



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

Written decision dated 11 November 2020

- Case Number:** D-1233
- Member:** Geoffrey Brian Cottle CA of New South Wales
- Hearing Date:** 21 October 2020
- Tribunal:** Simon Wallace-Smith FCA (Chair)
John Gavens FCA
Jenni Millbank, lay member of the Tribunal
- Tribunal Legal Adviser:** Jamesina McLeod
- Representation:** Michael Bradley for the Professional Conduct Committee (PCC)
The Member was not required to appear
- Decisions:**
- 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).
 - The Tribunal determined that the Member:
 - committed a breach of:
 - APES 110 *Code of Ethics for Professional Accountants* with respect to professional competence and due care; and
 - CA ANZ Regulation *Attention to Correspondence and Enquiries*;in breach of By-Law 40(2.1)(h); and
 - failed to observe a proper standard of professional care and diligence in the course of carrying out his professional duties and obligations.
 - The Tribunal imposed the following sanctions:
 - a censure; and
 - that the Member and the Member's Practice Entity, at the Member's expense, submit to a review pursuant to CA ANZ Regulation CR3.15 and that the results of such review be made available to the PCC as soon as possible.
 - The Tribunal imposed a cost sanction in the sum of \$8,227 towards the 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) pursuant to By-Law 40(10.3)(a), to consent to the PCC amending its Notice of Disciplinary Action less than 35 days before the hearing;
 - (b) its decision with reasons, mentioning the Member's name and locality, be published on the CA ANZ website (the **Published Decision**);
 - (c) a summary of the Published Decision mentioning the Member's name and locality with a web address for the Published Decision be published in the CA ANZ official publication, *Acuity*;
 - (d) the Tax Practitioners Board and Australian Securities and Investments Commission be notified of this decision;
 - (e) 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;
 - (f) the names of the Complainant and related parties be kept confidential;
 - (g) the decisions regarding confidentiality take effect immediately from 21 October 2020.

The date of effect of this decision is 3 December 2020 (By-Law 40(10.18)).



1. Introduction

- (a) On 2 May 2019 CA ANZ received a complaint from a lawyer on behalf of the Member's client (the **Complainant**) which claimed that the Member had failed, for a period of approximately four and a half years, to carry out the Complainant's instructions to perform a voluntary liquidation of the Complainant's companies (the **Complaint**).
- (b) After investigating the Complaint including conducting a Case Conference on 29 June 2020, on 15 July 2020 the PCC offered to enter into a Consent Agreement with the Member (the **Consent Agreement**). The Member signed the Consent Agreement and attempted to pay the costs but did so after the consent period had expired. By-Law 40(7.6) states that if a member does not deliver an executed consent agreement within the consent period, the PCC will refer the complaint to the Tribunal for hearing.
- (c) 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 the Member:
1. failed to carry out the Complainant's instructions and failed to respond to the Complainant, breaching APES 110 *Code of Ethics for Professional Accountants (APES 110)* and CA ANZ Regulation *Attention to Correspondence and Enquiries (Regulation CR 3.8)*; and
 2. in not carrying out the Complainant's instructions and by not responding to the Complainant, failed to observe a proper standard of professional care, skill, competence or diligence in the course of carrying out his professional duties and obligations.
- (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

- (a) Effective 20 October 2020 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 Chartered Accountants ANZ dispensing with the procedures in By-Law 40 (10) of the By-Laws of Chartered Accountants ANZ in relation to complaint D-1233 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 2.00pm on 21 October 2020. 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 8 September 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) *A censure;*
 - (b) *The Member will pay a contribution to Chartered Accountants ANZ of \$8,227 towards the costs and expenses of the disciplinary action;*

- (c) The Member and his Practice Entity must, at the Member's own expense, submit to a review pursuant to CA ANZ Regulation CR3.15 on terms that the results of the review are to be provided to the [PCC] as soon as possible;
- (d) 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**);
- (e) 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
- (f) 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]

20 October 2020

Signed

Chair of the Professional Conduct Committee

20 October 2020

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

Statement of Agreed Facts

Date	Event	Case File Page
09/10/1978	[The Member] becomes a member of Chartered Accountants Australia and New Zealand (CA ANZ)	N/A
1964	[The Member] was engaged by the Complainant and her husband, [redacted].	Page 37 (line 43)
01/07/1985	The Complainant's husband passed away. [redacted]'s estate comprised, in part shares in the companies [redacted] and [redacted] (the companies).	Page 29
Between 01/07/2014 & 28/08/2014	[The Member] was appointed liquidator of the companies.	Page 29 Page 34 (line 31-33)
01/07/2014 to 17/04/2019	The Complainant (via her lawyer) attempted to contact [the Member] by telephone and letter, to ascertain the likely conclusion of the liquidations.	Pages 30, 76, 101-132
01/07/2014, 21/01/2015, 20/02/2015, 14/08/2015, 02/09/2015 & 04/12/2017	[The Member] contacts the Complainant's lawyer by telephone.	Pages 101, 106, 108, 116 -117, 129
19 & 20 May 2015	[The Member] responds by email to the Complainant's lawyer.	Page 111- 112
2015 - 2017	[The Member] becomes ill.	Pages 38 - 39
Between January & March 2016	[The Member] instructed stockbrokers to sell various listed shares held by the companies.	Page 40 (line 22 - 31) Page 155
08/02/2019	[The Member]'s wife passed away and he ceases work for 6 months.	Page 39 (line 32)
29/06/2020	At the [PCC] Case Conference, [the Member] confirms that he is still yet to complete the voluntary liquidation for the companies. As such, [the Member] substantially delayed carrying out the Complainant's instructions to perform a voluntary liquidation for the companies over a six year period.	Page 35 (line 22)

Date	Event	Case File Page
30/07/2020	Deed of Consent - Member Sanctions, consent period expires	Page 48
06/08/2020	[The Member] executes Deed of Consent - Member Sanctions and provides a copy to CA ANZ via express post.	Pages 44 - 59
	[The Member] holds professional registrations with ASIC (SMSF Auditor) and the TPB (Tax agent).	

3. The issues for determination

- (a) Should the Tribunal dispense with the procedures in By-Law 40(10)?
- (b) Should consent be given to the PCC to amend the NDA?
- (c) Did the Member commit a breach of APES 110 and Regulation CR 3.8? (allegation 1)
- (d) Did the Member fail to observe a proper standard of professional care, skill, competence or diligence in the course of carrying out his professional duties and obligations? (allegation 2)
- (e) If the answer to (c) or (d) was yes, what sanctions should be imposed on the Member?
- (f) Should the Member be required to pay costs and if so, in what amount?
- (g) Was there any reason to suppress the Member's name from the published decision?
- (h) Should other parties be notified of the Tribunal's decision?
- (i) Should any confidentiality orders be made?

4. 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).

5. Should consent be given to the PCC to amend the NDA?

- (a) The PCC sought the Tribunal's consent to make typographical corrections to:
 - (i) allegation 1(a) from:

...committed a breach of Sections 100.5 and 130.4 of APES 110...

to:

...committed a breach of Sections 100.5(c) and 130.4 of APES 110...; and
 - (ii) allegation 1(b) from:

...committed a breach of Section 1212 of CA ANZ Public Regulation CR3 (until July 2015)...

to:

...committed a breach of Section 1212 of CA ANZ Public Regulation CR3 (from July 2015)...
- (b) In seeking these amendments the PCC advised the Tribunal that it had received verbal consent from the Member's legal representative to make the amendments.

- (c) The Tribunal was empowered to consent to the amendments, at its discretion, pursuant to By-Law 40(10.3) which provides:

The Professional Conduct Committee may amend a Notice of Disciplinary Action at any time, provided that it may not do so ... less than 35 days before the hearing, without:

- (a) the consent of the Disciplinary Tribunal;
- (b) the consent of the Member concerned...

and agreed to the PCC's request. In making this decision the Tribunal:

- (i) was satisfied that the Member had consented to the changes;
- (ii) considered the amendments were merely typographical;
- (iii) considered the amendments in no way disadvantaged the Member or altered the substance of the agreement.

6. Did the Member commit a breach of APES 110 and Regulation CR 3.8? (allegation 1)

6.1 Agreed facts

The PCC alleged and the Member admitted, that the Member had committed a breach of:

- (a) sections 100.5(c) and 130.4 of APES 110 in circumstances where the Member substantially delayed carrying out the Complainant's instructions to perform a voluntary liquidation of two companies over a six-year period; and
- (b) s 1212 of CA ANZ Public Regulation CR3 (from July 2015) and s CR 3.8 of CA ANZ Public Regulation CR 3 (from 28 July 2016 until 2019), the obligation to reply to professional correspondence and enquiries expeditiously, in circumstances where the Member failed to respond to the numerous letters from the Complainant requesting an update on the work and the timelines to completion.

6.2 Tribunal decision and reasons

The Tribunal was satisfied the allegation was established in full because:

- (a) there clearly was a considerable time period during which the Complainant's voluntary liquidations were not completed by the Member, and indeed those liquidations still had not been completed as recently as the Case Conference held in July 2020;
- (b) there were numerous examples of communications with the Complainant's solicitors regarding the lack of progress that were not responded to by the Member;
- (c) despite the reasons given by the Member that:
 - (i) he had experienced personal difficulties;
 - (ii) he had a preference for phone calls rather than communicating by correspondence;

the Tribunal was not satisfied the Member had any reasonable explanation for why the work could not have been completed within that time period by himself or by referral to another practitioner, or for his multiple failures to respond to correspondence over a lengthy period.

If at the time of publication of these reasons the Member has still not completed the engagement, the Tribunal strongly encourages him to do so as expeditiously as possible, including through him seeking the assistance of others if necessary.

7. Did the Member fail to observe a proper standard of professional care, skill, competence or diligence in the course of carrying out his professional duties and obligations? (allegation 2)

7.1 Agreed facts

The PCC alleged and the Member admitted, that the Member failed to observe a proper standard of professional care, skill, competence or diligence in the course of carrying out his professional duties and obligations, by engaging in the conduct referred to in allegation 1.

7.2 Tribunal decision and reasons

The Tribunal was satisfied the allegation was established because:

- (a) it was clear from the PCC's written and oral evidence that the Member had failed to adequately complete the engagement that the Complainant had instructed the Member to complete in an orderly and timely fashion;
- (b) it was highly likely that the Member was aware that the Complainant was being caused distress by how long the proceedings were taking, yet he did not take appropriate steps to arrange for the completion of the outstanding work even after the Complainant made multiple enquiries about the completion status;
- (c) the Member had contemplated referring the work to another practitioner in order for the work to be completed, but did not do so;
- (d) the Member had appeared to continuously prioritise other client work and did not seem to prioritise the Complainant's work.

8. 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 the following sanctions:
 - (i) a censure; and
 - (ii) that the Member and his Practice Entity must, at the Member's own expense, submit to a review pursuant to CA ANZ Regulation CR 3.15 on terms that the results of the review are to be provided to the PCC as soon as possible.
- (d) The Tribunal determined that these were appropriate sanctions because:
 - (i) the Member had consented to the sanctions;
 - (ii) a censure was an appropriate recognition of the breach and failure to meet the proper standard of professional care and diligence;
 - (iii) a review would ensure that the Member's practice would be further scrutinised and brought up to standard, if found to be lacking.

9. 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 \$8,227 towards the costs and expenses of the disciplinary action.
- (c) The Tribunal determined that the Member should pay \$8,227 towards the costs and expenses of the disciplinary action because:
 - (i) the Member consented to this amount;
 - (ii) notwithstanding the Member had made attempts to accept the Consent Agreement offered by the PCC, he had not done so within time and therefore further unavoidable costs were incurred;
 - (iii) having regard to Regulation CR 8.12, there were no exceptional circumstances to warrant a variation from the costs amount agreed between the PCC and the Member.

10. 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 PCC and the Member agreed that:
- (i) the Disciplinary Tribunal decision with reasons, mentioning the Member's name and locality, would be published on the CA ANZ website (the **Published Decision**); and
 - (ii) a summary of the Published Decision mentioning the Member's name and locality with a web address for the Published Decision would be published in the CA ANZ official publication, *Acuity*.
- (c) The Tribunal was satisfied that there were no exceptional circumstances and that the Member's name should be published.

11. 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 holds registrations with the Tax Practitioners Board (**TPB**) and the Australian Securities and Investments Commission (**ASIC**).
- (c) The PCC and the Member agreed that the Disciplinary Tribunal would notify its decision to any bodies with whom the Member holds a professional registration or membership.
- (d) The Tribunal determined that the TPB and ASIC would be notified of its decision, as interested parties.

12. 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. The Tribunal further directed that the names of the Complainant and related parties be kept confidential.

13. RIGHTS OF APPEAL

The Member may, within 21 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-Law 40(11.1)).

The PCC may, within 21 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-Law 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's decisions 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)(h), in that the Member has committed a breach of:
 - a. Sections 100.5 and 130.4 of APES 110, *Code of Ethics for Professional Accountants*, in circumstances where he substantially delayed carrying out the Complainant's instructions to perform a voluntary liquidation of two companies over a six-year period; and
 - b. Section 1212 of CA ANZ Public Regulation CR3 (until July 2015) and section CR 3.8 of CA ANZ Public Regulation CR3 (from 28 July 2016 until 2019), the obligation to reply to professional correspondence and enquiries expeditiously, in circumstances where he failed to respond to the numerous letters from the Complainant requesting an update on the work and the timelines to completion;
2. By-Law 40(2.1)(a), in that the Member failed to observe a proper standard of professional care, skill, competence or diligence in the course of carrying out his professional duties and obligations, by engaging in the conduct referred to in paragraph 1 above.

SCHEDULE 2: RELEVANT BY-LAWS

Section 5 - Professional Conduct

...

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

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

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

...

40(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:

- (a) has failed to observe a proper standard of professional care, skill, competence or diligence in the course of carrying out that Member's professional duties and obligations;

...

- (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;

...

40(10) Disciplinary Tribunal

...

40(10.12) If the Disciplinary Tribunal determines that the complaint contained in the Notice of Disciplinary Action or any part thereof is established it may, subject to By-Law 40(9.3)(c), and having given the Member a reasonable opportunity of being heard on the question of sanctions, impose any one or more of the sanctions in the table below identified as applicable to that class of Member:

...

- (g) censure the Member

...

- (j) require the Member or the Member's Practice Entity, at the Member's expense, to submit to an investigation or review or reviews, on such matters and on such terms as specified by the Disciplinary Tribunal, such terms to include that the

results of such investigation or reviews are made available to the Professional Conduct Committee

- (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(10.16) 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.

...

SCHEDULE 3: EXCERPTS FROM STANDARDS AND REGULATIONS

APES 110 CODE OF ETHICS FOR PROFESSIONAL ACCOUNTANTS

Compiled as at November 2013

...

PART A - GENERAL APPLICATION OF THE CODE

...

SECTION 100

Introduction and Fundamental Principles

...

Fundamental Principles

100.5 A Member shall comply with the following fundamental principles:

...

- (c) *Professional competence and due care* – to maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent Professional Activities based on current developments in practice, legislation and techniques and act diligently and in accordance with applicable technical and professional standards.

...

Each of these fundamental principles is discussed in more detail in Sections 110–150.

SECTION 130

Professional Competence and Due Care

...

130.4 Diligence encompasses the responsibility to act in accordance with the requirements of an assignment, carefully, thoroughly and on a timely basis.

...

CR3 – PUBLIC PRACTICE REGULATIONS

Issue date July 2015

...

Practice Management

...

Attention to Correspondence and Enquiries

1212 Members must reply to professional correspondence and enquiries expeditiously.

Issue date 28 July 2016

...

Practice Management

...

3.8 Attention to Correspondence and Enquiries

Members must reply to professional correspondence and enquiries expeditiously.

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.

SCHEDULE 5: REGULATION CR₃ - PUBLIC PRACTICE REGULATIONS

Issued 8 October 2019

...

3.15 Quality Control

- (a) Each Member in Public Practice must establish and maintain systems and procedures of quality control in accord with APES 320 Quality Control for Firms.
- (b) If ASQC 1 Quality Control for Firms that Perform Audits and Reviews of Financial Reports and Other Financial Information, Other Assurance Engagements and Related Services Engagements (**ASQC 1**) applies to a Member in Public Practice's Practice, then that Member in Public Practice must also establish and maintain systems and procedures of quality control in accord with ASQC 1.
- (c) Each CPP holder and each Affiliate Member will from time to time be required to submit to a quality and practice review conducted by CA ANZ in accordance with CA ANZ's quality and practice review programme.
- (d) In addition to any review conducted in accordance with CR 3.15(c), the CEO may at any time in his or her absolute discretion direct that a quality review be undertaken of all or part of a Practice.
- (e) To enable CA ANZ's quality and practice review programme to be conducted in an effective and timely manner, each Member subject to such review must:
 - (i) co-operate with all reasonable requests made by the Board, any committee or officer of CA ANZ or any person employed by CA ANZ to conduct a quality and practice review; and
 - (ii) produce all such documents or other materials in the Member's possession as may be required to enable a review to be conducted.
- (f) If a Member does not comply with a written request to cooperate or produce documents or other materials pursuant to CR 3.15(e) within 60 days of such request, the Board may, if the Member is a CPP holder, suspend the Member's CPP until they comply with such request.
- (g) Members must meet all costs imposed by CA ANZ for any review of their Practice undertaken by CA ANZ in accordance with CR 3.15(c) or 3.15(d).

...