



# Disciplinary Tribunal of Chartered Accountants Australia and New Zealand (CA ANZ) Written decision dated 3 June 2020

- Case Number:** D-1221
- Member:** Lyndon Allen Kingston CA of Queensland
- Hearing Date:** 27 May 2020
- Tribunal:** David Fairlie (Chair and lay member of the Tribunal)  
Bronwyn Morris AM FCA  
Kathryn Brown CA
- Tribunal Legal Adviser:** Jamesina McLeod
- Representation:** Michael Bradley for the Professional Conduct Committee (PCC)  
The Member neither appeared nor was represented
- Decisions:**
1. The Tribunal determined to suspend the Member from membership of CA ANZ on an interim basis pending further investigation and determination of the complaint.
  2. Costs were reserved until final determination of the complaint. The Tribunal noted the PCC estimate of costs to date of \$7,038.
  3. 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 written decision, 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 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 decision regarding confidentiality takes effect immediately on 27 May 2020.

The date of effect of this decision is 18 June 2020 (By-Law 40(10.18)).



## 1. Introduction

- (a) On 3 December 2019 the Australian Securities and Investments Commission (**ASIC**) issued media release 19-334MR titled “*ASIC charges former director and CEO of Credit Union, Lyndon Kingston, with criminal charges*” (the **ASIC media release**).
- (b) On becoming aware of the ASIC media release, the PCC initiated a complaint pursuant to the powers conferred by By-Laws 40(4.1) and 40(5.1) (the **Complaint**).
- (c) The PCC decided to refer the Member “*directly to the Disciplinary Tribunal (without convening a Case Conference) as it [was] satisfied that the complaint is sufficiently serious that the Disciplinary Tribunal may suspend the Member on an interim basis*”. The PCC subsequently applied to the Tribunal for suspension of the Member’s membership on an interim basis having regard to the urgency of the matter, the interests of the public, the reputation of CA ANZ, or the integrity of the profession of accountancy (By-Law 40(9.1)).
- (d) The PCC provided to the Tribunal a copy of the Brisbane Magistrates Court Verdict and Judgment Record for the Member printed 29 April 2020 (**Verdict and Judgment Record**) which listed seven charges for offences that occurred between 7 December 2015 and 22 August 2017 (the **Charges**).
- (e) The Member did not respond to the PCC during its investigation and did not respond to the PCC or the Tribunal Secretary after the matter was referred to the Tribunal.

## 2. The issues for determination

- (a) Should the hearing proceed in the absence of the Member?
- (b) Had the Member been charged with criminal offences and if yes, should the Member be suspended from membership on an interim basis?
- (c) Should the Member be required to pay costs and if so, in what amount?
- (d) Was there any reason to suppress the Member’s name from the published decision?
- (e) 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:
  - (i) first wrote to the Member by letter dated 5 February 2020 sent to the Member’s email address recorded on the General Register (the **Member’s Email Address**) and by prepaid Registered Post to the mailing address recorded for the Member on the General Register (the **Member’s Mailing Address**);
  - (ii) informed the Member of its decision to refer the matter directly to the Disciplinary Tribunal, and provided its reasons for that referral, by letter dated 24 March 2020 sent to the Member’s Email Address; and

- (iii) on 4 May 2020 arranged for service on the Member of the Notice of Disciplinary Action (**NDA**) by letter dated 1 May 2020 sent to the Member's Email Address and by prepaid Express Post to the Member's Mailing Address. The Member was also notified of the hearing date, time and location at the time of the NDA service. No bounceback, undeliverable or non-delivery notification was received for that email and the Express Post tracking reported that the item was successfully delivered to that Post Office Box and awaited collection.
- (c) The Tribunal Secretary:
- (i) on 7 and 19 May 2020 wrote to the Member by emails sent to the Member's Email Address. No bounceback, undeliverable or non-delivery notifications were received for those emails; and
- (ii) on 21 May 2020 wrote to the Member by letters sent by prepaid Express Post to:
- (1) the Member's Mailing Address; and
  - (2) the street address recorded for the Member:
    - A. as his residential address on the General Register; and
    - B. on the Verdict and Judgment Record as bail condition "*I must live at [street address]*";

**(the Member's Residential Address).**

The Express Post tracking for those letters reported that they were successfully delivered.
- (d) The Member did not respond to any of the communications listed in (b) and (c) above.
- (e) The Tribunal considered the above attempts made to contact the Member and was satisfied that he had notice that the hearing would take place on 27 May 2020. The Tribunal was also satisfied that the Member had notice that the Tribunal would be considering at the hearing the PCC's NDA and would make a decision as to whether the Member's membership should be suspended on an interim basis.
- (f) The Tribunal noted evidence provided by the PCC in support of the submission that it was more than likely the Member had received the PCC's communications referred to above, being correspondence received from a member of CA ANZ who the PCC submitted had knowledge of the matter, in which:
- (i) on 27 February 2020 that member referred to "*correspondence [the Member] received from the ICAA*" (sic); and
  - (ii) on 14 April 2020 that member wrote "*...I am sure your correspondence has reached [the Member] ... "I will forward your email to his legal counsel..."*".

However the Tribunal did not ultimately find it necessary to rely on this evidence to determine that the Member had notice that the hearing would proceed in his absence.

#### 4. Had the Member been charged with criminal offences and if yes, should the Member be suspended from membership on an interim basis?

##### 4.1 PCC submissions

- (a) The PCC submitted that, in order to suspend membership on an interim basis the Tribunal need only find that one of the factors set out in By-Law 40(9.1) was relevant. The PCC submitted that all four of those factors applied in this case, and that:

*“The criminal allegations against [the Member] strike at the heart of the profession of accountancy. Dishonesty in financial dealings, the pursuit of personal financial interest to the detriment of the organisation to which he owed fiduciary obligations and duties of fidelity, forging documents and attempting to deceive public officials, that is the nature of the allegation against him, none of those types of acts can be countenanced if committed by a member of [CA ANZ], they undermine the integrity and reputation of the membership body and of the entire profession.”*

- (b) In support of its submission, the PCC provided the following evidence:
- (i) the Verdict and Judgment Record;
  - (ii) the ASIC media release which stated *“In 2008 [the Member] became the Chief Financial Officer and then the [Chief Executive Officer] of [Bananacoast Community Credit Union Limited]”* (the **Credit Union**);
  - (iii) media reporting of the Charges:
    - (1) Josh Robertson, ‘ASIC charges former APRA staffer for providing ‘false documents’ as credit union boss’, *ABC News* (online, 3 December 2019) which reported that the Member *“was recruited from the banking watchdog”* (the Australian Prudential Regulation Authority (**APRA**)) by the Credit Union and *“was previously a senior manager in APRA’s specialised institutions division, where he supervised credit unions, including [the Credit Union] before it recruited him in 2008”*; and
    - (2) John Kavanagh, ‘Former credit union boss on criminal charges’, *Banking Day* (online, 4 December 2019);

**(Media Articles)**; and
  - (iv) a copy of the Member’s CA ANZ record which recorded the Member’s previous employment history as “Senior Accounting Specialist” with APRA.
- (c) In making this submission the PCC drew the Tribunal’s attention to the following:
- (i) the theoretical maximum possible penalties that the Member could face from the Charges would amount to a maximum 35 years’ imprisonment and fines of over \$2.2 million demonstrated the seriousness of the alleged conduct;
  - (ii) the Member had previously held senior managerial roles at APRA and the Credit Union; and
  - (iii) the Member had been granted bail on 29 November 2019 and there was no evidence that it had been revoked.

## 4.2 Tribunal decision and reasons

- (a) The Tribunal was satisfied that the Member had been charged with serious criminal offences.
- (b) In determining whether to suspend membership on an interim basis, the Tribunal is not required to make a determination as to guilt or innocence or to determine the facts. The power of interim suspension is intended as a protective provision for the benefit of the public and the reputation of CA ANZ and the profession generally.
- (c) The Tribunal considered the factors it must take into account when determining an application for interim suspension. Those factors are set out in By-Law 40(9.1) which states:
  - ...if the Disciplinary Tribunal is satisfied that it is necessary or desirable to do so, having regard to the urgency of the matter, the interests of the public, the reputation of CA ANZ, or the integrity of the profession of accountancy, the Disciplinary Tribunal may suspend the Member from Membership of CA ANZ on an interim basis pending further investigation and determination of the complaint.
- (d) The Tribunal was satisfied, having regard to each of the factors of By-Law 40(9.1) which the Tribunal considered were all applicable, that it was both necessary and desirable to suspend the Member's membership on an interim basis because:
  - (i) the Charges against the Member were objectively very serious, involving fraud and forgery allegedly for the personal advantage of the Member. If convicted it would potentially involve the Member in a substantial prison sentence. However the Tribunal noted that the Member had not yet been required to plead to the Charges;
  - (ii) the Media Articles, in particular the statement that the Member was due back in Court in late May, suggested the matter has the potential to generate further adverse publicity for the profession and for CA ANZ, given there was the potential for his CA ANZ membership to be publicised;
  - (iii) the Member had been granted bail and the Member could potentially represent himself as a Chartered Accountant;
  - (iv) there were no mitigating factors provided to the Tribunal in relation to any of the Charges.
- (e) The Tribunal determined that the Member be suspended from membership of CA ANZ on an interim basis until the earlier of:
  - (i) six months after the full and final resolution of the later of:
    - A. all civil and criminal proceedings against him; and
    - B. all regulatory investigations into his conduct; or
  - (ii) further investigation and determination of the complaints arising from the matters referred to in allegations 1 to 4 of the NDA.

## 5. Should the Member be required to pay costs and if so, in what amount?

The PCC did not seek a determination on costs however noted that the estimated costs to date were \$7,038.

## 6. Was there any reason to suppress the Member's name from the published decision?

(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.

## 7. 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.

## 8. RIGHTS OF APPEAL

The Member may, within 14 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-Laws 40(9.4)(a) and (11.1)).

The PCC may, within 14 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-Laws 40(9.4)(a) and (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) interim suspension
- (b) publication
- (c) notification.

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



**Chair  
Disciplinary Tribunal**

## **SCHEDULE 1: THE PCC'S NOTICE OF DISCIPLINARY ACTION**

The Professional Conduct Committee sought a determination that the Member's membership of Chartered Accountants Australia and New Zealand (Chartered Accountants ANZ) be suspended on an interim basis.

It is alleged that on or about 29 November 2019, while a member of Chartered Accountants ANZ, the Member was charged with the following criminal offences:

1. Three counts of dishonest use of his position as a director of Bananacoast Community Credit Union Limited (BCU) under section 184(2) of the Corporations Act 2001 (Cth);
2. Two counts of providing false information under section 1309(1) of the Corporations Act 2001 (Cth);
3. One count of making a false document with the intention of dishonestly inducing a Commonwealth public official to accept it as genuine under section 144.1(1) of the Criminal Code (Cth); and
4. One count of using a false document with the intention of dishonestly inducing a Commonwealth public official to accept it as genuine under section 145.1(1) of the Criminal Code (Cth).

The Professional Conduct Committee sought the interim suspension on the basis that it was necessary or desirable having regard to the criteria in By-Law 40(9.1), being the urgency of the matter, interests of the public, reputation of Chartered Accountants ANZ or the integrity of the profession of accounting, which were likely to be satisfied by reason of the Member's alleged conduct.

The time period for which the Professional Conduct Committee sought that the interim suspension apply was the earlier of:

- (a) six months after the full and final resolution of the later of:
  - i. all civil and criminal proceedings against the Member; and
  - ii. all regulatory investigations into the Member's conduct; or
- (b) further investigation and determination of the complaints arising from the matters referred to in paragraphs 1 – 4 above.

## 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(9) Interim suspension of Membership**

40(9.1) On application by the Professional Conduct Committee for the interim suspension of a Member, if the Disciplinary Tribunal is satisfied that it is necessary or desirable to do so, having regard to the urgency of the matter, the interests of the public, the reputation of CA ANZ, or the integrity of the profession of accountancy, the Disciplinary Tribunal may suspend the Member from Membership of CA ANZ on an interim basis pending further investigation and determination of the complaint.

40(9.2) For the period of a Member's suspension on an interim basis:

- (a) that Member's name shall be removed from the Registers on which it appears; and
- (b) that Member:
  - (i) loses the rights and privileges of Membership;
  - (ii) must surrender to CA ANZ that Member's certificate of Membership, certificate(s) of public practice and any other documents specified in By-Law 40(13.4); and
  - (iii) remains subject to the disciplinary processes and sanctions under these By-Laws (including this Section 5) as if still a Member.

40(9.3) The provisions of By-Law 40(10) apply to the procedures for a hearing on an application for interim suspension under this By-Law 40(9), except that:

- (a) the Notice of Disciplinary Action to be given in accordance with By-Law 40(10.1) must specify that the hearing is on an application by the Professional Conduct Committee for interim suspension;
- (b) the minimum 35 day time periods in By-Laws 40(10.1) and 40(10.3) are shortened to 14 days;
- (c) without prejudice to By-Law 40(13.8) , By-Laws 40(10.12)(a) to (j), and 40(10.13) (sanctions) do not apply; and

- (d) the maximum period within which the Disciplinary Tribunal is to notify its decision and give reasons in accordance with By-Law 40(10.15) is reduced to 7 days.

40(9.4) The provisions of By-Law 40(11) apply to the procedures for an appeal of a decision by the Disciplinary Tribunal in respect of the hearing of an application for interim suspension under this By-Law 40(9), except that:

- (a) the maximum 21 day time periods in By-Laws 40(11.1) and 40(11.2) (time for notifying appeal) are shortened to 14 days;
- (b) the minimum 28 day time period in By-Law 40(11.6) (notice of hearing) is reduced to 14 days; and
- (c) the maximum period within which the Appeals Tribunal is to notify its decision and give reasons in accordance with By-Law 40(11.15) is reduced to 7 days.

...

#### **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:

...

- (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(10.16) 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.
- (c) The Disciplinary Tribunal or Appeals Tribunal may determine to hear any part of a hearing in private.
- (d) The Disciplinary Tribunal or Appeals 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.

## **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.*