - the Member should make oral submissions to the Tribunal either (as appropriate) admitting or denying the Offences and should support those submissions by referring to the supporting evidence in the casefile or provided by the Member at least 14 days prior to the hearing
  - the Tribunal will consider the evidence and submissions presented by the PCC and the Member and will then determine:
    - whether the Member has committed an Offence
    - if so, whether to impose any Sanctions
    - whether to require the Member to pay any Costs
    - whether there are any exceptional circumstances for not publishing the Member's name and location

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<sup>1</sup> Capitalised terms are as defined in the By-Laws.

- whether to notify interested parties of its decision
- if the Tribunal announces its decision at the hearing, the Member can apply for a stay of publication of that decision pending finalisation of any appeal of the decision.



## General

- Disciplinary Tribunal hearings are formal processes and Members should attend the hearing. Members may attend:
  - where the hearing is held on site: in person, or by telephone or videoconference only with the leave of the Tribunal
  - where the hearing is held virtually: by virtual link as provided by the Tribunal, or by telephone or video conference only with the leave of the Tribunal.
- The Disciplinary Tribunal panel is comprised of a maximum of 15 Members as follows (i) at least 6 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) at least 3 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. No member of the CA ANZ Board, the CA ANZ Council, the Professional Conduct Committee, the Appeals Council or the Professional Conduct Oversight Committee may be a member of the Tribunal. Complaints are determined by a quorum of the Tribunal which must be made up of at least two CA ANZ 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 40.35(c)).
- In accordance with By-Law 40.30, the Disciplinary Tribunal may record and transcribe 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 records, 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, and the Tribunal will advise the Member and PCC of its decision.

- All communications by the PCC or Member with the Tribunal outside of the hearing shall be conducted with the Tribunal Secretary, and must be copied to all parties (representatives of the PCC and of the Member).

## The hearing

- The parties, the Tribunal Secretary, the Tribunal's legal adviser (if present) (**Legal Adviser**), the transcript provider and any Members of the public or media are admitted to the virtual hearing or 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 or was 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 Offences 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 alleged Offences, call any witnesses and make submissions on factors relevant to Sanctions, including submitting the PCC's view as to the appropriate Sanctions, whether or not there are any exceptional circumstances for not publishing the Member's name and location and notification to interested parties under By-Law 40.26(f). As part of its submission, the PCC will provide a final schedule of Costs to the Tribunal and Member (updating the interim schedule distributed prior to the hearing).
- The Member will then be given the opportunity to comment on the PCC's submissions, and to make submissions on Sanctions, whether or not there are any exceptional circumstances for not publishing the Member's name and location and notification to interested parties under By-Law 40.26(f).
- If the Member seeks an order that there are exceptional circumstances for not publishing the Member's name and location pursuant to By-Law 40.26(d), the Member or their representative must make submissions supporting the claim of exceptional circumstances and should provide any supporting evidence, 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 consider its decision on all issues, including whether or not an Offence has been committed, the Sanctions, Costs, as well as publication and notification to interested parties. The Tribunal must be satisfied (even if the Offences are admitted) that the Offences 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.

If the Tribunal decides to announce its decision at the hearing, it will do so after recalling all the parties and any members of the public or the media. The Tribunal's written decision with reasons, if not available on the day, will in

most cases be provided to the PCC and the Member within 21 days of the decision being made (see By-Law 40.25(a)).

- The Member may apply to the Tribunal to stay any orders for immediate publication of the decision.

Subject to any decision by the Tribunal either for immediate publication or for restricting publication (including any orders staying the decision and/or publication of the decision or prohibiting reporting of a decision until the Tribunal's written reasons have been provided), the Tribunal's decision will be published following the later of the conclusion of the appeal period under By-Law 40.22(a) 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, setting out the Offences which it is alleged that the Member committed and the evidence in support of the alleged Offences, 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 alleged Offences 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 make closing submissions on whether or not the Member has committed the Offences.
- Members of the Tribunal may ask questions of the PCC representative, the Member and the Member's representative in relation to the matters the subject of the hearing.
- The Tribunal will then decide whether or not it considers the Member committed the alleged Offences. The Tribunal must be satisfied (even if the allegations are admitted) that the Offences have been committed before proceeding to consider 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.
- If the Tribunal decides to announce at the hearing its decision on whether or not some or all of the Offences have been committed, it will do so after recalling all the parties and any members of the public or the media.
- If the Tribunal decides that any of the Offences have been committed then:
  - the PCC representative makes submissions on Sanctions, including submitting the PCC's view as to the appropriate Sanctions, Costs, whether or not there are any exceptional circumstances for not publicising the Member's name and location (By-Law 40.26(d)) and notification to interested parties (By-Law 40.26(f)). As part of its 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, Costs, whether or not there are any exceptional circumstances for not publicising the Member's name and location and notification to interested parties.
- If the Member seeks an order that there are exceptional circumstances for not publishing the Member's name and location pursuant to By-Law 40.26(d), the Member or their representative must make submissions supporting the

claim of exceptional circumstances and should provide any supporting evidence, and the PCC representative will be given an opportunity to reply.

- The Tribunal will then consider its decision on Sanctions, Costs, publication and notification to interested parties.
- If the Tribunal decides to announce its decision at the hearing, it will do so after recalling all the parties and any members of the public or the media.
- The Chair also advises the Member of the rights of appeal available to the Member and the PCC.
- The Member may apply to the Tribunal to stay any orders for immediate publication of the decision.
- Subject to any decision of the Tribunal either for immediate publication or restricting publication (including any orders staying the decision and/or publication of the decision or prohibiting reporting of a decision until the Tribunal's written reasons have been provided), the Tribunal's decision will be published following the later of the conclusion of the appeal period under By-Law 40.22(a) 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:
  - If the Tribunal decides that the Member has been properly served with the Notice of Disciplinary Action and supporting documents and other evidence then the Tribunal may decide that the hearing will proceed in the Member's absence.
  - if the Member has not admitted the Offences alleged in the Notice of Disciplinary Action, 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 Member has admitted the Offences alleged in the Notice of Disciplinary Action, 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, will not be permitted to remain in the hearing 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 considers 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 and PCC, or
  - arrange for that individual to attend the hearing to provide oral evidence.
- The Tribunal may receive as evidence any statement, document, thing or information whether or not it would be admissible in a court.
- The PCC does not have the power to require that Members call witnesses. Likewise, Members do not have the power to require that the PCC calls witnesses.

## Production of documents

- The Tribunal may:
  - require a Member to produce documents or information to the Tribunal, on the application by another Member made on the form specified in CA ANZ Regulation CR8- Disciplinary Procedures (Regulation CR8)
  - require that any document, thing or information be provided to any person appearing at the hearing and

- impose any terms or conditions on the provision of any document or information or thing to a Member, the complainant or any other person regarding the use that may be made of them, including any assessment of any claim for confidentiality or privilege.

## Expedition

- Certain types of Offences may be dealt with by the Tribunal on an expedited basis.
- Expedited hearings may be heard by a single Tribunal member.

## Costs

- The Tribunal may make orders to require the Member to pay all or any portion of the Costs incurred by CA ANZ in respect of the investigation and hearing of the complaint.
- To assist with the Member's submissions on Costs, an interim Costs schedule is sent to the Member prior to the 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 decision 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 6.7 of the Costs Guidelines.

## Reasons, publication and appeals process

- The Tribunal's decision, including reasons will generally be provided to the Member and PCC within 21 days of the decision being made (By-Law 40.13(b)).
- The Member may at any time apply to the Tribunal to stay any orders for immediate publication of the decision, pending determination of an appeal.
- Subject to any decision by the Tribunal that its decision will take immediate effect, and the determination of any stay application, a Final Decision of the Tribunal will take effect from:
  - the day immediately after the expiry of the period during which an appeal may be notified provided that no appeal has been notified during that period
  - if an appeal has been notified which is subsequently withdrawn, from the date of withdrawal
  - if an appeal has been notified during the appeal period and not withdrawn, from the date of Final Decision of the Appeals Council.
- The Tribunal decision will generally 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 notified 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 after notice of the written decision with reasons is given.

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