

Appeals Council of Chartered Accountants Australia and New Zealand (CA ANZ)

Written Final Decision dated 6 May 2024

Case Number:	A-208
Member:	Donald Jack Richards FCA of Queensland
Hearing Date:	15 April 2024
Council:	Harold Werksman (Chair and lay member of this Council) Bronwyn Morris FCA Richard Rassi FCA
Representation:	Paul Forbes for the Professional Conduct Committee (PCC) The Member did not appear
Decisions:	<ol style="list-style-type: none">1. The Appeals Council (the Council) determined to:<ol style="list-style-type: none">(a) set aside the sanction imposed by the Disciplinary Tribunal to suspend the Member's membership for a period of two years or until such time as the Member provides a written response to the complaint addressing all matters raised to the satisfaction of the PCC;(b) impose alternative sanctions as follows:<ol style="list-style-type: none">(i) to censure the Member; and(ii) to remove the Member's membership status as a Fellow and alter it to that of Chartered Accountant; consequent upon the Member's failure to comply with the reasonable and lawful directions of an officer or organ of CA ANZ acting within the powers conferred by CA ANZ's Supplemental Charter, the By-Laws or the Regulations which related to a matter concerning the good order and management of CA ANZ, in breach of By-Law 40(20.1)(i)¹;(c) affirm the cost sanction imposed by the Disciplinary Tribunal that the Member pay \$16,316 in respect of the hearing before the Disciplinary Tribunal.2. The Council imposed a cost sanction on the Member in the sum of \$6,420 towards the costs and expenses of the appeal.

¹ CA ANZ By-Laws effective date March 2022

3. The Council made the following directions regarding the conduct of the hearing and the publication of its reasons for decision:
- (a) its decision with reasons, mentioning the Member's name and location, be published on the CA ANZ website (the **Published Decision**);
 - (b) a notice mentioning the Member's name and location with a web address for the Published Decision be published in the CA ANZ digital and print magazine *Acuity*;
 - (c) ASIC and the Tax Practitioners Board be notified of this decision;
 - (d) except for the content of the written decision with reasons, all written and oral evidence and submissions related to this decision are to remain confidential.

The date of effect of this decision is 15 April 2024 (By-Law 40.25(c)).

1. Introduction

- (a) On 21 November 2023 the Disciplinary Tribunal made the following decisions:
- (i) that the Member failed to comply with the reasonable and lawful directions of an officer or organ of CA ANZ acting within the powers conferred by CA ANZ's Supplemental Charter, the By-Laws or the Regulations which related to a matter concerning the good order and management of CA ANZ, in breach of By-Law 40(20.1)(i)²;
 - (ii) to suspend the Member's membership for a period of two years or until such time as the Member provides a written response to the complaint addressing all matters raised to the satisfaction of the PCC;
 - (iii) to impose a cost sanction in the sum of \$16,316 for the full costs and expenses of the proceedings before the Disciplinary Tribunal;
 - (iv) to make the following directions regarding the conduct of the hearing and the publication of its reasons for decision:
 - (1) its decision with reasons, mentioning the Member's name and location, be published on the CA ANZ website (the **Published Decision**);
 - (2) a summary of the Published Decision mentioning the Member's name and location with a web address for the Published Decision be published in the CA ANZ official publication, *Acuity*;
 - (3) the Tax Practitioners Board and Australian Securities and Investments Commission be notified of the decision;
 - (4) 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;
 - (5) the decision regarding confidentiality takes effect immediately from 31 October 2023.
- (b) On 12 December 2023 the Member submitted a Notification of Appeal form in which he appealed:
- (i) the determination that his membership be suspended;
 - (ii) the award of costs and quantum of those costs as determined by the Disciplinary Tribunal;
- (c) In accordance with By-Law 40.39 Transitional Provisions:
- (a) All matters, complaints and investigations must be handled by the Professional Conduct Committee and each disciplinary body in accordance with the currently

² CA ANZ By-Laws effective date March 2022

applicable Section 5 of these By-Laws regardless of when the matter, complaint or investigation arose.

- (b) Save with the consent of a Member under By-Law 40.16, nothing in this Section 5 of these By-Laws shall operate so as to increase the Sanction imposed on a Member beyond those applicable to such Offence or to make a Member liable to a Sanction which that Member would not otherwise have been under Section 5 of these By-Laws which were in force at the time when the Offence occurred.

2. The issues for determination

- (a) Should the Member be granted the requested adjournment?
- (b) Should the hearing proceed in the absence of the Member?
- (c) Was it necessary or desirable to suspend the Member's membership from CA ANZ for a period of two years or until such time as the Member provides a written response to the complaint addressing all matters raised to the satisfaction of the PCC? If not, what sanctions should be applied?
- (d) Should the Member be required to pay the full costs of the Disciplinary Tribunal hearing of \$16,316 as determined by the Disciplinary Tribunal?
- (e) Should the Member be required to pay the costs of the hearing before the Appeals Council and if so, in what amount?
- (f) Should the Member's name and location be suppressed?
- (g) Should other parties be notified of the Council's decision?
- (h) Should any confidentiality orders be made?

3. Should the Member be granted the requested adjournment?

- (a) The Member requested an adjournment in an email dated 25 March 2023, on the basis that he had decided to retain legal counsel who would not have sufficient time to prepare for the hearing date. He requested a date in mid May 2024.
- (b) The Appeals Council decided that more than sufficient notice had been given of the appeal hearing date to enable the Member to retain counsel if he wished to do so and no explanation was given as to why he had not attempted to retain counsel earlier. The Member was accordingly notified that the hearing would proceed on 15 April 2024.

4. Should the hearing proceed in the absence of the Member?

- (a) The Member did not appear at the hearing.
- (b) On the morning of the hearing, the Tribunal Secretary called the Member's office phone number, emailed the Member and called the Member's mobile phone number.

- (c) After numerous calls the Member answered his mobile phone and advised the Tribunal Secretary, he was unaware the hearing was proceeding and he was not able to attend as he was at his doctor's surgery.
- (d) The Tribunal Secretary advised the Member she would let the Appeals Council know and they would decide about how they will proceed.
- (e) The PCC submitted the matter should proceed in the absence of the Member.
- (f) The Council decided that the Member had been given sufficient notice of the hearing and was well aware it would be going ahead. Indeed the Member provided a lengthy written submission to the PCC just after 9am on the hearing date.
- (g) In the circumstances the Council decided to proceed with the hearing.

5. Was it necessary or desirable to suspend the Member's membership from CA ANZ for a period of two years or until such time as the Member provides a written response to the complaint addressing all matters raised to the satisfaction of the PCC?

5.1 Disciplinary Tribunal determination

- (a) The Disciplinary Tribunal made the decisions referred to in paragraph 1(a) above.
- (b) The original complaint to which the Member was asked to respond, asserted that he had provided an opinion criticising a valuation of a family business when the Member did not possess the relevant expertise and in circumstances in which he did not provide a letter of engagement.

5.2 Member submissions

- (a) The Member did not contest the finding that he had breached By-Law 40(2.1)(i)³ by failing to comply with the reasonable and lawful directions of an officer of CA ANZ.
- (b) The Member, in a letter to the PCC dated 27 October 2023, which was received by the PCC one day prior to the hearing on 31 October 2023, stated that he did not know the Complainant and did not act for him. He also said that he provided a letter to the Complainant's estranged wife's solicitors. The wife was involved in family law proceedings with the Complainant and the Member asserted that the letter was privileged. He also asserted that he did not have any engagement with the Complainant's wife to provide a valuation and had recommended that an independent valuer be appointed to provide that valuation.
- (c) The Member, in a written submission dated 15 April 2024 amplified his explanation and effectively repeated he had not provided any valuation to the Complainant's wife and provided a letter from her in which she confirmed that the Member had not provided a formal valuation to her.

³ CA ANZ By-Laws effective date March 2022

5.3 PCC submissions

- (a) The PCC submitted that:
- (i) whilst the Member's correspondence of 27 October 2023 provided a written response that he had not provided a valuation it did not expressly deal with the issue of engagement;
 - (ii) the Member was fully aware of the necessity to reply in writing to the specific questions raised by the PCC in its correspondence of 9 March 2023 namely:
 - (1) failing to provide terms of engagement to the client; and
 - (2) acting without expertise regarding valuations;
 - (iii) the Member had waited until one day before the Disciplinary Tribunal hearing to provide his explanation and that the PCC had not had the opportunity to consider it properly.

5.4 Council decision and reasons

- (a) The Council considered that the letter dated 27 October 2023 from the Member made it clear that he had not provided any valuation to the Complainant or to the Complainant's wife. Further, although he had not expressly stated that he had not been engaged by either of them his explanation quite clearly implied that he did not have any engagement to provide a valuation.
- (b) This is supported by the Member's explanation that he advised the Complainant's spouse and her solicitor that someone more independent should prepare a valuation and that such a valuation had been obtained. He clearly was not engaged by her to provide a valuation and did not need to provide an engagement letter to her. Further, although the Complaint did not specify the person to whom the Member should provide a letter of engagement, it could not have been suggested that an engagement letter be provided to the Complainant as the Member said in his letter of 27 October 2023 that he did not know the Complainant and did not act for him.
- (c) The Council also took into the account that the Member was not providing an explanation with legal precision. It formed the view that on an ordinary reading, the explanation he gave was reasonably consistent with him not having an engagement to prepare a valuation.
- (d) The Council took the view therefore that by 27 October 2023, prior to the hearing before the Disciplinary Tribunal, the Member had complied with the PCC's request for information.

6. What sanctions should be imposed on the Member?

- (a) Regulation CR 8.12, *Guidelines for the imposition of sanctions (Guidelines)* sets out the matters that may be considered by this Council 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;

(xi) the manner in which the Member has treated CA ANZ staff and, relevantly, members of the Professional Conduct Committee, Disciplinary Tribunal and Appeals Council during the course of the investigation and determination of the complaint and any disciplinary proceedings; and

(xii) 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 this Council may have regard to any other relevant matters that are before it.
- (c) The PCC submitted that suspension was the appropriate sanction because the Member had failed properly to comply with the PCC's request for information.
- (d) The Member was not in attendance. In his Appeal Notification form he said that he had complied with the request for information orally in May 2023 and that he was unaware of the need to provide anything further.
- (e) The Council determined, in relation to the finding of the Disciplinary Tribunal that the Member had breached By-Law 40(2.1)(i)⁴, that the Member's failure to comply with numerous written requests for a response which were sent to him by the PCC was a serious breach of his obligations as a Member. This was particularly the case having regard to the fact that the Member admitted, during the course of oral argument before the Disciplinary Tribunal, that in May 2023, prior to receipt of further correspondence requesting information, he was aware of the necessity to respond to those letters. This was also consistent with his providing the written explanation which he did, on 27 October 2023.
- (f) Having regard to the fact that the Council has determined that the explanation provided to the PCC by the Member, in writing on 27 October 2023 was a sufficient response, the Council

⁴ CA ANZ By-Laws effective date March 2022

determined that it was inappropriate in the circumstances to suspend the Member's membership, but that the Member should be censured and that his membership status as a Fellow should be removed and altered to that of Chartered Accountant.

7. Should the Member be required to pay the full costs of the Disciplinary Tribunal hearing of \$16,316 as determined by the Disciplinary Tribunal?

7.1 Disciplinary Tribunal determination

The Disciplinary Tribunal determined that the Member pay \$16,316 for the full costs of the Disciplinary Tribunal proceedings.

7.2 Member submissions

The Member submitted in his Appeal Notification Form dated 12 December 2024 that the costs were excessive and unreasonable.

7.3 PCC submissions

- (a) The PCC submitted that:
- (i) the costs were reasonable;
 - (ii) the written explanation sought from the Member was only provided one business day prior to the Disciplinary Tribunal hearing; and
 - (iii) the PCC needed time to consider the adequacy of that response.

7.4 Council decision and reasons

- (a) The Council decided that the written explanation provided by the Member one day prior to the hearing was very late, the hearing before the Disciplinary Tribunal could not be averted and the full costs of the Disciplinary Tribunal hearing in the sum of \$16,316 were properly payable by the Member.

8. Should the Member be required to pay costs of the Appeals Council and if so, in what amount?

- (a) Regulation CR 8.13, *Costs awards* states that when determining whether or not to require a Member to pay Costs, and the amount of such Costs, the Council:
- ...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 Council 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 submitted that the Member should pay the full costs of the Appeals Council hearing as handed up to the Appeals Council because:

- (i) The Member was well aware of the need to provide further written explanation regarding the complaint;
- (ii) had he provided the explanation that he gave on the 15 April 2024 the appeal process could have been avoided.

(c) The Member was not in attendance and made no submissions.

(d) The Council determined that the Member should pay \$6,420 towards the costs of the Appeal proceedings because:

- (i) it was of the view that the written explanation provided by the Member on 27 October 2023 to the PCC was sufficient to answer the request by the PCC for information;
- (ii) the Member had been partially successful in his appeal because his membership was not suspended; and
- (iii) considering the factors set out in CR8.13 the amount of \$6,420 being half the amount of the expected costs of the appeal, as notified to the Member in the interim costs schedule on 22 March 2024, was reasonable.

9. Should the Member's name and location be suppressed?

(a) By-Law 40.26 states:

(d) Where the ... Appeals Council determines that an Offence has been committed or decides to suspend a Member on an interim basis, it must direct that a notice be

published by CA ANZ ... of the Final Decision or the decision to suspend a Member on an interim basis. Any such publication must disclose the name and location of the relevant Member unless the ... Appeals Council ... considers that there are exceptional circumstances for not doing so. If the Final Decision is under appeal, and no stay is granted, any publication of the Final Decision must include a statement that it is under appeal. [emphasis added]

(e) Publication ... may be in such form and publication as the ... Appeals Council ... considers appropriate, including in CA ANZ's official publication, on CA ANZ's website, including in the Registry of Disciplinary Decisions, or in any other manner that it may in its discretion direct.

- (b) The Council determined there were no exceptional circumstances and therefore the Member's name and location should be disclosed in the publication.

10. Should other parties be notified of the Council's decision?

- (a) By-Law 40.26(f) states:

The Disciplinary Tribunal or Appeals Council 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 Final Decision relates, of so much of a Final Decision or a decision to suspend on an interim basis, the reasons for it and/or the Sanctions imposed, as it thinks fit. The Disciplinary Tribunal or Appeals Council will not do so until the day following the last date on which an appeal may be notified in accordance with Section 5 of these By-Laws. If an appeal is notified in accordance with Section 5 of these By-Laws, the Disciplinary Tribunal will not make such a notification until that appeal is finalised or otherwise determined.

- (b) The Member holds or has held registrations with ASIC and the TPB.
- (c) The Council determined that, due to the Member's association with ASIC and the TPB, they were interested parties and should be notified of this decision.

11. Should any details be kept confidential?

- (a) By-Law 40.35 states:

(d) The ... Appeals Council may:

...

- (ii) 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 Council directed that, except for the content of the Appeals Council written decision with reasons, all written and oral evidence and submissions related to this determination are to remain confidential.

A handwritten signature in black ink, consisting of several fluid, overlapping strokes that form a cursive name.

Chair
Appeals Council

SCHEDULE 1: DISCIPLINARY TRIBUNAL OF CHARTERED ACCOUNTANTS AUSTRALIA AND NEW ZEALAND (CA ANZ)

WRITTEN DECISION DATED 21 NOVEMBER 2023



Disciplinary Tribunal of Chartered Accountants Australia and New Zealand (CA ANZ) Written decision dated 21 November 2023

Case Number:	DT-1341
Member:	Donald Jack Richards FCA of Queensland
Hearing Date:	31 October 2023
Tribunal:	Simon Wallace-Smith FCA (Chair) John Gavens FCA Seamus Rigby, lay member of the Tribunal
Tribunal Legal Adviser:	Sian McGee
Representation:	Mr Forbes for the Professional Conduct Committee (PCC) The Member represented himself
Decisions:	<ol style="list-style-type: none"> 1. The Tribunal determined that the Member failed to comply with the reasonable and lawful directions of an officer or organ of CA ANZ acting within the powers conferred by CA ANZ's Supplemental Charter, the By-Laws or the Regulations which relates to a matter concerning the good order and management of CA ANZ, in breach of By-Law 40(2.1)(i). 2. The Tribunal determined to suspend the Member's membership for a period of two years or until such time as the Member provides a written response to the complaint addressing all matters raised to the satisfaction of the PCC. 3. The Tribunal imposed a cost sanction in the sum of \$16,316 for the full costs and expenses of the proceedings. 4. The Tribunal made the following directions regarding the conduct of the hearing and the publication of its reasons for decision: <ol style="list-style-type: none"> (a) its decision with reasons, mentioning the Member's name and location, be published on the CA ANZ website (the Published Decision); (b) a summary of the Published Decision mentioning the Member's name and location with a web address for the Published Decision be published in the CA ANZ official publication, <i>Acuity</i>; (c) the Tax Practitioners Board (TPB) and the Australian Securities and Investments Commission (ASIC) be notified of this decision;

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- (d) except for the content of the Disciplinary Tribunal written decision with reasons, all written and oral evidence and submissions related to this determination are to remain confidential;
- (e) the decision regarding confidentiality takes effect immediately from 31 October 2023.

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



1. Introduction

- (a) On 6 December 2022 CA ANZ received a complaint raising allegations that the Member had failed to provide terms of engagement to a client, and acted without expertise regarding valuations in family law proceedings (the **Complaint**).
- (b) In early 2023 the PCC initiated an investigation into the Complaint pursuant to the powers conferred by By-Law 40(5.1).
- (c) Between 9 March 2023 and 12 May 2023 the PCC wrote to the Member on four occasions concerning the Complaint, requiring him to respond pursuant to By-Law 40(4.4). The Member did not respond.
- (d) The PCC considered the matter on 29 May 2023 and gave the Member a further 14 days to respond to the Complaint. The Member did not respond in writing as was required.
- (e) The PCC further considered the matter on 31 July 2023 and referred the Member to the Tribunal by way of Notice of Disciplinary Action (the **NDA**, set out in full in Schedule 1). On 31 July 2023 the PCC also decided to adjourn the investigation of the Complaint.
- (f) The PCC alleged in the NDA that the Member failed to comply with a reasonable and lawful direction from CA ANZ which related to matters concerning the good order and management of CA ANZ, in breach of By-Law 40(2.1)(i).
- (g) The allegation in the NDA concerned only the Member's response to the correspondence sent to him on behalf of the PCC. The PCC did not refer to the Tribunal, and the Tribunal did not determine, the merit of the Complaint itself.

2. The issues for determination

- (a) Did the Member fail to comply with the reasonable and lawful directions of an officer of CA ANZ? (allegation 1)
- (b) If the answer to (a) was yes, what sanctions should be imposed on the Member?
- (c) Should the Member be required to pay costs and if so, in what amount?
- (d) Should the Member's name and location be disclosed in the Tribunal's published decision?
- (e) Should other parties be notified of the Tribunal's decision?
- (f) Should any confidentiality orders be made?

3. Did the Member fail to comply with the reasonable and lawful directions of an officer of CA ANZ? (allegation 1)

3.1 PCC submissions

- (a) The PCC submitted that:
 - (i) there had been a clear breach by the Member of By-Law 40(2.1)(i) as the Member had failed to respond within the time required to official correspondence sent to him by an officer of CA ANZ;

- (ii) there were five occasions where the Member had not complied with correspondence from CA ANZ:
 - (1) a letter from CA ANZ dated 9 March 2023;
 - (2) a letter from CA ANZ dated 24 March 2023;
 - (3) a letter from CA ANZ dated 3 April 2023;
 - (4) a letter from CA ANZ dated 12 May 2023;
 - (5) a letter from CA ANZ dated 29 May 2023;
 - (iii) the PCC was satisfied that the Member was in fact receiving correspondence as delivery and read receipts were received on multiple occasions; and
 - (iv) the statement provided by the Member on 29 October 2023 related to the substantive Complaint made and was not relevant for the purpose of establishing a breach of the By-Laws as set out in the NDA.
- (b) In making these submissions, the PCC referred to the following evidence:
- (i) the letters from CA ANZ dated 9 March 2023, 24 March 2023, 3 April 2023, 12 March 2023 and 29 May 2023; and
 - (ii) email delivery notifications and read receipts received on multiple occasions follow CA ANZ's sending of the letters in (i) by email to the email address contained in the General Register and the email address subsequently advised by the Member on 29 May 2023.
 - (iii) the Member's statement provided to the Tribunal on 29 October 2023 as part of his Disciplinary Tribunal Hearing Questionnaire response.

3.2 Member submissions

- (a) On 29 October 2023 the Member provided to the Tribunal a written statement that in part addressed the substance of the Complaint, and in part addressed the allegation in the NDA.
- (b) The Member was advised in the course of the hearing that the Tribunal could not adjudicate the Complaint itself, because only the allegation of failing to respond to CA ANZ's correspondence had been referred to the Tribunal by the PCC in the NDA.
- (c) Accordingly, only those parts of the Member's written statement and submissions that related to the allegation in the NDA were considered by the Tribunal in its determination.
- (d) In relation to the allegation in the NDA, the Member submitted that:
 - (i) he was not aware of any of the relevant letters until 29 May 2023 when he spoke to an officer from CA ANZ;
 - (ii) he was in poor health and under stress around the time the CA ANZ letters were sent. He said he was diagnosed with cancer just before Christmas 2022 and had surgery scheduled for March 2023, which was ultimately deferred until April 2023. He said he had been hospitalised eight times in the past year and still had issues at the time of the hearing;
 - (iii) he was not sure why some of the emails sent to him had been issued with read receipts. As a result of his health issues, he had been working at an approximately 50 per cent workload. There were other people in his office with access to that account, being an

administrative assistant, who might have opened them on days when he was not in the office. He said he was not advised by staff of any emails from CA ANZ;

- (iv) also as a result of his health issues he had sold his practice and intended to shortly surrender his practicing certificate; and
- (v) on 29 May 2023 he gave to an officer of CA ANZ a verbal response to the Complaint and believed that that was the end of the matter.

3.3 Tribunal decision and reasons

- (a) The Tribunal found that the Member had breached By-Law 40(2.1)(i) for the following reasons:
 - (i) the PCC wrote to the Member on four separate occasions. Each piece of correspondence required that the Member to respond in writing to the Complaint, and to do so within a given time, pursuant to By-Law 40(4)(4.4). The Member did not respond;
 - (ii) on 29 May 2023 the PCC provided the Member a further 14 days for the Member to respond to the Complaint. The Member did not respond;
 - (iii) the PCC is an organ of CA ANZ;
 - (iv) under By-Law 40(4)(4.4) a Member must respond in writing to the PCC within such period of time as the PCC specifies in its notification regarding a complaint, and the Member's written response must address all matters raised in the notification to the satisfaction of the PCC. Therefore, the PCC's directions were reasonable and lawful and made under the By-Laws of CA ANZ;
 - (v) responding to the PCC as the body responsible for investigating complaints about professional conduct is necessary for the maintenance of good order and management of CA ANZ by ensuring standards of practice and professional conduct are upheld by its members;
 - (vi) the Member said that he had not personally received and read any correspondence prior to 29 May 2023. The Member indicated he had a period of ill health for at least part of the period that the correspondence was issued and he was working at only half capacity at his accounting practice;
 - (vii) the material before the Tribunal confirmed that the correspondence before 29 May 2023 had been delivered to and/or read at the email address as contained in the General Register. The Member indicated that other employees at his practice had the ability to read emails and possibly opened these emails without bringing the CA ANZ correspondence to his attention. The Tribunal considered that the Member should have had appropriate policies and procedures in place to enable any important correspondence to be brought to the attention of the Member. In any event the Tribunal considered that the Member was ultimately responsible for ensuring the emails were responded to.

4. 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.

4.1 PCC submissions

- (a) The PCC submitted that the appropriate sanction was that the Member's membership be suspended for a period of five years, or until such time as the Member provides a written response to the complaint addressing all matters raised to the satisfaction of the PCC, whichever is the earlier.
- (b) The PCC also submitted that:
- (i) the Member's conduct was sufficiently serious to impose a substantial sanction;
 - (ii) the good order and management of CA ANZ can only be maintained if members comply with lawful directions of organs of CA ANZ;
 - (iii) members must be held accountable when they fail to engage with CA ANZ in relation to complaints that have been made against them by members of the public;
 - (iv) the PCC did not consider the Member's written response provided on 29 October 2023 to be sufficient and required further engagement from the Member;
 - (v) the Member's conduct had been subject of two unrelated complaints within the past six years;
 - (vi) public confidence can only be maintained if adequate steps are taken to respond to this matter and impose an appropriate sanction;
 - (vii) the Member had referred to his ill health and hospitalisations as a mitigating factor, but provided no supporting evidence;
 - (viii) an aggravating factor is that the Member had tried to avoid the consequences of his breach by trying to resign from CA ANZ; and

- (ix) according to the Member he was still working at half capacity, he had engaged in selling his practice, and had also engaged in a PCC case conference on an unrelated matter on 29 May 2023. These matters indicated that he was not incapacitated and instead had chosen to deprioritise the serious and important correspondence from CA ANZ.

4.2 Member's adjournment application and submissions

- (a) Having been informed of the Tribunal's decision that the allegation was established, in the course of submissions regarding sanctions the Member requested an adjournment for 45 days so he could respond to the original Complaint. He indicated he would prefer an adjournment and to bear the additional costs that would arise.
- (b) The Member did not otherwise make submissions about the sanction proposed by the PCC.

4.3 Tribunal decisions and reasons

- (a) The Tribunal determined not to adjourn the hearing for the following reasons:
 - (i) the breach had been established and the only outstanding matter for determination was sanction;
 - (ii) the Member had already had ample opportunity to address the PCC requests previously and the hearing should continue;
 - (iii) the sanction sought by the PCC was a conditional suspension that could be remedied by complying with the requests regarding the Complaint; and
 - (iv) adjourning the hearing in these circumstances would have an unduly dilatory effect, having regard to the Tribunal's obligation to deal with matters in a timely and efficient manner.
- (b) In respect of sanctions, in balancing the interest 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, the Tribunal determined that the Member's membership be suspended for a period of two years or until such time as the Member provides a written response to the complaint addressing all matters raised to the satisfaction of the PCC for the following reasons:
 - (i) the non-response from the Member to four requests from the PCC in relation to the complaint was serious;
 - (ii) the Member was actually present at a case conference on an unrelated matter on 29 May 2023 and was informed that he was required to respond to the Complaint. The PCC wrote to him again on the same day at an alternate email address provided by the Member, providing him with copies of the earlier correspondence and informing him in writing that he was required to respond in 14 days. The Member did not respond in any way until 29 October 2023;
 - (iii) it is unsatisfactory for a member of CA ANZ not to take seriously any investigation by the PCC and to fail to cooperate with the investigation process. This conduct undermines CA ANZ's authority and its ability to regulate its members;
 - (iv) for CA ANZ to administer its functions its members must comply with its policies and procedures;

- (v) the Tribunal noted the Member's submissions on his ill-health. Notwithstanding there was no supporting evidence forwarded by the Member the Tribunal accepted the Member's account given at the hearing about his ill-health. Some of the relevant dates of when the correspondence was sent to the Member by the PCC did span the time when the Member was hospitalised and recovering from a health episode;
- (vi) in view of the ill-health context to his non-response, the Tribunal considered that while the matter was serious there are other more serious breaches of this nature and accordingly conditional suspension of the Member for two years, rather than the maximum five years, was appropriate.

5. 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 submitted that:
 - (i) the allegation in the NDA was found to have merit;
 - (ii) the allegation that was established was serious, repeating the submissions in relation to sanctions about the seriousness of the conduct;
 - (iii) the Member was not open, honest and timely in his dealings with the PCC and the Tribunal;
 - (iv) the amount of costs was fair and reasonable;
 - (v) it was reasonable to impose the costs on the Member given his conduct;
 - (vi) the full costs were reasonable in the circumstances;
 - (vii) the Member had not previously been required to pay any costs incurred by CA ANZ.
- (c) The Member submitted only that he would find it very difficult to pay the costs.

- (d) Having regard to the factors in CRS.12 the Tribunal concluded there was no reason to depart from the costs sanction proposed by the PCC because:
 - (i) the allegation against the Member was found to have merit and was serious;
 - (ii) the Member was not open and timely in his dealings with the PCC;
 - (iii) the majority of costs was caused by the Member's own lack of engagement with the PCC and the Complaint;
 - (iv) the final costs schedule showed that the costs were reasonable and not excessive.
- (e) In the circumstances the Tribunal determined that the Member should pay \$16,316 for the full costs of the proceedings.

6. Should the Member's name and location be disclosed in the Tribunal's published decision?

- (a) By-Law 40 states:

12.3 Where the Disciplinary Tribunal ... determines that a complaint is established or imposes a sanction adverse to the Member ... it must direct that a notice be published by CA ANZ of its decision and the sanctions imposed (if any). Any such publication must disclose the name and location 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) As the allegations in the NDA were established and sanctions adverse to the Member imposed, pursuant to By-Law 40(12.3) the Tribunal must direct that a notice of its decision and sanctions imposed be published by CA ANZ.
- (c) Neither the Member nor the PCC submitted that there were any exceptional circumstances for not publishing the Member's name in CA ANZ's publication of the notice of this decision and the sanctions imposed. The Tribunal was not satisfied that there were any such exceptional circumstances. Therefore the Member's name and location is to be disclosed in the notice of the Tribunal's decision and the sanctions imposed.
- (d) The Tribunal further determined that it was appropriate that:
 - (i) this written decision with reasons mentioning the Member's name and location be published on the CA ANZ website (the **Published Decision**); and
 - (ii) a summary of the Published Decision mentioning the Member's name and location with a web address for the Published Decision be published in the CA ANZ official publication, *Acuity*.

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 holds registrations and/or memberships with the TPB and ASIC.

- (c) The Tribunal determined that, due to the Member's association with those bodies, the TPB and ASIC were interested parties and should be notified of this 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 and oral evidence and submissions related to this determination are to remain confidential.

9. Rights of appeal

The Member and the PCC may give notice of appeal against any determination made or sanction imposed by the Tribunal, within 21 days after notice of the written reasons for such determination or sanction is given to them. Any such notice of appeal must be given using the form prescribed by the Regulations (By-Laws 40(11.1) and 40(11.2)).

While the parties remain entitled to appeal or while any such appeal awaits determination by the Appeals Tribunal, the following decisions shall not take effect:

- (a) breach of the By-Laws
- (b) sanction
- (c) costs sanction
- (d) publication
- (e) notification.

The Tribunal decision as to confidentiality took effect immediately.



Chair
Disciplinary Tribunal

SCHEDULE 1: THE PCC'S ALLEGATIONS

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

1. By-Law 40(2.1)(i) in that 2023 you have failed to comply with the reasonable and lawful directions of an officer or organ of CA ANZ acting within the powers conferred by CA ANZ's Supplemental Charter, the By-Laws or the Regulations which relates to a matter concerning the good order and management of CA ANZ by failing:
 - a. to provide a response to the matters contained in correspondence sent on behalf of the PCC:
 - (i) on 9 March 2023 by 23 March 2023 or at all;
 - (ii) on 24 March 2023 by 31 March 2023 or at all;
 - (iii) on 3 April 2023 by 14 April 2023 or at all; and
 - (iv) on 12 May 2023 by 18 May 2023 or at all; and
 - b. to provide a response to the complaint as referred to in the decision of the PCC on 29 May 2023 by 12 June 2023 or at all.

SCHEDULE 2: RELEVANT BY-LAWS

Section 1 - Preliminary

...

Definitions

- 2.** In the interpretation of these By-Laws, unless the context or subject matter otherwise indicates or requires:
- ...
- (k) **Board** means the board of Directors of CA ANZ appointed by the CA ANZ Council and constituted under the Supplemental Charter and these By-Laws;
- ...
- (dd) **General Register** means the register of Members whose Registered Address is maintained by the CEO under By-Law 142;
- ...
- (gg) **Individual Member** means a natural person who has been admitted to Membership as a Fellow, Chartered Accountant, Associate Chartered Accountant or Accounting Technician and **Individual Membership** has a corresponding meaning;
- ...
- (ddd) **Practice Entity** means any partnership, trust or body corporate or unincorporated body in or through which persons who are Members, or include a Member or Members, practise as public accountants;
- (eee) **Practice Entity Member** means a Chartered Firm which has been admitted to Membership;
- ...
- (ooo) **Registered Address** of a Member means his or her address on the General Register kept under these By-Laws;
- ...

Section 2 - Membership

...

Resignation

- 21.** Any Member may resign his or her Membership by sending his or her resignation in writing together with all moneys owing by him or her to CA ANZ, whether for subscription, fee or other amount, to the CEO:
- (a) Provided that no resignation shall take effect unless and until it has been accepted by the Board. The Board may decline to accept the resignation of a Member who is the subject of disciplinary action or professional conduct proceedings by either CA ANZ or NZICA or whose conduct, in the opinion of the Board, by virtue of matters brought to the attention of CA ANZ, may become the subject of professional conduct proceedings or who has been requested to provide information, given notice of or is undergoing a review or any follow up process arising from a review, investigation or professional conduct proceedings.

Section 4 – Rights and Obligations of Members

...

Compliance Obligations

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

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

...

Section 5 - Professional Conduct

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

...

- (c) **Case Conference** means a meeting of the Professional Conduct Committee in respect of a complaint which has been notified to a Member in accordance with By-Law 40(7.1);

...

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

...

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

...

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

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

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

40(1) Committees and Tribunals

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

...

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

...

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

40(2) Disciplinary action

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

- (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;
- (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);
- (d) has pleaded guilty to, or been found guilty of, any statutory or other offence by a court of law, professional body, statutory or other regulatory authority or body, commission or inquiry in any jurisdiction in Australia or elsewhere which may not be a crime but which, in the opinion of the Professional Conduct Committee, the Disciplinary Tribunal or the Appeals Tribunal, brings, or may bring, discredit upon that Member, CA ANZ or the profession of accountancy (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;
- (f) with or without any admissions, has given or entered into an undertaking (whether enforceable or not) or consented, accepted or agreed to any order in connection with any matter or proceedings or any threatened or proposed proceedings or any review, audit or investigation by any statutory or regulatory authority or body, or professional body in any jurisdiction in Australia or elsewhere (other than an undertaking or order in respect of procedural matters in respect of or in the course of the conduct of the proceedings or investigation);

- (g) has agreed to, or has had imposed, any condition or restriction on any professional membership, registration or licence in that Member's name;
- (h) has committed any breach of the Supplemental Charter, these By-Laws or the Regulations, any pronouncements issued by the Accounting Professional and Ethical Standards Board, Australian Accounting Standards Board and Auditing and Assurance Standards Board (or their successor entities) including the Code of Ethics, or any applicable pronouncements, instruments, technical or professional standards or guidance issued by any similar body whether in Australia or in a foreign jurisdiction;
- (i) has failed to comply with any reasonable and lawful direction of any officer or organ of CA ANZ acting within the powers conferred by CA ANZ's Supplemental Charter, these By-Laws or the Regulations and which relates to a matter concerning the good order and management of CA ANZ;
- (j) suffers an Insolvency Event;
- (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;
- (l) is or was the Principal of a Practice Entity that has done any of the things described in paragraphs (b), (c) or (d), has an adverse finding against it as described in paragraph (e), entered into an undertaking of the kind described in paragraph (f), had a condition or restriction imposed on a professional registration or licence as described in paragraph (g) or suffers an Insolvency Event;
- (m) has provided information to CA ANZ or NZICA which is false or misleading;
- (n) has failed to comply with any determination or decision made by the Professional Conduct Committee, the Disciplinary Tribunal or the Appeals Tribunal; or
- (o) has failed to comply with any undertaking given to the Professional Conduct Committee, the Disciplinary Tribunal or the Appeals Tribunal in accordance with By-Law 40(13.8).

...

40(4) Complaints

40(4.1) A complaint about the conduct of a Member (including a Member who is suspended on an interim basis) may be:

- (a) lodged by any person; or
- (b) initiated and made by the Professional Conduct Committee at any time following an investigation or receipt of information (including of the kind specified in By-Law 40(5.1)),

in either case whether or not the conduct occurred in Australia.

40(4.2) Every complaint shall be:

- (a) in writing; and

- (b) with respect to complaints lodged by a person pursuant to By-Law 40(4.1)(a), in such form as may be prescribed from time to time in the Regulations.
- 40(4.3) The Professional Conduct Committee must notify the relevant Member of any complaint relating to that Member unless the Professional Conduct Committee decides that any complaint it has received is determined on the basis that it:
- (a) is not a matter prescribed by By-Law 40(2.1);
 - (b) is trivial, frivolous, vexatious or in bad faith;
 - (c) is lacking in substance, vague, imprecise or unsupported by evidence;
 - (d) is, may or could be, an abuse of process;
 - (e) relates to historical issues that it considers would no longer be practical to investigate ;
 - (f) is of an insufficient nature to warrant investigation; or
 - (g) comes within the jurisdiction of another forum and in all the circumstances it is reasonable for the complaint to be so resolved.
- 40(4.4) A Member must respond in writing to the Professional Conduct Committee within such period of time as the Professional Conduct Committee specifies in its notification. The Member's written response must address all matters raised in the notification to the satisfaction of the Professional Conduct Committee.
- 40(4.5) If the Professional Conduct Committee decides not to notify a complaint in accordance with By- Law 40(4.3), it will notify the complainant of that determination.
- 40(5) Investigation**
- 40(5.1) The Professional Conduct Committee may investigate any matter that it considers may result in disciplinary action being taken in respect of a Member under these By-Laws.
- 40(5.2) For the purposes of any investigation, the Professional Conduct Committee may:
- (a) make, or engage or employ any person to make, such inquiries as the Professional Conduct Committee considers necessary;
 - (b) require any Member to whom the investigation relates to provide the Professional Conduct Committee, within such period of time as the Professional Conduct Committee specifies in its notification, any documents, things or information that are in the possession or under the control of that Member that may relate to the subject matter of the investigation;
 - (c) require the Member or the Member's Practice Entity to submit, at the Member's cost, to a review or reviews on such matters and on such terms as determined by the Professional Conduct Committee, such terms to include that the results of such reviews are made available to the Professional Conduct Committee;
 - (d) make and retain copies of any documents that are provided to the Professional Conduct Committee, including those containing personal information for the purposes of the Privacy Act 1988 (Cth);
 - (e) require the Member at the Member's own cost to attend before the Professional Conduct Committee, on at least 14 days' notice to answer any questions and/or discuss the complaint or any matter arising from it; and

(f) request the complainant to appear before the Professional Conduct Committee (at the complainant's cost) to discuss the complaint or any matter arising from it.

40(5.3) The investigative powers of the Professional Conduct Committee may be exercised at any time, including after the Professional Conduct Committee has decided to convene a Case Conference or refer a complaint against a Member to the Disciplinary Tribunal for hearing.

40(5.4) Members may not be legally represented when attending the Professional Conduct Committee in accordance with By-Law 40(5.2)(e) unless the Professional Conduct Committee consents. An application for such consent must be made no less than 7 days prior to the date notified for such attendance in the form prescribed by the Regulations.

...

40(10) Disciplinary Tribunal

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

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

...

40(10.3) The Professional Conduct Committee may amend a Notice of Disciplinary Action at any time, provided that it may not do so, subject to By-Law 40(9.3)(b), less than 35 days before the hearing, without:

- (a) the consent of the Disciplinary Tribunal;
- (b) the consent of the Member concerned; or
- (c) postponing the date for the hearing to a date not less than 35 days after service of the amended Notice of Disciplinary Action.

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

- (a) whether the Member will attend the hearing and, if represented, by whom (including details of that representative's name and firm, organisation or chambers);
- (b) the matters the Member admits or disputes in the Notice of Disciplinary Action;

- (c) whether the Member intends to adduce any evidence at the hearing, and the names, qualifications and organisations of any witnesses the Member intends to call; and
 - (d) any relevant fact or circumstance the Member wishes to bring to the attention of the Disciplinary Tribunal and the reasons for doing so.
- 40(10.5) The Disciplinary Tribunal may, in an appropriate case, require a Member to produce the evidence on which the Member will rely to the Disciplinary Tribunal and the Professional Conduct Committee by such date prior to the hearing as the Disciplinary Tribunal prescribes.
- 40(10.6) The Disciplinary Tribunal may require any Member or a representative of a Practice Entity (whether a Practice Entity Member or a Non-Member Practice Entity) to attend and give evidence at the Disciplinary Tribunal hearing.
- 40(10.7) Failure by the Member to comply with any or all of the above requirements (or to attend) shall not preclude the Disciplinary Tribunal from proceeding to hear and determine a Notice of Disciplinary Action at the appointed time.
- 40(10.8) The Disciplinary Tribunal may appoint a legal adviser who is an Australian legal practitioner to advise (attending the hearing as necessary) the Disciplinary Tribunal on matters of law, procedure and evidence.
- 40(10.9) At every hearing before the Disciplinary Tribunal, the Professional Conduct Committee shall be responsible for the presentation of the case against the Member. The Professional Conduct Committee may appoint an independent Australian legal practitioner to present the case on its behalf.
- 40(10.10) The Disciplinary Tribunal shall give the Member concerned or that Member's representative a reasonable opportunity of being heard and shall give due consideration to any material that Member may submit.
- 40(10.11) The Disciplinary Tribunal shall determine whether or not the complaint contained in the Notice of Disciplinary Action, or any part thereof, is established.
- 40(10.12) If the Disciplinary Tribunal determines that the complaint contained in the Notice of Disciplinary Action or any part thereof is established it may, subject to By-Law 40(9.3)(c), and having given the Member a reasonable opportunity of being heard on the question of sanctions, impose any one or more of the sanctions in the table below identified as applicable to that class of Member:
- ...
- (a) terminate that Member's Membership and remove the Member's name from the Registers on which it appears
 - (b) suspend the Member from membership of CA ANZ for a period not exceeding 5 years and remove the Member's name from the Registers on which it appears
 - (c) cancel or suspend any certificate of public practice held by the Member
 - (d) declare that the Member is ineligible to hold a certificate of public practice for a period not exceeding 5 years and on such terms and conditions as to the earlier termination of such period of ineligibility as the Disciplinary Tribunal may prescribe
 - (da) cancel any specialisation held by the Member

- (e) remove the Member's Membership status as of Fellow and alter it to that of Chartered Accountant, Associate Chartered Accountant, or Accounting Technician (as the case may be)
- (f) fine that Member an amount not exceeding \$50,000
- (g) censure the Member
- (h) require the Member, at the Member's own expense, to complete any professional development courses prescribed by the Disciplinary Tribunal within the time period and on the terms stipulated by the Disciplinary Tribunal
- (i) require the Member to engage an adviser or consultant or other person at the Member's own expense as directed by the Disciplinary Tribunal
- (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(10.14) Notwithstanding that the Disciplinary Tribunal determines that the allegations contained in a Notice of Disciplinary Action, or any part thereof, against the Member are established, it may at its discretion not impose any sanctions.
- 40(10.15) Written notice of every decision of the Disciplinary Tribunal, including reasons for the decision and any sanctions imposed, must be given by the Disciplinary Tribunal to the relevant Member, the Professional Conduct Committee and to the Professional Conduct Oversight Committee, subject to By-Law 40(9.3)(d), within 21 days of the Disciplinary Tribunal's decision.
- 40(10.16) The Disciplinary Tribunal may notify interested parties including other professional bodies, regulatory authorities, the Member's current and/or former employers, partners, clients of the Member or the Member's Practice Entity who are or may be affected by the Member's conduct to which the disciplinary action relates, of so much of a decision (including a decision to suspend on an interim basis), the reasons for it and/or the sanctions imposed, as it thinks fit. The Disciplinary Tribunal will not do so until the day following the last date on which an appeal may be notified in accordance with paragraph 11.1. If an appeal is notified in accordance with paragraphs 11.1 or 11.2, the Disciplinary Tribunal will not make such a notification until that appeal is heard or otherwise determined.

...

40(10.18) A determination of the Disciplinary Tribunal shall take effect from the day immediately after the expiry of the period during which an appeal may be notified, if no appeal has been notified within that period.

40(11) Appeals Tribunal

40(11.1) Any Member in respect of whom any determination has been made by the Disciplinary Tribunal or upon whom any sanction has been imposed by the Disciplinary Tribunal may, subject to By-Law 40(9.4), within 21 days after notice of the written reasons for such determination or sanction is given to that Member, give notice of appeal in the form prescribed by the Regulations to the Appeals Tribunal against any such determination or sanction or both. At the discretion of the Appeals Tribunal later notice may be accepted.

40(11.2) The Professional Conduct Committee, may, subject to By-Law 40(9.4), within 21 days after notice of the written reasons for the determination or sanction imposed by the Disciplinary Tribunal against a Member is given to it, give notice of appeal in the form prescribed by the Regulations to the Appeals Tribunal against any such determination or sanction or both. At the discretion of the Appeals Tribunal later notice may be accepted.

40(11.3) A notice of appeal must state the grounds of appeal in full and the grounds so stated shall not thereafter be amended except with the approval of the Appeals Tribunal.

40(11.4) The Appeals Tribunal may, at its discretion, require the Member to pay such amount as it determines to CA ANZ as security against the anticipated Costs which CA ANZ may incur in the conduct and hearing of the appeal.

40(11.5) The Appeals Tribunal may, at its discretion, stipulate a time period of not less than 28 days within which the Member must pay the amount referred to in By-Law 40(11.4) and, if it does so and the Member has not paid that amount at the expiry of that period, the appeal will automatically lapse.

40(11.6) Subject to By-Law 40(9.4), as soon as practicable after receipt of a notice of appeal the Appeals Tribunal shall give to the Member and the Professional Conduct Committee not less than 28 days' notice of the date, time and place fixed for the hearing of the appeal.

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

...

40(12) Publication of investigations and decisions

...

40(12.3) Where the Disciplinary Tribunal ... determines that a complaint is established, imposes a sanction adverse to the Member (including one with the consent of a Member or a written undertaking under By-Law 40(13.8)) or decides to suspend a Member on an interim basis, it must direct that a notice be published by CA ANZ of its decision and the sanctions imposed (if any). Any such publication must disclose the name and location of the relevant Member unless the Disciplinary ... considers that there are exceptional circumstances for not doing so.

40(12.4) Publication under By-Laws 40(12.1) or 40(12.3) may be in such form and publication as the ... Disciplinary Tribunal ... considers appropriate, including in CA ANZ's official publication, on CA ANZ's website or in any other manner that it may in its discretion direct.

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

...

40(13) General

40(13.1) Expedition

The Professional Conduct Committee, Disciplinary Tribunal and Appeals Tribunal shall endeavour to investigate, hear and determine complaints in a timely and efficient manner.

40(13.2) Evidence

The rules of evidence do not apply to the processes and proceedings referred to in this Section 5.

40(13.3) Conduct and provision of information

Members must be open and honest in their dealings with the Professional Conduct Committee, Disciplinary Tribunal and Appeals Tribunal. Members must provide such information as is required of them by CA ANZ, the Professional Conduct Committee, Disciplinary Tribunal or Appeals Tribunal in connection with an investigation, a complaint or any matters arising from or in relation to it, in a timely fashion and in any event within the time prescribed in this Section 5 and any applicable Regulations. Each of the Professional Conduct Committee, Disciplinary Tribunal and Appeals Tribunal may record its meetings, interviews, investigations, proceedings and hearings in any manner it decides, including by the use of stenography and sound recording technology.

40(13.4) Termination and suspension

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

...

40(13.6) Guidelines for the imposition of sanctions

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

40(13.7) Costs awards

When the Professional Conduct Committee, Disciplinary Tribunal or Appeals Tribunal determines whether or not to require a Member to pay Costs under this Section 5, and

the amount of such Costs a Member is required to pay, it must have regard to the guidelines set out in any applicable Regulations.

40(13.8) 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.

40(13.9) Interest

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

...

40(13.11) Adjournment

...

- (c) Each of the Disciplinary Tribunal and Appeals Tribunal may set, change or cancel the date of a hearing before it, or adjourn a hearing after it has commenced.

40(13.12) Public and private hearings

...

- (b) Subject to By-Laws 40(13.12)(c) and 40(13.12)(d), and unless the Disciplinary Tribunal or Appeals Tribunal determine otherwise, each shall hold its hearings in public.
- (c) The Disciplinary Tribunal or Appeals Tribunal may determine to hear any part of a hearing in private.
- (d) The Disciplinary Tribunal or Appeals Tribunal may require, including as a condition of admission to a hearing, any person present to undertake to keep all or any part of a hearing, the evidence adduced at it or other information disclosed (including the identity of any persons present at or otherwise connected with the hearing) confidential on such terms as it determines.

Section 10 – Management

...

Registered Address

- 143.** The Registered Address of a Member to be entered in the General Register and the relative Regional Register or Overseas Regional Register shall be the Member's place or principal place of business for the time being or, if a Member has no place of business, his or her place of residence for the time being or such other place as the Member may advise.

Change of Address

- 144.** Every Member of CA ANZ shall forthwith notify the CEO of any change required to be made in his or her Registered Address for the purpose of the preceding By-Law.

...

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.

SCHEDULE 2: RELEVANT BY-LAWS

Section 1 - Preliminary

...

Definitions

2. In the interpretation of these By-Laws, unless the context or subject matter otherwise indicates or requires:

...

(k) **Board** means the board of Directors of CA ANZ appointed by the CA ANZ Council and constituted under the Supplemental Charter and these By-Laws;

...

(dd) **General Register** means the register of Members maintained by the CEO under By-Law 142;

...

(gg) **Individual Member** means a natural person who has been admitted to Membership as a Fellow, Chartered Accountant, Associate Chartered Accountant or Accounting Technician and **Individual Membership** has a corresponding meaning;

...

(qqq) **Registered Address** of a Member means his or her address on the General Register kept under these By-Laws;

...

Section 2 - Membership

...

Resignation

21.

(a) Any Member may resign his or her Membership by sending his or her resignation inwriting together with all moneys owing by him or her to CA ANZ, whether for subscription, fee or other amount, to the CEO:

(b) No resignation shall take effect unless and until it has been accepted by the Board. The Board may decline to accept the resignation of a Member who is the subject of disciplinary action or professional conduct proceedings by either CA ANZ or NZICA or whose conduct, in the opinion of the Board, by virtue of matters brought to the attention of CA ANZ, may become the subject of professional conduct proceedings or who has been requested to provide information, given notice of or is undergoing a review or any

follow up process arising from a review, investigation or professional conduct proceedings.

...

Section 4 – Rights and Obligations of Members

Place of Business

30.

- (a) On application for admission to Membership, every applicant (being a natural person) shall, in writing under his or her hand, inform the CEO of his or her place or principal place of business (whether as a principal or an employee) and the nature of such business and of his or her principal place of residence and shall thereafter, as soon as reasonably practicable, advise the CEO of any change in these particulars.

...

Certificates of Public Practice

34.

- (a) An Individual Member shall not, without the consent of the Board, practise as a public accountant unless he or she has been issued with a current certificate of public practice or his or her application thereof has been approved or he or she is exempt from the obligation to hold such a certificate.
- (b) The Board may prescribe Regulations for the issue and renewal of certificates of public practice and for any exemption from the obligation to hold such a certificate. Without limitation of the foregoing, the Board may prescribe the form of any application for such issue, renewal or exemption, any fee payable in respect thereof, the form and duration of any certificate of public practice and any conditions attaching thereto or to the issue or renewal thereof.
- (c) Where a certificate of public practice has been issued or renewed (as the case may be) with attaching conditions and those conditions have not been satisfied within a period (not being less than 30 days) of the Member being called upon to satisfy them by notice in writing from the CEO, the certificate of public practice shall, at the expiration of that period, be cancelled and accordingly cease to be a current certificate of public practice in terms of By-Law 34(a).
- (d) The certificate of public practice of a Member upon whom any of the Sanctions referred to in By-Laws 40.19(a) or 40.21(b) of Section 5 of these By-Laws has been imposed, shall, subject to any appeal under By-Law 40.22, ipso facto, be cancelled and, accordingly, cease to be a current certificate of public practice in terms of By-Law 34(a).

- (e) A Member whose certificate of public practice has been cancelled or who otherwise ceased to be entitled to a certificate of public practice, shall, upon payment of the appropriate fee and subject to any conditions imposed by the Board be issued with a further certificate at such time as the Board may in its absolute discretion determine.

...

Compliance Obligations

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

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

...

Section 5 - Conduct Rules

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

...

- (h) **Costs** means any costs and expenses incurred by or on behalf of CA ANZ in relation to the investigation and determination of a complaint (whether through the Professional Conduct Committee, Disciplinary Tribunal, Appeals Council or otherwise) and any other taxes, fees and charges, paid or payable on such costs and expenses, including, without limitation:

- (i) fees and disbursements of professionals, advisors or consultants employed, engaged or retained to investigate, represent, appear (as expert witnesses or otherwise), hear, or determine the complaint or advise on the same; and
- (ii) other outgoings and disbursements including, without limitation, couriers, any transport, travel, accommodation, search fees, transcription services, outsourced photocopying, publication fees, room hire, video-conferencing, telephone conferencing and meals;

...

- (w) **Registers** means the General Register, Regional Register and Overseas Regional Register and **Register** means one of them;
- (x) **Related Entity** means any partnership, company, corporation or trust carrying on the whole or any part of practice as a Practice Entity;

...

Conduct Rules

40.

40.1 Purpose

...

- (c) Members must be open and honest in their dealings with the Professional Conduct Committee, Reviewer of Complaints, Disciplinary Tribunal and Appeals Council in connection with an investigation, a complaint or any matters arising from or in relation to the investigation or the complaint promptly and in any event within any timeframe prescribed by Section 5 of these By-laws and any applicable Regulations.

...

40.2 Committees, Tribunals and Council

There shall be the following investigative and disciplinary bodies:

...

- (b) a Professional Conduct Committee which shall receive, initiate, investigate, dispose of and refer and prosecute complaints and respond to any applications for Readmission made to the Disciplinary Tribunal;
- (c) a Disciplinary Tribunal which shall hear and determine complaints made to it by the Professional Conduct Committee and any other applications made to it in accordance with Section 5 of these By-Laws; and
- (d) an Appeals Council which shall hear and determine appeals of the Disciplinary Tribunal.

40.3 Powers of Committees, Tribunals and Council

...

- (b) Subject to these By-Laws, the Regulations and the Charters, each of the Professional Conduct Oversight Committee, Professional Conduct Committee, the Disciplinary Tribunal and the Appeals Council is empowered to:
 - (i) regulate its own affairs;
 - (ii) issue directions, either of its own motion or on the application of any party, for the efficient conduct of its functions;
 - (iii) appoint experts and/or investigators;
 - (iv) make decisions by circular resolution;
 - (v) issue practice notes or guidelines; and
 - (vi) delegate any of its functions or powers.

...

40.9 Offences

- (a) A Member will have committed an Offence for the purposes of Section 5 of these By-Laws if that Member:
- (i) has committed any act, omission or default that amounts to Misconduct;
 - (ii) has committed any act, omission or default that amounts to Conduct Unbecoming of a Member;
 - (iii) 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; 27
 - (iv) has, before any court of law in any jurisdiction in Australia or elsewhere pleaded guilty to, or been found guilty of, a Serious Criminal Offence (with or without conviction) which has not been set aside on appeal;
 - (v) has pleaded guilty to, or been found guilty of, any statutory or other offence (with or without conviction) by a court of law, professional body, statutory or other regulatory authority or body, commission or inquiry in any jurisdiction in Australia or elsewhere, which has not been set aside on appeal, which may not be a crime but which, in the opinion of the Professional Conduct Committee, the Disciplinary Tribunal or the Appeals Council, brings or may bring discredit upon Member, the Member's Practice Entity, the membership as a whole or the profession of accountancy;
 - (vi) has in any proceedings before any court, tribunal, or similar body in any jurisdiction in Australia or elsewhere been subject of a binding determination that the Member has acted dishonestly, which has not been set aside on appeal;
 - (vii) has been the subject of any adverse or unfavourable binding determination in relation to the Member's professional or business conduct, competence, or integrity (including in relation to direct discrimination, vilification, sexual harassment, harassment or bullying in the workplace and/or work-related) by any body, including any court of law, tribunal, professional body, royal commission, statutory authority, regulatory authority, statutory body, commission or inquiry, which is empowered by law to make such determinations;
 - (viii) has agreed to, or has had imposed, any condition or restriction on any professional membership, registration or licence in that Member's name;
 - (ix) has committed any breach of the Compliance Obligations;

- (x) has failed to comply with any reasonable and lawful direction of any officer or body of CA ANZ or NZICA acting within the powers conferred by CA ANZ's Supplemental Charter, these By-Laws or the Regulations;
- (xi) suffers an Insolvency Event;
- (xii) is or was a Principal of a Practice Entity that has suffered, experienced or is the subject of a Firm Event;
- (xiii) has provided information to CA ANZ or NZICA which is false or misleading (including by omission);
- (xiv) has failed to comply with any Sanction, determination or decision made by the Professional Conduct Committee, Disciplinary Tribunal or Appeals Council under Section 5 of these By-Laws;
- (xv) has failed to comply with any undertaking given to the Professional Conduct Committee, the Disciplinary Tribunal or Appeals Council under Section 5 of these By-Laws; and/or
- (xvi) has made any admissions or committed any act, omission or default which, in the opinion of the Professional Conduct Committee, Disciplinary Tribunal or Appeals Council brings, or may bring, discredit upon that Member, or the profession of accountancy.

...

40.20 Disciplinary Tribunal

- (a) Subject to any directions made by the Disciplinary Tribunal, where the Professional Conduct Committee refers any matter to the Disciplinary Tribunal for hearing:
 - (i) the Professional Conduct Committee must give written notice to the Disciplinary Tribunal of the Offences alleged against the Member together with all supporting documents and other evidence and, where the Professional Conduct Committee's case against the Member will be presented at the Disciplinary Tribunal hearing by an external legal practitioner, a statement to that effect and, if known, the legal practitioner's name and firm, organisation or chambers;
 - (ii) the Disciplinary Tribunal must give the Member, not less than 35 days before the hearing before the Disciplinary Tribunal, notice of the date, time and place or virtual location of the hearing and all of the information provided by the Professional Conduct Committee to the Disciplinary Tribunal pursuant to this Conduct Rule; and 39\
 - (iii) the Member must, not less than 14 days before the date of the hearing, give written notice to the Disciplinary Tribunal of:

- (A) which of the alleged Offences are admitted, and which are disputed;
 - (B) whether the Member intends to attend the hearing;
 - (C) whether the Member intends to be represented by a legal representative at the hearing and, if so, the name and contact details of the representative;
 - (D) whether the Member intends to call any evidence at the hearing, and if so, the names of the witnesses; and
 - (E) copies of any documents and other evidence on which the Member proposes to rely at the hearing.
- (b) The Professional Conduct Committee may amend the notice detailing the Offences alleged against a Member by giving written notice of the amendments to the Disciplinary Tribunal and to the Member:
- (i) not less than 35 days before the date of the hearing before the Disciplinary Tribunal; or
 - (ii) at any other time, with the consent of the Member or with the leave of the Disciplinary Tribunal.
- (d) The Professional Conduct Committee may withdraw the referral of a matter to the Disciplinary Tribunal at any time.
- (e) If the Professional Conduct Committee seeks to present evidence at a hearing before the Disciplinary Tribunal, notice of which has not been given in accordance with this Conduct Rule or in accordance with any direction of the Disciplinary Tribunal, that evidence may only be presented:
- (i) with the consent of the Member: or
 - (ii) with the leave of the Disciplinary Tribunal on such terms and conditions as it sees fit. The Disciplinary Tribunal may grant leave only if it is satisfied that doing so will not materially prejudice the Member and that it is otherwise appropriate to do so.
- (f) If a Member fails to comply with this Conduct Rule, that failure does not prevent the Member from disputing the Offences, attending the hearing, being represented at the hearing, or calling any evidence at the hearing, subject to the directions made by the Disciplinary Tribunal.
- (g) The Disciplinary Tribunal may, with the written consent of the Member and the Professional Conduct Committee, dispense with any or all of the procedures in this Conduct Rule, including timeframes and the requirement to have one or both parties

attend the hearing, and proceed to make and impose orders in respect of Sanctions, publication or Costs and/or accept a written undertaking.

- (g) The Disciplinary Tribunal may appoint a legal adviser who is an independent legal practitioner to advise (attending the hearing as necessary) the Disciplinary Tribunal on matters of law, procedure and evidence.
- (h) At every hearing before the Disciplinary Tribunal, the Professional Conduct Committee shall be responsible for the presentation of the case against the Member concerned. The Professional Conduct Committee may appoint an independent Australian legal practitioner to present the case on its behalf.
- (i) The Disciplinary Tribunal may require a Notifying Principal to attend and give evidence at the Disciplinary Tribunal hearing.
- (j) Failure by the Member or Notifying Principal to comply with any or all of the above requirements (or to attend) shall not preclude the Disciplinary Tribunal from proceeding to hear and determine the matter and impose orders in respect of Sanctions, publication or costs and/or accept a written undertaking.

40.21 Sanctions

- (a) The Disciplinary Tribunal may impose one or more Sanctions upon a Member if it is satisfied that a Member has committed one or more Offences.
- (b) If satisfied that an Individual Member, Practice Entity Member, or Non-Member Practice Entity has, or in the case of a Firm Event, the Members who are Principals of the relevant Practice Entity have, committed one or more Offences:
 - (i) the following Sanctions or any combination of them (if applicable) may be imposed by the Disciplinary Tribunal on an Individual Member:
 - (A) the termination of the Member's membership of CA ANZ;
 - (B) the suspension of the Member from Membership of CA ANZ for a period not exceeding 5 years;
 - (C) the cancellation or suspension of any certificate of public practice held by the Member;
 - (D) the declaration that the Member is ineligible to hold a certificate of public practice for a period not exceeding 5 years and on such terms and conditions as to the earlier termination of such period of ineligibility as the Disciplinary Tribunal may prescribe;
 - (E) an order that any licence, accreditation, recognition, specialisation or status issued to the Member by CA ANZ in accordance with any enactment, regulation, other legislation, CA ANZ By-Laws or

Regulations or any other instrument, be varied, suspended for any period, or cancelled;

- (F) removal of the Member's membership status as a Fellow and alter it to that of Chartered Accountant, Associate Chartered Accountant or Accounting Technician (as the case may be);
- (G) where the Member's fees or billing practices have been found to breach Compliance Obligations set out in the CA ANZ By-Laws, an order that the Member be required to:
 - (1) waive the whole or part of any fee agreed to or invoiced;
 - (2) return the whole or part of any fee already paid; and/or
- (H) the Member be required to pay an amount not exceeding \$50,000 within the time prescribed by the Disciplinary Tribunal, being not less than 28 days;
- (I) the censure of the Member;
- (J) an order that the Member, at the Member's own expense, complete any professional development courses prescribed by the Disciplinary Tribunal within the time period and on the terms stipulated by the Disciplinary Tribunal;
- (K) an order that the Member engage an adviser or consultant or other person at the Member's own expense, as directed by the Disciplinary Tribunal; or
- (L) an order that the Member and/or the Member's Practice Entity, at the Member's own expense, 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 or that the Professional Conduct Committee itself conduct the investigation.

...

40.22 Appeals Council

- (a) Within 21 days, or such longer timeframe as approved by the Appeals Council in its discretion, after the date of written notification of the Final Decision of the Disciplinary Tribunal, the Member or the Professional Conduct Committee may give notice of appeal of the entire or any part of the Final Decision, including but not limited to decisions as to Offences, Sanctions, publication and costs, in the form prescribed by the Regulations, to the Appeals Council.

- (b) A notice of appeal must state the grounds of appeal in full. Once given, a notice of an appeal and the grounds of appeal cannot be amended except with the approval of the Appeals Council. The appellant must also give notice of any Final Decision that it seeks be stayed pending determination of the appeal.
- (c) The Appeals Council may, at its discretion or on application by the Professional Conduct Committee, require the Member or Notifying Principal on behalf of a Practice to pay such amount as it determines to CA ANZ as security against the anticipated Costs which CA ANZ may incur in the conduct and hearing of the appeal.
- (d) The Appeals Council may, at its discretion, stipulate a time period of not less than 28 days within which the Member must pay the security amount and, if it does stipulate a period and the Member has not paid that amount at the expiry of that period, the appeal will automatically lapse
- (e) Subject to the payment of any security amount ordered, as soon as practicable after receipt of a notice of appeal, the Appeals Council shall give to the Member and the Professional Conduct Committee not less than 28 days' notice of the date, time and place or virtual location fixed for the hearing of the appeal.
- (f) Every appeal shall be by way of rehearing but, unless the Appeals Council directs otherwise, no witnesses who gave evidence before the Disciplinary Tribunal will be recalled and the parties will not be permitted to introduce any new evidence.
- (g) The Appeals Council may require any Member to attend and give evidence at the Appeals Council hearing.
- (h) The Member shall not later than 14 days (or such other date as the Appeals Council prescribes) before the date of the hearing provide in writing to the Appeals Council.:
 - (i) notice as to whether the Member will attend the hearing and, if legally represented, by whom (including details of that representative's name and firm, organisation or chambers); and
 - (ii) notice of any other relevant fact or circumstance the Member wishes to bring to the attention of the Appeals Council .
- (i) At every hearing before the Appeals Council, the Professional Conduct Committee shall be responsible for the presentation of the case against the Member concerned. where the Professional Conduct Committee has issued the notice of appeal or acting as the respondent in any appeal brought by the Member The Professional Conduct Committee may appoint an external legal practitioner to present the case on its behalf.
- ...
- (k) On each appeal, the Appeals Council may stay, affirm, vary or set aside any Final Decision of the Disciplinary Tribunal or any part of that Final Decision.

...

40.24 Costs

...

- (d) The Professional Conduct Committee, Disciplinary Tribunal or Appeals Council must have regard to the guidelines set out in any applicable Regulations and may have regard to any practice notes when determining whether or not to require a Member or Notifying Principal to pay Costs or the amount of such Costs a Member is required to pay.

...

40.25 Issuing of Final Decisions of the Committee, Tribunal and Council

- (a) Written notice of a Final Decision made by any of the Professional Conduct Committee, Disciplinary Tribunal and Appeals Council with reasons for that decision must be sent to the relevant Member within 21 days, or such longer period as may be reasonably required by the Professional Conduct Committee, Disciplinary Tribunal or the Appeals Council (as the case may be) in the circumstances of specific matters, and:
- (i) the complainant, if any, in relation to Final Decisions of the Professional Conduct Committee; and
 - (ii) in the case of a decision of the Disciplinary Tribunal and Appeals Council, to the Professional Conduct Committee.
- (b) Subject to any decision of the Disciplinary Tribunal or the Appeals Council that a Final Decision of the Disciplinary Tribunal shall take immediate effect, such decision shall take effect from:
- (i) the day immediately after the expiry of the period during which an appeal may be notified against that decision provided that no appeal has been notified within that period;
 - (ii) if an appeal has been notified during the appeal period and that appeal is subsequently withdrawn, from the date of such withdrawal; and
 - (iii) if an appeal has been notified during the appeal period and not withdrawn, from the date of the Final Decision of the Appeals Council.

For the avoidance of doubt, no Final Decision including any decision as to publication is to take effect prior to the determination of any stay application by the Appeals Council.

- (c) A Final Decision of the Appeals Council shall take effect as from the date it is made.

...

40.26 Publication and public comment

...

- (d) Where the Disciplinary Tribunal or Appeals Council determines that an Offence has been committed or decides to suspend a Member on an interim basis, it must direct that a notice be published by CA ANZ or NZICA of the Final Decision or the decision to suspend a Member on an interim basis. Any such publication must disclose the name and location of the relevant Member unless the Disciplinary Tribunal or Appeals Council (as applicable) considers that there are exceptional circumstances for not doing so. If the Final Decision is under appeal, and no stay is granted, any publication of the Final Decision must include a statement that it is under appeal.
- (e) Publication under paragraph (a) and (c) may be in such form and publication as the Professional Conduct Committee, Disciplinary Tribunal or Appeals Council (as applicable) considers appropriate, including in CA ANZ's official publication, on CA ANZ's website, including in the Register of Disciplinary Decisions, or in any other manner that it may in its discretion direct.
- (f) The Disciplinary Tribunal or Appeals Council 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 Final Decision relates, of so much of a Final Decision or a decision to suspend on an interim basis, the reasons for it and/or the Sanctions imposed, as it thinks fit. The Disciplinary Tribunal or Appeals Council will not do so until the day following the last date on which an appeal may be notified in accordance with Section 5 of these By-Laws. If an appeal is notified in accordance with Section 5 of these By-Laws, the Disciplinary Tribunal will not make such a notification until that appeal is finalised or otherwise determined.
- (h) Any publication of a Final Decision in relation to a Firm Event will not identify the name of any Member who is a Principal of the relevant Practice Entity, but may identify the name of the Practice Entity

...

40.28 Expedition

- (a) The Professional Conduct Committee, Disciplinary Tribunal and Appeals Tribunal shall endeavour to investigate, hear and determine complaints in a timely and efficient manner.

...

40.29 Evidence

- (a) The rules of evidence do not apply to the processes and proceedings of the Professional Conduct Committee, the Disciplinary Tribunal or the Appeals Council.

...

40.30 Recording and transcribing of hearings

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

40.31 Termination and suspension

If a Member's membership is terminated or suspended in accordance with this Section 5 of these By-Laws, the Member's certificate of Membership, any certificate of public practice and any other accreditation, specialisation or other certificate or award then held by the Member is cancelled with immediate effect and must be delivered to CA ANZ.

...

40.33 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.

40.34 Adjournment

...

- (c) Each of the Disciplinary Tribunal and Appeals Council may set, change or cancel the date of the hearing before it, or adjourn a hearing after it has commenced.

40.35 Public and private hearings

...

- (b) Subject to Section 5 of these By-Laws and unless the Disciplinary Tribunal or Appeals Council determine otherwise, each shall hold its hearings in public.
- (c) The Disciplinary Tribunal or Appeals Council may determine to hear any part of a hearing in private.
- (d) The Disciplinary Tribunal or Appeals Tribunal may:

...

- (ii) 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.

...

40.39 Transitional Provisions

- (a) All matters, complaints and investigations must be handled by the Professional Conduct Committee and each disciplinary body in accordance with the currently applicable Section 5 of these By-Laws regardless of when the matter, complaint or investigation arose.
- (b) Save with the consent of a Member under By-Law 40.16, nothing in Section 5 of these By-Laws shall operate so as to increase the Sanction imposed on a Member beyond those applicable to such Offence or to make a Member liable to a Sanction which the Member would not otherwise have been under Section 5 of these By-Laws which were in force at the time when the Offence occurred.

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

...

Interest

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

...

Section 10 – Management

...

Registered Address

- 143.** The Registered Address of a Member to be entered in the General Register and the relative Regional Register or Overseas Regional Register shall be the Member's place or principal place of business for the time being or, if a Member has no place of business, his or her place of residence for the time being or such other place as the Member may advise.

Change of Address

- 144.** Every Member of CA ANZ shall notify the CEO as soon as reasonably practicable of any change required to be made in his or her Registered Address for the purpose of the preceding By-Law.

...

SCHEDULE 3: REGULATION CR8 - DISCIPLINARY PROCEDURES

Issued 2 April 2024

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. Except as specifically provided, 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.

By-Law 39 provides that:

...

- (b) Final Decision means ((inter alia) a decision of the Professional Conduct Committee under By-Law 40.13(a) (other than paragraphs 40.13(a)(v) and 40.13(a)(x).

For the purposes of the By-Laws and this regulation 8, the Board has exercised its power under By-Law 5.2 to provide for the rights of review to apply to decisions which were reviewable under the Former Professional Conduct By-Laws and to interpret paragraph (i) of the definition of **Final Decision** as a decision of the Professional Conduct Committee under By-Law 40.13(a), 40.15(a) and 40.16 (other than paragraphs 40.13(a)(v), 40.13(a)(x) and 40.15(a)(iv)).

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](#).

...

8.11 Appeals Council (By-Law 40.22)

- (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 40.22(a).
- (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 40.22(c), 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.

...

8.14 Former Professional Conduct By-Laws (By-Law 40.39)

...

- (c) A copy of the By-Laws as at 30 March 2022 may be found [here](#).

8.15 Confidentiality Obligations (By-Law 40.38)

- (a) Members must comply with the requirements set out in By-Law 40.38; and
- (b) Complainants must comply with the confidentiality obligations given in favour of CA ANZ as set out in the Complaint Form.

Commentary

The obligations of Members 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. CA ANZ may, but is not obliged, to take action in connection with any threatened or actual breach of confidentiality obligations owed to CA ANZ by any complainant.