

## **THE COMPLAINTS PROCESS**

What happens to complaints about members resident  
in New Zealand

A summary



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The term Chartered Accountant is used in a generic sense and should be taken as referring to all members of Chartered Accountants Australia and New Zealand resident in New Zealand i.e. Chartered Accountants, Associate Chartered Accountants, Accounting Technicians, Provisional Members and Retired Members.

The New Zealand Institute of Chartered Accountants regulates the conduct of members of Chartered Accountants Australia and New Zealand who reside in New Zealand. Such members remain members of the New Zealand Institute of Chartered Accountants.

# THE COMPLAINTS PROCESS

## WHAT HAPPENS TO COMPLAINTS ABOUT MEMBERS RESIDENT IN NEW ZEALAND

A summary

- › This booklet explains what happens to complaints we receive about our members.
- › Please read this booklet carefully, and if you have any questions, contact:
  - The Secretary – Professional Conduct Committee
  - New Zealand Institute of Chartered Accountants
  - PO Box 11342, Wellington 6142
  - tel: +64 4 474 7840
  - 0800 469 422
  - email: [Complaints.NZICA@charteredaccountantsanz.com](mailto:Complaints.NZICA@charteredaccountantsanz.com)

## THE STANDARDS EXPECTED OF MEMBERS

Members of Chartered Accountants Australia and New Zealand (CA ANZ) resident in New Zealand are regulated by the New Zealand Institute of Chartered Accountants (NZICA) in accordance with the NZICA Act 1996 (the Act). Under the Act, NZICA is required to have Rules and a Code of Ethics that are binding on members.

Members of NZICA include Chartered Accountants, Associate Chartered Accountants, Accounting Technicians and provisional members. Complaints can be made about any member of NZICA. In certain circumstances, complaints can be made about former members if the complaint relates to conduct that occurred while they were a member of NZICA.

The Code of Ethics sets out the professional and ethical standards of behaviour for members. In summary, these standards mean that members must:

- be straightforward, honest and sincere in their approach to professional work and act with integrity
- be impartial, intellectually honest and free from conflicts of interest
- be competent so that all professional work is completed carefully and on time
- understand and apply all relevant technical, accounting and professional standards
- act in a way that upholds the good reputation of the accountancy profession
- respect their clients' confidentiality
- be independent in the general sense of the word.

**NZICA takes any breaches of the Code of Ethics very seriously. Rule 13 of NZICA's Rules sets out the strict process for dealing with complaints about members. A copy of the Rules can be found on our website ([charteredaccountantsanz.com](http://charteredaccountantsanz.com)). A hard copy is available on request.**

## WHEN WE RECEIVE A COMPLAINT

### Initial Assessment

Upon receipt of a complaint about a member of NZICA, we reply to the complainant, acknowledging that we've received it. We complete an initial review of the complaint to make sure it falls within our jurisdiction and if so, whether enough information has been received from the complainant to understand their concerns. We will contact the complainant if we require more information. If we do not receive a response to a request for more information, generally no further action will be taken on the complaint and the file will be closed.

### Reasons why we may not investigate

In some cases, the PCC may determine not to investigate a complaint. If this occurs, the member is advised that a complaint has been made against them, but they are not required to provide a response and the complaint is closed without further action. The complainant is also notified of the decision. Reasons why we may not investigate a complaint include where the complaint:

- is frivolous;
- is vexatious;
- is an abuse of process;
- relates to historical issues that would no longer be practical to investigate;

- is of an insufficient nature to warrant referral to the member; or
- can be resolved by referral to an alternative forum and in all the circumstances it is reasonable for the complaint to be so resolved.

### Complaint Investigation

Once enough information has been received, we send a copy of the complaint to the member, who has 14 days to respond. An extension may be granted in appropriate circumstances. When we receive their response, we would usually send the complainant a copy for formal comment. If the response satisfies the concerns raised in the complaint, the complainant may choose to withdraw the complaint.

The process of exchanging comments continues until there is sufficient information to pass the complaint on to the Professional Conduct Committee (PCC).

The process of exchanging comments ensures that both the complainant and the member are fully informed and that the PCC has all the details it needs.

In some cases, providing the member's response to the complainant may not be appropriate.

## WHO INVESTIGATES A COMPLAINT

NZICA's professional conduct process operates on a basis that is independent of NZICA and CAANZ. The PCC carries out the first stage of investigating the complaint and may be able to make a final ruling on it.

The PCC is made up of a pool of senior and well-respected members of the accounting profession and experienced lay members who represent the wider public interest..

If any member of the PCC or the lay member has had any involvement with either the complainant or the member that is the subject of the complaint that they feel may impact on their impartiality, they will disclose this and withdraw from the investigation and consideration of the complaint.

## WHAT THE PROFESSIONAL CONDUCT COMMITTEE DOES

The PCC examines all the information gathered from both parties. If it needs more information, the PCC may use an investigator to collect this information. This person will look into the complaint,

which may include visiting or talking to the parties, and reporting to the PCC.

The PCC, in exceptional circumstances, may want to meet with the complainant to discuss the complaint or get more information.

The PCC members take their responsibilities as committee members very seriously. They take great care in reaching a decision, but ultimately that decision is dependent on the professional assessment of the information put before them. The PCC is not a court and therefore does not have the power to call witnesses.

### PCC decisions

Following initial consideration of the complaint, the PCC can adopt one or more of the following courses of action:

- decide no further action be taken
- require the member, subject to the agreement of the complainant, to submit any fee dispute to the Fees Resolution Service
- caution the member
- set the matter down for final determination
- order the member to pay costs to the complainant and/or NZICA
- investigate and make a decision as to any other matter arising out of the investigation of the complaint.

In limited circumstances, the PCC may refer the matter directly to the NZICA's Disciplinary Tribunal.

### **Letting parties know the outcome**

Parties will be sent a letter explaining the PCC's decision, within 21 days of the PCC meeting.

- If the PCC takes no further action, or has cautioned the member, that is the end of the complaint process.
- If the PCC requests a final determination then the investigation moves to the next stage.

## **FINAL DETERMINATION**

A final determination is usually held for a complaint that needs more detailed investigation.

One purpose of a final determination is to consider whether the matters raised in the complaint are serious enough to require referral to the Disciplinary Tribunal.

The final determination is an opportunity for the member to discuss the complaint and the evidence with the PCC. The PCC has the power to require a member to attend if it

considers it to be necessary. The meeting is not open to the public and witnesses are not called. The PCC may invite the complainant to the meeting.

### **Possible outcomes**

After the final determination the PCC will make any of the following rulings:

- determine that no further action should be taken
- require the member, subject to the agreement of the complainant, to submit any fee dispute to the Fees Resolution Service
- caution the member
- impose a range of other penalties on the member by way of an agreement with the member
- refer the matter to the Disciplinary Tribunal
- order the member to pay costs to the complainant and/or NZICA.

### **Consent order**

In some circumstances, at a final determination the member may be offered the option of accepting a consent order. A consent order is the member's written agreement to enter into an order. A consent order

may be offered when a complaint is serious enough to be referred to the Disciplinary Tribunal, but the PCC considers that it is reasonable and appropriate for it to finalise the case. If the member does not accept the consent order then the matter will be referred to the Disciplinary Tribunal for hearing.

If the member accepts the consent order, the possible penalties include:

- waiving all or part of any fee agreed to or invoiced
- returning to the complainant the whole or part of any fee already paid
- a reprimand or severe reprimand
- paying a fine to NZICA
- paying costs to the complainant and/or NZICA
- a requirement to complete professional development courses or engage in tutoring at the member's own expense
- appointing another member to undertake or complete the work that is the subject of the complaint.

However, no orders shall be made where, in the view of the PCC the complaint involves

- a dispute that should be resolved by either evidence from independent experts or evidence given on oath; or
- matters of high public interest or of significance to the accounting profession as a whole.

If the PCC believes it is in the public interest to do so, it may publish the consent order in such a form as it considers appropriate.

### **Letting parties know the outcome**

The PCC will send the parties a written notice of the final determination, usually within 21 days of making its decision.

- If the PCC decides to take no further action, or the member has been cautioned or has accepted a consent order, then that is the end of the complaint process.
- If the case is referred to the Disciplinary Tribunal the investigation moves to the next stage.

This is explained below.

### **How long this takes**

Complaints that go before the PCC are usually concluded within four to nine months of receiving the complaint. The time depends on how complicated the situation is and how much extra information needs to be gathered.

## FAILURE TO RESPOND

If a member fails to attend a final determination when they have been required to, or they fail to respond in writing to all matters raised, then the PCC may refer the matter directly to the Disciplinary Tribunal or make a final determination.

## REVIEWER OF COMPLAINTS

If either the complainant or the member are dissatisfied with the way the PCC handled the complaint, they may make a complaint to the Reviewer of Complaints. A review can only be requested after the written notice of the PCC's final decision has been received and must be made within three months of receiving the decision. Parties cannot complain to the Reviewer if the matter is referred to the Disciplinary Tribunal.

Parties can complain to the Reviewer if they are dissatisfied with the procedures that have been followed by the PCC or if they believe the decision was not reasonable in light of the information before the PCC.

### **About the Reviewer**

The Reviewer cannot be a member of NZICA, so they offer a completely impartial consideration of all the facts. The Reviewer is a person whose integrity and reputation are without question, and whose judgement and experience are widely recognised.

The Reviewer may contact the parties to discuss the concerns and will also consider all the material the PCC had available to it in its investigation.

### **What happens next?**

After the Reviewer considers the handling of the investigation, they will report their findings to all parties, including the PCC.

The Reviewer may direct the PCC to reconsider its decision, and may make recommendations, as the Reviewer considers appropriate.

The Reviewer may decide not to review the complaint if the Reviewer considers that the complaint is frivolous or vexatious.

## DISCIPLINARY TRIBUNAL

The Disciplinary Tribunal considers complaints referred by the PCC.

These include:

- convictions punishable by imprisonment or a fine, where the conviction means that the member is no longer fit to practise accountancy or brings the profession into disrepute (for example, fraud, theft, misappropriation of funds)
- serious professional misconduct or conduct unbecoming an accountant
- professional negligence or incompetence
- bankruptcy
- serious breaches of NZICA's Code of Ethics or Rules
- engaging in business inconsistent with the integrity of NZICA
- provision of false or misleading information to NZICA
- failure to respond to the PCC
- failure to comply with any order made by the PCC, Disciplinary Tribunal or the Appeals Council.

The PCC's written decision following a final determination hearing will explain if the complaint is being referred to the Disciplinary Tribunal. The exact charges that have been laid by the PCC against the member will be provided to the member at a later date.

### The hearing

Unlike the PCC, the Disciplinary Tribunal acts more in the nature of a court, in that:

- the PCC acts as prosecutor and has legal counsel to present the PCC's case against the member
- the member can have a lawyer or other representative represent them at the hearing
- the hearing is generally open to the public (which means the complainant can attend, as can the media)
- witnesses can be called (this may include the complainant)
- evidence is given under oath.

The Disciplinary Tribunal has its own legal assessor, who will be present during the hearing and may advise the Disciplinary Tribunal on matters of law, procedure and evidence.

The member may elect to plead either guilty or not guilty to the charges brought by the PCC.

- If the member pleads guilty then the Disciplinary Tribunal is likely to move straight to the issue of penalties.
- If the member pleads not guilty then evidence will be presented to the Disciplinary Tribunal by both the prosecutor (the PCC) and the member.

The Disciplinary Tribunal will meet in a closed session to consider its decision after all evidence has been heard.

### **Possible outcomes**

The Disciplinary Tribunal may find the member guilty on all charges, guilty on some of the charges, or not guilty. Consideration will then be given to the appropriate penalty. The Disciplinary Tribunal receives submissions from the member and the prosecutor.

NZICA's Rules allow for a range of different penalties against members who are found guilty at a Disciplinary Tribunal hearing. The Disciplinary Tribunal may impose one or more of the following penalties:

- removing the name of the member from the Register of Members
- suspending the member from membership for up to a maximum of five years
- imposing a monetary penalty up to a maximum of \$20,000
- cancelling or suspending a Certificate of Public Practice held by the member
- ordering an investigation into the member's practice by the PCC
- ordering regular reviews of the member's practice by NZICA's Practice Review Unit

- ordering the member to attend professional development courses
- appointing another member to undertake or complete any of the member's work
- ordering that the member waive all or part of any fee agreed to or invoiced
- ordering the return of all or part of any fee already paid
- formally censuring the member
- ordering that the member be prohibited from practising in partnership with a non-member
- ordering the member to pay costs to the complainant and/or the Institute
- ordering the member or member's practice not to undertake specified assignments.

The Disciplinary Tribunal may also order that its decision be published. This usually means that the member's name and offence are published in Acuity (NZICA's official publication), on our website and in the local newspaper as well as any other publication that the Disciplinary Tribunal directs.

### **Letting parties know the outcome**

Parties will receive a written notice of the Disciplinary Tribunal's decision and any penalties imposed. Sometimes the Disciplinary Tribunal will suppress details regarding the member's name and location.

The complainant cannot appeal the decision of the Disciplinary Tribunal, as the PCC is acting as prosecutor. However, if either the member or the PCC is not satisfied with the decision of the Disciplinary Tribunal, then they may exercise their rights under the Rules to appeal the decision to the Appeals Council. They must do this within 14 days of the notice of the Disciplinary Tribunal's written decision.

### **How long this takes**

Complaints that go before the Disciplinary Tribunal are usually concluded between six and twelve months of receiving the complaint. If an appeal is lodged, the complaint may take considerably longer to be finalised.

## **APPEALS COUNCIL**

The Appeals Council hears all applications of appeal against decisions of the Disciplinary Tribunal.

### **Possible outcomes**

The Appeals Council may confirm, vary or reverse any decision of the Disciplinary Tribunal and may also make fresh orders on costs.

All parties will receive written notice of the Appeal Council's decision within 14 days of the decision being issued. The decision is final.

## **CONCLUSION**

The New Zealand Institute of Chartered Accountants recognises that the complaints process can be stressful, particularly if the relationship between a client and their Chartered Accountant has effectively broken down. However, the operation of a professional conduct and disciplinary system is vital to maintaining the reputation of the accountancy profession.

Our aim is for everyone involved in the process to feel confident in NZICA's professional conduct and disciplinary processes. If at any stage of the process you have any queries or require any clarification, please feel free to contact us for help.

Please read this booklet carefully, and if you have any questions, contact:

**The Secretary – Professional Conduct  
Committee**

**New Zealand Institute of Chartered  
Accountants**

**PO Box 11342**

**Wellington 6142**

**Tel: +64 4 917 5632**

**0800 469 422**

**Email: [Complaints.NZICA@  
charteredaccountantsanz.com](mailto:Complaints.NZICA@charteredaccountantsanz.com)**

For more information refer to  
our website  
[www.charteredaccountantsanz.com](http://www.charteredaccountantsanz.com)

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