



Disciplinary Tribunal of Chartered Accountants Australia and New Zealand (CA ANZ) Written decision dated 1 May 2020

- Case Number:** D-1220
- Member:** Vanda Russell Gould FCA of New South Wales
- Hearing Date:** 29 April 2020
- Tribunal:** David Fairlie (Chair and lay member of the Tribunal)
Ross Gavin FCA
Richard Rassi FCA
- Representation:** Michael Bradley for the Professional Conduct Committee (PCC)
Mark Ord for the Member
- The parties were not required to appear in person
- Decisions:**
1. The Tribunal determined to suspend the Member from membership of CA ANZ on an interim basis.
 2. The Tribunal made the following directions regarding the conduct of the hearing and the publication of its reasons for decision:
 - (a) the matter be determined on the papers;
 - (b) it convene by way of videoconference;
 - (c) its decision with reasons, mentioning the Member's name and locality, be published on the CA ANZ website (the **Published Decision**);
 - (d) a notice mentioning the Member's name and locality with a web address for the Published Decision be published in the CA ANZ official publication "Acuity";
 - (e) the Tax Practitioners Board be notified of this decision;
 - (f) except for the content of the Disciplinary Tribunal written decision with reasons, all written evidence and submissions related to this determination are to remain confidential; and
 - (g) the decision regarding confidentiality takes effect immediately; ie 29 April 2020.

The date of effect of this decision is 16 May 2020 (By-Law 40(10.18)).



1. Introduction

- (a) The PCC arranged for service of a Notice of Disciplinary Action dated 19 March 2020 (the **NDA**) on the Member. The NDA is reproduced in Schedule 1.
- (b) On 21 April 2020 the Tribunal received a written undertaking made pursuant to By-Law 40(13.8) signed on behalf of the Member by his lawyer Mark Ord in the following terms:

“BY: MR VANDA GOULD FCA

OF: SYDNEY, NSW

I hereby consent to the:

- 1. suspension of my membership of Chartered Accountants ANZ on an interim basis until the earlier of:
 - a) six months after the full and final resolution of any appeal of the termination of my registration as an Individual Tax Agent by the Tax Practitioners Board (TPB) referred to at 3. of the Notice of Disciplinary Action dated 19 March 2020 (NDA); and*
 - b) six months after the full and final resolution of the criminal matter referred to at 4. of the NDA; or*
 - c) further investigation and determination of the complaints arising from a) and b) above,*on the basis that the factors set out at By-Law 40(9.1), including the urgency of the matter, the interests of the public, the reputation of CA ANZ and the integrity of the profession, are likely to be satisfied;*
- 2. notification by the Disciplinary Tribunal of its decision to the TPB; and*
- 3. publication:
 - a) on the website of Chartered Accountants ANZ of the decision of the Disciplinary Tribunal to suspend my membership on the terms set out at 1 above, including my name and locality, and of the Statement of Agreed Facts found at Appendix A (the **Published Decision**);*
 - b) in the Chartered Accountants ANZ digital and print magazine “Acuity” of a notice mentioning my name, locality and a web address for the Published Decision.”**

(the **Written Undertaking**).

- (c) The Written Undertaking annexed the following statement of agreed facts:

Date	Event
9.07.1973	Mr Gould becomes a member of Chartered Accountants Australia and New Zealand (Member #15805)
7.04.2017	Mr Gould is committed to stand trial in the District Court of NSW on the charge of conspiring to pervert the course of justice, contrary to section 42(1) of the Crimes Act 1914 (Matter reference; 2016/0027818 - R v Vanda Russell Gould).
13.12.2018	The Tax Practitioners Board (TPB) terminated Mr Gould's registration as an individual tax agent on the basis that he was no longer a fit and proper person for the purposes of section 20-5(1)(a) of the Tax Agent Services Act 2009 (Cth).
31.01.2019	Mr Gould lodges an application to stay the TPB's termination of his registration as an individual tax agent.

Date	Event
26.11.2019	Mr Gould is found guilty of conspiring to pervert the course of justice, contrary to section 42(1) of the Crimes Act 1914, by a jury in the District Court of NSW in R v Vanda Russell Gould (2016/00278181). Mr Gould's bail is revoked and he is remanded in custody.
7.01.2020	The Administrative Appeals Tribunal orders that the application to stay TPB's termination of his resignation as an individual tax agent be adjourned until any appeal from the decision R v Vanda Russell Gould (2016/00278181)
8.04.2020	R v Vanda Russell Gould (2016/00278181) is listed for a mention on 19 August 2020 for a date to be set for the sentencing hearing before Judge D Wilson in the District Court of NSW. Mr Gould is granted bail.

(the **Statement of Agreed Facts**).

2. Conduct of the hearing

- (a) On 17 April 2020 the PCC wrote to the Tribunal advising that the Member would provide a written undertaking for the Tribunal's consideration and that *"the Member consents to the interim suspension contemplated in the alternative"* in the NDA. The PCC enquired:
1. *Would the [Disciplinary Tribunal] be minded to consider the Member's written undertaking on the papers, rather than proceed to hearing (currently scheduled for 30 (sic) April 2020)?*
 2. *If it is minded to consider the undertaking on the papers, does it require written submissions from the PCC?"*
- (b) On 21 April 2020 the PCC provided the Written Undertaking to the Tribunal.
- (c) On 24 April 2020 the Tribunal considered the Written Undertaking and determined:
- (i) to consider the matter on the papers; and
 - (ii) that it did not require further submissions from the parties;
- and wrote to the parties on that day to inform them of the determination.

3. The issues for determination

- (a) Should the Tribunal accept the Written Undertaking?
- (b) Should the Member's membership be suspended on an interim basis?
- (c) Was there any reason to suppress the Member's name from the published decision?
- (d) Should other parties be notified of the Tribunal's decision?
- (e) Should any confidentiality orders be made?

4. Should the Tribunal accept the Written Undertaking

- (a) The Tribunal is empowered under By-Law 40(13.8) to accept a written undertaking if it considers that it is appropriate to do so.
- (b) The Tribunal considered the terms of the Written Undertaking and considered that it was appropriate because:
 - (i) it consented to interim suspension and publication;
 - (ii) it contained a detailed account in the annexed Statement of Agreed Facts of the allegations raised against the Member in the NDA;
 - (iii) the six month period was an appropriate period for the suspension to continue after the determination of the earlier of the matters in 1(a) and (b) of the Written Undertaking, in order for the PCC to receive notice of appeal outcomes and to consider its position with respect to the relevant allegations;
 - (iv) the PCC was informed that the Member's lawyer had authority to sign the Written Undertaking on behalf of the Member and the Tribunal accepted that information.

5. Should the Member's membership be suspended on an interim basis?

5.1 Evidence

The Tribunal considered:

- (a) an extract of the TPB's register which recorded the following information about the Member:
 - Registration type: Individual Tax Agent*
 - Termination: Date of Effect: 28/05/2019*
Reason: 40-5(1)(b) individual no longer meets registration requirements
- (b) the letter from the Member's lawyer to the PCC dated 22 January 2020 (the **Ord Letter**) in which he stated the Member *"faced a charge of attempting to pervert the course of justice. On 26 November 2019 [the Member] was found guilty and remanded in custody"*;
- (c) the Statement of Agreed Facts which was annexed to the Written Undertaking; and
- (d) the following media articles provided by the PCC in support of its allegations against the Member:
 - (i) Ben Butler, 'Businessman Vanda Gould to face tax scam allegations', *The Australian* (online, 29 September 2016);
 - (ii) Neil Chenoweth and Katie Walsh, 'High Court finds Vanda Gould's \$300m tax scheme was fake', *The Australian Financial Review* (online, 16 November 2016);
 - (iii) Sarah Danckert and Nassim Khadem, 'Taxman's win against society accountant', *The Sydney Morning Herald* (digital edition, 17 November 2016);
 - (iv) 'Curtains for Vanda Gould's \$383m tax panto', *The Australian Financial Review* (online, 30 May 2019); and
 - (v) Neil Chenoweth, 'Vanda Gould guilty of witness tampering in \$383m tax fraud case', *The Australian Financial Review* (online, 26 November 2019).

5.2 Tribunal decision and reasons

- (a) The Tribunal was satisfied that:
- (i) the TPB had terminated the Member's registration as an Individual Tax Agent pursuant to section 40-5(1)(b) on the basis that he was no longer considered a fit and proper person. The Tribunal noted that the Member had sought a review of that decision; and
 - (ii) the Member had been convicted of the criminal offence of perverting the course of justice and would not be sentenced for several months. The Tribunal noted the Ord Letter in which it was stated "*I am advised by [the Member's] criminal solicitors that he has issued instructions to appeal the conviction and that a notice of (sic) intention to appeal has already been filed*".
- (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), that it was both necessary and desirable to suspend the Member's membership on an interim basis because:
- (i) of the seriousness of the criminal conviction against the Member;
 - (ii) of the need to protect the public interest particularly given that the Member was granted bail and released over the Easter weekend pending sentencing;
 - (iii) there is likely to be further media attention after sentencing and on any subsequent appeal which, together with the seriousness of the conviction, will bring the reputation of CA ANZ and the integrity of the profession of accounting into disrepute;
 - (iv) the Member's appeal of his conviction and his review of the TPB termination of the Member's registration have the potential to be protracted, with the result that the Member's conduct could have an ongoing adverse impact on the integrity of CA ANZ and the profession generally;
 - (v) the Member consented to the interim suspension and the Tribunal was satisfied with the terms and conditions of the Written Undertaking.
- (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 any appeal of the Tax Practitioners Board termination of the Member's registration as an Individual Tax Agent referred to in allegation 3 of the NDA; and
 - (ii) six months after the full and final resolution of the criminal matter referred to in allegation 4 of the NDA; or

- (iii) further investigation and determination of the complaints arising from (i) and (ii) above.

6. 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 Member consented to publication of his name and locality.

7. 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 TPB being notified of the Tribunal decision.

8. 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 evidence and submissions related to this determination are to remain confidential.

9. 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 decision as to confidentiality took effect immediately.



**Chair
Disciplinary Tribunal**

SCHEDULE 1: THE PCC'S NOTICE OF DISCIPLINARY ACTION

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 adverse findings made in relation to his professional or business conduct or competence, including:
 - a) the findings of Perram J made on 19 December 2014 in *Hua Wang Bank v Commissioner of Taxation* [2014] FCA 1392; and
 - b) the finding of the Tax Practitioners Board made on 13 December 2018 that the Member was not a fit and proper person for the purposes of section 20-5(1)(a) of the *Tax Agent Services Act 2009* (Cth) (the TASA).
2. By-Law 40(2.1)(c) in that the Member was found to have acted dishonestly in *Hua Wang Bank v Commissioner of Taxation* [2014] FCA 1392 and that finding was not set aside on appeal.
3. By-Law 40(2.1)(g) in that on 13 December 2018 the Tax Practitioners Board (TPB) terminated the Member's registration as an Individual Tax Agent, rejected his application for renewal as a tax (financial) adviser, and imposed a 5 year disqualification from registration under the TASA.
4. By-Law 40(2.1)(b) in that on 26 November 2019 the Member was found guilty of a crime in the District Court of New South Wales.
5. By-Law 40(2.1)(k) in that the acts, omissions and defaults associated with the matters set out at paragraphs 1. to 4. bring or may bring discredit upon the Member, Chartered Accountants Australia New Zealand.

Subject to the outcome of the hearing of allegations 1 to 5 above, the Professional Conduct Committee seeks a determination that your membership of CA ANZ be suspended on an interim basis until the earlier of:

- i) six months after the full and final resolution of any appeal of the TPB termination referred to at 3. above; and
- ii) six months after the full and final resolution of the criminal matter referred to at 4. above; or
- iii) further investigation and determination of the complaints arising from i) and ii) above,

on the basis that the factors set out at By-Law 40(9.1), including the urgency of the matter, the interests of the public, the reputation of CA ANZ and the integrity of the profession, are likely to be satisfied.

SCHEDULE 2: RELEVANT BY-LAWS

Section 5 - Professional Conduct

...

40. Except as provided by By-Law 41, the By-Laws in this Section 5, including the following paragraphs of this By-Law 40, do not apply to Members who are also members of NZICA in respect of disciplinary matters over which NZICA has jurisdiction and which relate to the practice of the profession of accountancy by NZICA's members in New Zealand. Nothing in this By-Law 40 excludes from the operation of this Section 5, conduct of a Member:

- (a) who was, but is no longer, a member of NZICA; or
- (b) who has subsequently also become a member of NZICA.

Except as provided by By-Law 41, no Member shall be sanctioned under both this Section 5 and NZICA Rule 13 in respect of the same conduct.

...

40(2) Disciplinary action

40(2.1) A Member is liable to disciplinary sanctions under these By-Laws if (whether before or after the date of adoption of this By-Law) that Member:

...

- (b) has, before any court of law in any jurisdiction in Australia or elsewhere pleaded guilty to, or been found guilty of, any criminal offence which has not been set aside on appeal;
- (c) has in any civil proceedings before any court of law, tribunal or similar body in any jurisdiction in Australia or elsewhere been found to have acted dishonestly (provided such finding has not been entirely set aside on appeal);

...

- (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;

...

- (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(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(10.13) 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(10.16) 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(13.8) Written undertakings

The Professional Conduct Committee, the Disciplinary Tribunal or the Appeals Tribunal may, if it considers that it is appropriate to do so in connection with the consideration or determination of any matter before it, accept a written undertaking from a Member on such terms as it thinks fit at any time.

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.