



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

Written decision dated 22 February 2021

- Case Number:** D-1240
- Member:** Nitin Nalinkant Gathani CA of Western Australia
- Hearing Date:** 3 February 2020
- Tribunal:** Simon Wallace-Smith FCA (Chair)
Josephine Stevens FCA
Jenni Millbank, lay member of the Tribunal
- Tribunal Legal Adviser:** Joshua Kangisser
- Representation:** Michael Bradley for the Professional Conduct Committee (PCC)
The Member was not required to appear
- Decisions:**
1. Pursuant to By-Law 40(10.13) and with the written consent of the PCC and the Member, the Tribunal determined to dispense with the procedures in By-Law 40(10).
 2. The Tribunal determined that the Member:
 - (a) has been the subject of an adverse or unfavourable finding in relation to that Member's professional or business conduct, competence and integrity by the Tax Practitioners Board, in breach of By-Law 40(2.1)(e);
 - (b) has had imposed a condition or restriction on a professional registration in his name, in breach of By-Law 40(2.1)(g);
 - (c) committed breaches of APES 220 *Taxation Services*, in breach of By-Law 40(2.1)(h);
 - (d) committed acts, omissions and defaults which bring, or may bring, discredit upon the Member, CA ANZ and the profession of accountancy, in breach of By-Law 40(2.1)(k).
 3. The Tribunal determined to suspend the Member from membership of CA ANZ until 11 November 2024 and remove the Member's name from the Registers on which it appears.
 4. The Tribunal imposed a cost sanction in the sum of \$12,458 for the full costs and expenses of the proceedings.
 5. The Tribunal made the following directions regarding the conduct of the hearing and the publication of its reasons for decision:

- (a) to accept the Member's response to By-Law 40(10.4) which had been provided out of time;
- (b) to accept documentation from the PCC which had been provided after the last date directed by the Tribunal;
- (c) to receive, by way of the PCC, written confirmation that the Member consented to notification of its decision to the Tax Practitioners Board;
- (d) its decision with reasons, mentioning the Member's name and location, be published on the CA ANZ website (the **Published Decision**);
- (e) a summary of the Published Decision mentioning the Member's name and location with a web address for the Published Decision be published in the CA ANZ official publication, *Acuity*;
- (f) to notify its decision to:
 - (i) any bodies with whom the Member holds a professional registration or membership; and
 - (ii) the Tax Practitioners Board;
- (g) 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;
- (h) the decision regarding confidentiality takes effect immediately from 3 February 2020.

The date of effect of this decision is 16 March 2021 (By-Law 40(10.18)).



1. Introduction

- (a) The Member became a registered tax agent on 1 October 2003 and joined CA ANZ on 4 May 2010.
- (b) In around July 2020 CA ANZ became aware that the Tax Practitioners Board (**TPB**):
 - (i) terminated the Member's registration as an Individual Tax Agent effective 11 November 2019; and
 - (ii) disqualified him from applying for registration from 11 November 2019 to 11 November 2024;

because the TPB found the Member *"had engaged in conduct the (sic) breached the Code of Professional Conduct ('Code'), and the TPB found he no longer met the registration requirements as he was not a fit and proper person"* (**TPB Decision**).

- (c) The PCC initiated a complaint pursuant to the powers conferred by By-Laws 40(4.1) and 40(5.1) (the **Complaint**). After investigating the Complaint, the PCC referred the Member to the Tribunal by way of Notice of Disciplinary Action (set out in full in Schedule 1) (the **NDA**) which in summary alleged that:
 - 1. the Member had been the subject of an adverse or unfavourable finding by the TPB which found he had:
 - a. added two taxpayers to the Tax Agents Portal without their consent;
 - b. lodged five Income Tax Returns (ITRs) for taxpayers without their consent;
 - c. lodged three Business Activity Statements (BAS) for a taxpayer without her consent;
 - d. made false statements to the TPB in a registration renewal application and annual declarations by failing to declare overdue personal tax obligations;
 - e. failed to comply with the taxation laws by failing to cause related entities to lodge ITRs and BAS on time;
 - f. failed to ensure that the tax agents services he provided, or that were provided on his behalf, were provided competently;
 - g. obstructed the proper administration of the taxation laws by influencing, or attempting to influence, witnesses to a TPB investigation to give evidence to the TPB that was not completely truthful.

The TPB also found that the evidence showed the Member instructed an employee to falsify invoices to fraudulently obtain goods and services tax (GST) refunds for a client;

 - 2. by reason of the matters in allegation 1, a restriction had been imposed on a professional registration in the Member's name;
 - 3. the Member had committed a breach of sections 9.1 and 9.2 of APES 220 *Taxation Services* (**APES 220**) in circumstances where he:
 - a. received payment of a tax refund in 2015 on behalf of a client which was paid into the Member's bank account but was not transmitted to the client thereafter;
 - b. received payment of a tax refund on behalf of a client which was paid into the Member's bank account and which in late 2016 or early 2017 was applied

towards the payment of rent due to him by the client without written authority from the client;

4. the Member's acts, omissions and defaults associated with the matters set out in allegations 1, 2 and 3 brought, or could bring, discredit on the Member, CA ANZ or the profession of accountancy.
- (d) The PCC and the Member subsequently reached an agreement as to sanctions for the Tribunal's consideration pursuant to By-Law 40(10.13) which states:
- ...the Disciplinary Tribunal may, with the written consent of the relevant Member and the Professional Conduct Committee, dispense with any or all of the procedures in this By-Law 40(10) and impose any of the sanctions permitted in By-Law 40(10.12)...

2. Proposed agreement as to sanctions

Effective 27 January 2021 the PCC and the Member reached an agreement as to sanctions (the **Agreement as to Sanctions**) in the following terms:

The Member ... and the [PCC] consent to the Disciplinary Tribunal of CA ANZ dispensing with the procedures in By-Law 40 (10) of the By-Laws of CA ANZ in relation to complaint D-1240 made against the Member and proceeding directly to the imposition of sanctions on the following terms:

1. *The [PCC] will appear at the scheduled hearing of the matter at 12:00PM (AEDT) on 3 February 2021. The Member will not be required to attend the hearing.*
2. *The [PCC] will present to the Disciplinary Tribunal a signed copy of this Agreement including the annexed Agreed Statement of Facts.*
3. *The Member admits to the allegations contained in the Notice of Disciplinary Action dated 10 December 2020.*
4. *The Disciplinary Tribunal may determine the matter without further submissions or evidence being required from either the [PCC] or the Member and impose the following sanctions:*
 - (a) *The Member's membership of CA ANZ be suspended, until 11 November 2024 and the Member's name be removed from the Registers on which it appears;*
 - (b) *The Member will pay a contribution to CA ANZ of \$12,458 towards the costs and expenses of the disciplinary action;*
 - (c) *The Disciplinary Tribunal's decision with reasons, mentioning the Member's name and locality, will be published on the CA ANZ website (the Published Decision);*
 - (d) *A summary of the Published Decision mentioning the Member's name and locality with a web address for the Published Decision will be published in the CA ANZ official publication, Acuity; and*
 - (e) *The Disciplinary Tribunal will notify its decision to any bodies with whom the Member holds a professional registration or membership.*
5. *If the Disciplinary Tribunal is not prepared to dispense with the procedures in By-Law 40 (10) on the terms above then the Member and the [PCC] jointly seek and will consent to the hearing of the complaint being adjourned for a period of not less than 14 days.*

Signed

[The Member]

18 January 2021

Signed

Chair of the [PCC]

27 January 2021

Annexed to the Agreement as to Sanctions was a statement of agreed facts:

Statement of Agreed Facts

Date	Event	Case File Page
2010.05.04	The Member became a Member of CA ANZ	63
2010.05.11	The Member obtained his CPP	65

Date	Event	Case File Page
2019.05.21	The Member received a Notice of Alleged Breach from the Tax Practitioner's Board (TPB) which alleged breaches of the Code of Professional Conduct (Code) as set out in section 30-10 of the Tax Agent Services Act 2009 (TASA) and that he did not meet the registration requirements as set out in section 20-5 of TASA that he be a fit and proper person.	31-52
2019.06.14	<p>The Member provided a response to the Notice of Alleged Breach to the TPB.</p> <p>The Member admitted in relation to Ms K that he had received payment of a tax refund on her behalf which was paid into his bank account and which in late 2016 or early 2017 was applied towards the payment of rent due to him by Ms K without written authority from her.</p> <p>The Member also admitted in relation to Ms P that he had received payment of a tax refund in 2015 on her behalf which was paid into his bank account but was not transmitted to Ms P thereafter.</p>	53-62 54-55 56-57
2019.11.11	<p>The Member's Tax agent registration was terminated by the TPB with effect from 11 September 2019. The TPB found that the Member had engaged in conduct which breached the Code and that he no longer met the registration requirements as he was not a fit and proper person. The TPB found that the Member engaged in conduct which breached the Code as:</p> <ol style="list-style-type: none"> He added two taxpayers to the Tax Agents Portal without their consent; He lodged five Income Tax Returns (ITRs) for taxpayers without their consent; He lodged three Business Activity Statements (BAS) for a taxpayer without her consent; He made false statements to the TPB in a registration renewal application and annual declarations by failing to declare overdue personal tax obligations; He failed to comply with the taxation laws by failing to cause related entities to lodge ITRs and BAS on time; He failed to ensure that the tax agents services he provided, or that were provided on his behalf, were provided competently in that he failed to report pay as you go withholding (PAYGW) and superannuation guarantee charge (SGC) amounts for one client by the due date and he failed to correctly report BAS amounts for a second client resulting in tax shortfall amounts owed to the Australian Taxation Office (ATO) along with the imposition of penalties; He obstructed the proper administration of the taxation laws by influencing, or attempting to influence, witnesses to a TPB investigation to give evidence to the TPB that was not completely truthful. <p>The TPB also found that the evidence showed the Member instructed an employee to falsify invoices to fraudulently obtain goods and services tax (GST) refunds for a client.</p> <p>The TPB imposed a period of five years during which the Member may not apply for re-registration, concluding on 11 November 2024.</p>	29-30
2020.07.31	Chartered Accountants ANZ (CA ANZ) advised the Member of the complaint made against him in relation to the decision by the TPB.	70-72
2020.09.23	<p>The Member provided a detailed response to the complaint including numerous supporting documents.</p> <p>In relation to Ms K, the Member admitted that he used the tax refund towards outstanding rent.</p>	91-238 94

3. The issues for determination

- (a) Should the Tribunal accept the PCC's submission received after the deadline directed by the Tribunal?
- (b) Should the Tribunal dispense with the procedures in By-Law 40(10)?
- (c) Was the Tribunal satisfied that the allegations admitted by the Member had been established?
 - (i) Had the Member been the subject of adverse or unfavourable findings by the TPB in relation to his professional or business conduct, competence or integrity, in breach of By-Law 40(2.1)(e)? (allegation 1)
 - (ii) Had a restriction been imposed on a professional registration in the Member's name, in breach of By-Law 40(2.1)(g)? (allegation 2)
 - (iii) Had the Member committed a breach of sections 9.1 and 9.2 of APES 220, in breach of By-Law 40(2.1)(h)? (allegation 3)
 - (iv) Did the Member's acts, omissions and defaults associated with the matters set out in allegations 1, 2 and 3 bring, or could they bring, discredit on the Member, CA ANZ or the profession of accountancy? (allegation 4)
- (d) Was the Tribunal satisfied that the sanctions and other matters proposed in the Agreement as to Sanctions are appropriate:
 - (i) If the answer to (b) and (c)(i), (c)(ii), (c)(iii) or (c)(iv) was yes, what sanctions should be imposed on the Member?
 - (ii) Should the Member be required to pay costs and if so, in what amount?
 - (iii) Was there any reason to suppress the Member's name from the published decision?
 - (iv) Should other parties be notified of the Tribunal's decision?
 - (v) Should any confidentiality orders be made?

4. Should the Tribunal accept the PCC's submission received after the deadline directed by the Tribunal?

- (a) The Tribunal notified the Member and the PCC by letter of 17 December 2020 that if the parties wished to provide written submissions or further evidence those materials were to be provided by the Member's By-Law 40(10.4) deadline of 19 January 2021 and the PCC deadline of 26 January 2021.
- (b) The PCC provided the Agreement as to Sanctions one day late however it noted the last day stipulated for its provision was a public holiday and therefore sought the Tribunal's permission to submit the Agreement as to Sanctions.
- (c) The Tribunal decided to consent to the material being submitted one day late. There was no prejudice to the Member and no inconvenience to the Tribunal.

5. Should the Tribunal dispense with the procedures in By-Law 40(10)?

Pursuant to By-Law 40(10.13) and with the written consent of the PCC and the Member, the Tribunal determined to dispense with the procedures in By-Law 40(10).

Was the Tribunal satisfied that the allegations admitted by the Member had been established?

6. Had the Member been the subject of adverse or unfavourable findings by the TPB in relation to his professional or business conduct, competence or integrity, in breach of By-Law 40(2.1)(e)? (allegation 1)

6.1 Agreed facts

The PCC alleged and the Member admitted, that the Member had been the subject of adverse or unfavourable findings by the TPB in relation to his professional or business conduct, competence or integrity in circumstances where his tax agent registration was terminated for breaches of the Code of Professional Conduct of the *Tax Agent Services Act 2009* and because he no longer met the registration requirement that he be a fit and proper person.

6.2 Tribunal decision and reasons

The Tribunal was satisfied the allegation was established because:

- (a) the Tribunal was provided with a copy of the TPB Decision;
- (b) the Tribunal was of the opinion that the TPB Decision contained adverse or unfavourable findings about the Member's conduct, competence and integrity because it contained:
 - (i) a finding that the Member "...no longer met the registration requirements as he was not a fit and proper person";
 - (ii) findings that the Member had engaged in obstruction of the proper administration of taxation law, failed to comply with taxation law, and that he had made false statements to the TPB;

which the Tribunal considered were seriously adverse and unfavourable findings about the Member's professional or business conduct, competence and integrity;

- (c) the Member admitted the allegation.

7. Had a restriction been imposed on a professional registration in the Member's name, in breach of By-Law 40(2.1)(g)? (allegation 2)

7.1 Agreed facts

The PCC alleged and the Member admitted, that by reason of the matters set out in allegation 1, a restriction had been imposed on a professional registration in the Member's name.

7.2 Tribunal decision and reasons

The Tribunal was satisfied the allegation was established because:

- (a) the Tribunal was provided with a copy of the Member's TPB registration details which stated:
 - "Registration type: Individual Tax Agent"
 - "Registration status: Terminated"
 - "Disqualification: Period of Effect: 11/11/2019 to 11/11/2024
Reason: 40-25 Period during which you may not apply for registration"

Termination: *Date of Effect: 11/11/2019*
 Reason: 40-5(1)(b) individual no longer meets registration requirements"

- (b) to establish a breach of By-Law 40(2.1)(g), what has to be proved is that the Member "has had imposed, any condition or restriction on any professional membership, registration or licence" in his name;
- (c) due to the Member's disqualification from the TPB for a period of five years, there was a breach of the By-Law;
- (d) the Member admitted the allegation.

8. Had the Member committed a breach of sections 9.1 and 9.2 of APES 220, in breach of By-Law 40(2.1)(h)? (allegation 3)

8.1 Agreed facts

The PCC alleged and the Member admitted, that:

- (a) the Member received a tax refund on behalf of a client which was applied towards the payment of rent due to him without a written authority from the client;
- (b) the Member received a payment of a tax refund on behalf of a client which he did not transfer to the client thereafter; and
- (c) the Member had committed a breach of sections 9.1 and 9.2 of APES 220.

8.2 Tribunal decision and reasons

The Tribunal was satisfied the allegation was established because it was admitted that the Member had:

- (a) failed to remit clients' tax refunds. This conduct breached s 9.1 of APES 220;
- (b) received a tax refund on behalf of a client but had applied it to a debt which he claimed was due to him by that client without any written authority from that client. This conduct breached s 9.2 of APES 220.

The Member admitted that this involved a breach of sections 9.1 and 9.2.

9. Did the Member's acts, omissions and defaults associated with the matters set out in allegations 1, 2 and 3 bring, or could they bring, discredit on the Member, CA ANZ and the profession of accountancy? (allegation 4)

9.1 Agreed facts

The PCC alleged and the Member admitted, that the Member's acts, omissions and defaults associated with the matters set out in allegations 1, 2 and 3 brought, or could bring, discredit on him, CA ANZ or the profession of accountancy.

9.2 Tribunal decision and reasons

- (a) The Tribunal was satisfied the allegation was established and that the Member had brought discredit to the Member, CA ANZ and the profession of accountancy because:

- (i) the TPB Decision was in the public domain;
- (ii) the TPB found that the Member was no longer a fit and proper person and therefore brought discredit on himself;
- (iii) members of the public expect high standards of Chartered Accountants in dealing with their personal financial affairs;

and the Tribunal was of the view that the Member's conduct as set out in these reasons above, in particular the TPB's findings of the Member making false statements and his misapplication of client tax funds, falls short of meeting the high standards expected of a Chartered Accountant.

- (b) The Member admitted the allegation.

Was the Tribunal satisfied that the sanctions and other matters proposed in the Agreement as to Sanctions are appropriate?

10. What sanctions should be imposed on the Member?

- (a) Regulation CR 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 and the Member agreed to the imposition of a suspension of the Member's membership to 11 November 2024.
- (d) Having regard to all the factors in Regulation CR 8.11, the Tribunal concluded that the proposed agreed sanctions put forward by the PCC and the Member were appropriate. The Tribunal made this determination because:
 - (i) the suspension of membership was a proportionate and appropriate recognition of the seriousness of the Member's conduct;

- (ii) the period of the suspension was in keeping with the period imposed by the TPB;
 - (iii) at the conclusion of the suspension the Member will be required to reapply for membership and satisfy the CA ANZ Board that he meets the registration requirements which include that he be a fit and proper person.
- (e) The Tribunal has no power to intervene in the decision of the CA ANZ Board when considering any future application by the Member to re-join CA ANZ membership. However given the seriousness of the TPB's findings and the admitted conduct, including acts of dishonesty, very serious ethical breaches, and breakdown of policies and procedures in the Member's office, the Tribunal suggests that the Member give earnest consideration to what steps he might take between now and any future reapplication to demonstrate remediation. Such remediation could address how the Member has made improvements in his knowledge and attitude to his professional obligations. Consideration could be given to further ethical training, in particular training concerning the proper conduct of trust funds and issues concerning management of professional boundaries.

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

- (a) Regulation CR 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 and the Member agreed that the Member should pay \$12,458 towards the costs and expenses of the disciplinary action.
- (c) Having regard to all the factors in Regulation CR 8.12 and the detailed costs schedule handed up by the PCC, the Tribunal concluded that there was no compelling reason to depart from the proposed costs sanction put forward by the PCC and the Member. The Tribunal determined that the order of costs was appropriate and reasonable in the circumstances.

12. 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 was satisfied that there were no exceptional circumstances and that the Member's name should be published.
- (c) The Member agreed to the publication of his name and location.

13. 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 Member consented to the Tribunal decision being notified to any bodies with whom he holds a professional registration or membership. The Tribunal was notified that the Member holds registrations and/or memberships with the Australian Securities and Investments Commission (**ASIC**), CPA Australia and The Tax Institute.
- (c) The Member previously held a registration with the TPB and the Tribunal identified that body as an interested party. During the hearing of the matter, the PCC advised the Tribunal that it had contacted the Member and obtained his consent to notify the TPB of the Tribunal's decision. The Tribunal requested that the PCC send a copy of the Member's consent in writing to the Tribunal, which the PCC provided on 3 February 2021.
- (d) The Tribunal determined that, due to the Member's association with those bodies, ASIC, CPA Australia, The Tax Institute and the TPB were interested parties and should be notified of this decision. The Member agreed to these notifications being given.

14. 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.

15. Rights of appeal

The Member and the PCC may give notice of appeal against any determination made or sanction imposed by the Tribunal, within 21 days after notice of the written reasons for such determination or sanction is given to them. Any such notice of appeal must be given using the form prescribed by the Regulations (By-Laws 40(11.1) and 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 decision as to confidentiality took effect immediately.



Chair
Disciplinary Tribunal

SCHEDULE 1: THE PCC'S ALLEGATIONS

It is alleged that while a member of Chartered Accountants Australia and New Zealand (CA ANZ) the Member is liable to disciplinary action in accordance with:

1. By-Law 40(2.1)(e) in that the Member has been the subject of an adverse or unfavourable finding in relation to his professional or business conduct, competence or integrity by a statutory authority or body or regulatory authority in circumstances where the Member's tax agent registration was terminated by the Tax Practitioner's Board (TPB) with effect from 11 September 2019 and he is unable to apply for re-registration for a period of 5 years, concluding on 11 November 2024, on the basis that the Member engaged in conduct which breached the Code of Professional Conduct (Code) and no longer meets the registration requirement that he be a fit and proper person. The TPB found that the Member engaged in conduct which breached the Code as:
 - a. He added two taxpayers to the Tax Agents Portal without their consent;
 - b. He lodged five Income Tax Returns (ITRs) for taxpayers without their consent;
 - c. He lodged three Business Activity Statements (BAS) for a taxpayer without her consent;
 - d. He made false statements to the TPB in a registration renewal application and annual declarations by failing to declare overdue personal tax obligations;
 - e. He failed to comply with the taxation laws by failing to cause related entities to lodge ITRs and BAS on time;
 - f. He failed to ensure that the tax agents services he provided, or that were provided on the Member's behalf, were provided competently in that he failed to report pay as you go withholding (PAYGW) and superannuation guarantee charge (SGC) amounts for one client by the due date and he failed to correctly report BAS amounts for a second client resulting in tax shortfall amounts owed to the Australian Taxation Office (ATO) along with the imposition of penalties;
 - g. He obstructed the proper administration of the taxation laws by influencing, or attempting to influence, witnesses to a TPB investigation to give evidence to the TPB that was not completely truthful.

The TPB also found that the evidence showed the Member instructed an employee to falsify invoices to fraudulently obtain goods and services tax (GST) refunds for a client.

2. By-Law 40(2.1)(g) in that by reason of the matters set out in paragraph 1 above the Member has had imposed a restriction on a professional registration in his name;
3. By-Law 40(2.1)(h) in that the Member has committed a breach of sections 220 9.1 and 9.2 of APES 220, *Taxation Services*, in circumstances where he:
 - a. received payment of a tax refund in 2015 on behalf of a client which was paid into the Member's bank account but was not transmitted to the client thereafter;
 - b. received payment of a tax refund on behalf of a client which was paid into the Member's bank account and which in late 2016 or early 2017 was applied towards the payment of rent due to him by the client without written authority from the client.
4. By-law 40(2.1)(k), in that the acts, omissions and defaults associated with the matters set out in paragraphs 1, 2 and 3 above bring, or may bring, discredit on the Member, CA ANZ or the profession of accountancy.

SCHEDULE 2: RELEVANT BY-LAWS

Section 4 – Rights and Obligations of Members

...

Certificates of Public Practice

34. ...

- (d) The certificate of public practice of a Member upon whom any of the sanctions referred to in By-Laws 40(9.1), 40(10.12)(a) to (d) of By-Law 40 or By-Law 41 has been imposed, shall, subject to any appeal under By-Law 40(11), ipso facto, be cancelled and, accordingly, cease to be a current certificate of public practice in terms of By-Law 34(a).

...

Compliance Obligations

38A. A Member must at all times comply with the Supplemental Charter, these By-Laws and:

- (a) for all Members who are not subject to the NZICA Rules, the Regulations, any pronouncements issued by the Accounting Professional and Ethical Standards Board, Australian Accounting Standards Board and Auditing and Assurance Standards Board (or their successor entities) including the Code of Ethics, and any applicable pronouncements, instruments, technical or professional standards or guidance issued by any similar body whether in Australia or in a foreign jurisdiction;

...

Section 5 - Professional Conduct

39. In this Section 5 unless the context requires otherwise:

...

- (h) **Costs** means any costs and expenses incurred by or on behalf of CA ANZ in relation to the investigation and determination of a complaint (whether through the Professional Conduct Committee, Disciplinary Tribunal, Appeals Tribunal or otherwise) and any other taxes, fees and charges, paid or payable on them, including, without limitation:
- (i) fees and disbursements of professionals, advisors or consultants employed, engaged or retained to investigate, represent, appear (as expert witnesses or otherwise), hear, or determine the complaint or advise on the same; and
- (ii) other outgoings and disbursements including, without limitation, couriers, any transport, travel, accommodation, search fees, transcription services, outsourced photocopying, publication fees, room hire, video-conferencing, telephone conferencing and meals;

...

- (o) **Notice of Disciplinary Action** has the meaning given to it in By-Law 40(10.1);

...

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(1) Committees and Tribunals

40(1.1) For the implementation of the procedures referred to in this Section 5, there shall be the following committees and tribunals:

...

- (b) a Professional Conduct Committee which shall receive, initiate, investigate, determine and refer complaints;
- (c) a Disciplinary Tribunal which shall hear and determine complaints made to it by the Professional Conduct Committee; and

...

40(1.3) Subject to these By-Laws, the Regulations and the Charters, each committee and tribunal shall regulate its own affairs and may delegate any of its functions.

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:

...

- (e) has been the subject of an adverse or unfavourable finding in relation to that Member's professional or business conduct, competence or integrity by any court of law, professional body, royal commission, statutory authority, regulatory authority, statutory body, commission or inquiry in any jurisdiction in Australia or elsewhere;

...

- (g) has agreed to, or has had imposed, any condition or restriction on any professional membership, registration or licence in that Member's name;
- (h) has committed any breach of the Supplemental Charter, these By-Laws or the Regulations, any pronouncements issued by the Accounting Professional and Ethical Standards Board, Australian Accounting Standards Board and Auditing and Assurance Standards Board (or their successor entities) including the Code of Ethics, or any applicable pronouncements, instruments, technical or professional standards or guidance issued by any similar body whether in Australia or in a foreign jurisdiction;

...

- (k) has committed any act, omission or default which, in the opinion of the Professional Conduct Committee, Disciplinary Tribunal or Appeals Tribunal brings, or may bring, discredit upon that Member, CA ANZ or the profession of accountancy;

...

40(10) Disciplinary Tribunal

40(10.1) Subject to By-Laws 40(9.3)(a) and 40(9.3)(b), when a complaint is referred by the Professional Conduct Committee to the Disciplinary Tribunal, the Professional Conduct Committee must, unless the Member otherwise consents, give to the Member concerned a notice (**Notice of Disciplinary Action**) no less than 35 days before the Disciplinary Tribunal hearing setting out:

- (a) details of the complaint made against the Member and any particulars and information in support;
- (b) the date, time and place of the hearing before the Disciplinary Tribunal; and
- (c) where the Professional Conduct Committee's case against the Member will be presented at the Disciplinary Tribunal hearing by an independent Australian legal practitioner, a statement to that effect and, if known, the legal practitioner's name and firm, organisation or chambers.

...

40(10.4) The Member receiving a Notice of Disciplinary Action ... shall, unless the Professional Conduct Committee otherwise consents, not less than 14 days before the date of the hearing, state in writing to the Professional Conduct Committee:

- (a) whether the Member will attend the hearing and, if represented, by whom (including details of that representative's name and firm, organisation or chambers);
- (b) the matters the Member admits or disputes in the Notice of Disciplinary Action;
- (c) whether the Member intends to adduce any evidence at the hearing, and the names, qualifications and organisations of any witnesses the Member intends to call; and
- (d) any relevant fact or circumstance the Member wishes to bring to the attention of the Disciplinary Tribunal and the reasons for doing so.

...

40(10.7) Failure by the Member to comply with any or all of the above requirements (or to attend) shall not preclude the Disciplinary Tribunal from proceeding to hear and determine a Notice of Disciplinary Action at the appointed time.

40(10.8) The Disciplinary Tribunal may appoint a legal adviser who is an Australian legal practitioner to advise (attending the hearing as necessary) the Disciplinary Tribunal on matters of law, procedure and evidence.

40(10.9) At every hearing before the Disciplinary Tribunal, the Professional Conduct Committee shall be responsible for the presentation of the case against the Member. The Professional Conduct Committee may appoint an independent Australian legal practitioner to present the case on its behalf.

40(10.10) The Disciplinary Tribunal shall give the Member concerned or that Member's representative a reasonable opportunity of being heard and shall give due consideration to any material that Member may submit.

40(10.11) The Disciplinary Tribunal shall determine whether or not the complaint contained in the Notice of Disciplinary Action, or any part thereof, is established.

- 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
- ...
- (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(10.13) Subject to By-Law 40(9.3)(c) the Disciplinary Tribunal may, with the written consent of the relevant Member and the Professional Conduct Committee, dispense with any or all of the procedures in this By-Law 40(10) and impose any of the sanctions permitted in By-Law 40(10.12) or accept a written undertaking under By-Law 40(13.8).
- ...
- 40(10.15) Written notice of every decision of the Disciplinary Tribunal, including reasons for the decision and any sanctions imposed, must be given by the Disciplinary Tribunal to the relevant Member, the Professional Conduct Committee and to the Professional Conduct Oversight Committee, subject to By-Law 40(9.3)(d), within 21 days of the Disciplinary Tribunal's decision.
- 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(11.3) A notice of appeal must state the grounds of appeal in full and the grounds so stated shall not thereafter be amended except with the approval of the Appeals Tribunal.
- 40(11.4) The Appeals Tribunal may, at its discretion, require the Member to pay such amount as it determines to CA ANZ as security against the anticipated Costs which CA ANZ may incur in the conduct and hearing of the appeal.
- 40(11.5) The Appeals Tribunal may, at its discretion, stipulate a time period of not less than 28 days within which the Member must pay the amount referred to in By-Law 40(11.4) and, if it does so and the Member has not paid that amount at the expiry of that period, the appeal will automatically lapse.

...

- 40(11.7) Every appeal shall be by way of rehearing but, unless the Appeals Tribunal directs otherwise, it shall not allow witnesses to be recalled who gave evidence before the Disciplinary Tribunal or to introduce any new evidence.

...

40(12) Publication of investigations and decisions

...

- 40(12.3) Where the Disciplinary 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 ... 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 ... 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.
- 40(12.5) No publication of a Disciplinary Tribunal decision or sanction will be made until the later of the day following the final date for its appeal under By-Law 40(11.1), and the determination of any appeal notified in accordance with By-Laws 40(11.1) to 40(11.3).

...

40(13) General

...

40(13.3) Conduct and provision of information

...Each of the Professional Conduct Committee, Disciplinary Tribunal and Appeals Tribunal may record its meetings, interviews, investigations, proceedings and hearings in any manner it decides, including by the use of stenography and sound recording technology.

40(13.4) Termination and suspension

If the name of a Member is removed from any Registers on termination or suspension in accordance with this Section 5, the Member's certificate of Membership, any certificate of public practice and any other accreditation, specialisation or other certificate or award then held by the Member is cancelled with immediate effect and must be delivered up by the former Member to CA ANZ.

...

40(13.6) Guidelines for the imposition of sanctions

In determining the sanctions to be imposed on a Member under this Section 5 (with or without the consent of that Member) the Professional Conduct Committee, Disciplinary Tribunal and Appeals Tribunal must have regard to the guidelines set out in any applicable Regulations.

40(13.7) Costs awards

When the Professional Conduct Committee, Disciplinary Tribunal or Appeals Tribunal determines whether or not to require a Member to pay Costs under this Section 5, and the amount of such Costs a Member is required to pay, it must have regard to the guidelines set out in any applicable Regulations.

...

40(13.9) Interest

If ... the Disciplinary Tribunal ... has required a Member to pay Costs and/or a fine to CA ANZ by a specified date and such payment has not been received by CA ANZ by the due date, unless waived by CA ANZ, interest accrues and is payable on the amount due and outstanding from the due date to the date of final payment at the Default Rate.

...

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.

...

Section 6 – Fees, Subscriptions and other payments due to CA ANZ

...

Interest

- 54.** If any payment is due to CA ANZ under or in accordance with these By-Laws but has not been received by CA ANZ by the due date, unless waived by CA ANZ, interest accrues and is payable at the Default Rate on the amount due and outstanding from the due date to the date of final payment.

...

SCHEDULE 3: EXCERPT FROM APES 220 TAXATION SERVICES

Revised October 2015

...

9. Client Monies

- 9.1 A Member in Public Practice shall ensure prompt transmission of Client Monies received on behalf of a Client from Revenue Authorities to the Client in accordance with the requirements of APES 310 *Dealing with Client Monies*.**
- 9.2 A Member in Public Practice shall not use, withhold or otherwise appropriate tax refunds to settle the fees of the Member or for any other use in lieu of their transfer directly to the Client, unless agreed to by the Client in Writing.**

...

SCHEDULE 4: 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.