



# Disciplinary Tribunal of Chartered Accountants Australia and New Zealand (CA ANZ) Written decision dated 27 July 2021

- Case Number:** DT-1261
- Member:** James Redmond Burrows CA of Victoria, previously practising in Tasmania
- Hearing Date:** 20 July 2021
- Tribunal:** Richard Rassi FCA (Chair)  
Jayne Godfrey FCA  
Jenni Millbank, lay member of the Tribunal
- Tribunal Legal Adviser:** Joshua Kangisser
- Representation:** Paul Forbes for the Professional Conduct Committee (PCC)  
The Member did not appear but consented to the application
- Decisions:**
1. The Tribunal determined to suspend the Member from membership of CA ANZ on an interim basis pending further investigation and determination of the complaint.
  2. Costs were reserved until final determination of the complaint. The Tribunal noted the PCC estimate of costs to date of \$9,938.
  3. The Tribunal 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 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*;
    - (c) the Australian Taxation Office and Tax Practitioners Board be notified of this decision;
    - (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 20 July 2021.

The date of effect of this decision is 11 August 2021 (By-Law 40(10.18)).



## 1. Introduction

- (a) In March 2021 CA ANZ became aware of a public report that the Member had been charged with more than 40 “fraud offences” following an investigation by Tasmania Police and the Australian Taxation Office. The PCC initiated a complaint pursuant to the powers conferred by By-Laws 40(4.1) and 40(5.1) (the **Complaint**).
- (b) After commencing its investigation of the Complaint the PCC “*decided that the Member be referred directly to the Disciplinary Tribunal (without convening a Case Conference) as it [was] satisfied that the [C]omplaint received about [the Member was] sufficiently serious that the Disciplinary Tribunal may suspend the Member on an interim basis. Further, having regard to the information available, the PCC decided that the investigation should be adjourned under By-Law 40(13.11)(a) on the basis that the issues arising in the [C]omplaint [were] the same as or substantially similar to those in the court proceedings presently on foot*”.
- (c) The Member sought to resign his CA ANZ membership however that request was declined in accordance with By-Law 21 “... *on the basis that there are matters concerning [the Member] which are the subject of disciplinary action or professional conduct proceedings by Chartered Accountants Australia and New Zealand*”.
- (d) At the time of hearing the Member was facing 18 counts of obtaining financial advantage by deception pursuant to Federal criminal law and 16 counts of stealing by misappropriation under Tasmanian criminal law.

## 2. The issues for determination

- (a) Was it necessary or desirable to suspend the Member from membership of CA ANZ on an interim basis, having regard to the urgency of the matter, the interests of the public, the reputation of CA ANZ, or the integrity of the profession of accountancy? (By-Law 40(9.1))
- (b) If the answer to (a) was yes, for what period should the Member be interim suspended?
- (c) Should the Member be required to pay costs and if so, in what amount?
- (d) Was there any reason to suppress the Member’s name from the published decision?
- (e) Should other parties be notified of the Tribunal’s decision?
- (f) Should any confidentiality orders be made?

**3. Was it necessary or desirable to suspend the Member from membership of CA ANZ on an interim basis, having regard to the urgency of the matter, the interests of the public, the reputation of CA ANZ, or the integrity of the profession of accountancy? (By-Law 40(9.1))**

**3.1 PCC submissions**

- (a) The PCC provided no information in relation to whether the Member was contesting the criminal charges.
- (b) The PCC submitted that an interim suspension of membership was both necessary and desirable because:
  - (i) all four of the criteria for interim suspension were satisfied;
  - (ii) this was a matter of urgency as four months had passed since 34 criminal charges were laid against the Member and CA ANZ should be seen to act promptly in relation to criminal charges;
  - (iii) the seriousness and number of the criminal charges strikes at the heart of the public expectation that when dealing with a CA ANZ member they are dealing with a person of integrity and honesty. Therefore the protection of the interests of the public, and the public confidence in CA ANZ and the profession of accountancy, all required prompt action;
  - (iv) the possibility that criminal proceedings would take a lengthy period to resolve was a further factor weighing in favour of interim suspension.
- (c) In making this submission the PCC referred to:
  - (i) a media report by April McLennan, 'Tasmanian tax agent James Burrows accused of stealing in excess of a million dollars from clients', ABC News (online, 12 March 2021);
  - (ii) a document setting out a court listing date and charges, dated 1 July 2021 from the Magistrates Court of Tasmania; and
  - (iii) the PCC's correspondence with the Member.

**3.2 Member submissions**

The Member provided no submissions but consented to the PCC's application for the interim suspension of his membership.

**3.3 Tribunal decision and reasons**

- (a) In determining whether to suspend membership on an interim basis, the Tribunal is not required to make a determination as to guilt or innocence or to determine the facts of the substantive allegation. The power of interim suspension is intended as a protective provision for the benefit of the public and the reputation of CA ANZ and the profession generally.
- (b) The Tribunal considered the factors it must take into account when determining an application for interim suspension. Those factors are set out in By-Law 40(9.1) which states:

On application by the Professional Conduct Committee for the interim suspension of a Member, if the Disciplinary Tribunal is satisfied that it is necessary or desirable to do so, having regard to the urgency of the matter, the interests of the public, the reputation of CA ANZ, or the integrity of the profession of accountancy, the Disciplinary Tribunal may suspend the Member from Membership of CA ANZ on an interim basis pending further investigation and determination of the complaint. [emphasis added]

- (c) The Tribunal was satisfied that the charges were serious, if proved, because:
- (i) they related to the Member's practice as an accountant and his role of trust in having control of clients' funds;
  - (ii) there was a multitude of charges;
  - (iii) the charged conduct covered a period of approximately two years.
- (d) The Tribunal was satisfied, having regard to each of the factors of By-Law 40(9.1), that it was both necessary and desirable to suspend the Member's membership on an interim basis because:
- (i) the Member acknowledged that criminal charges had been laid against him. It was unknown at the time of the Tribunal hearing whether the Member intended to contest the criminal proceedings;
  - (ii) the criminal charges were a serious matter and the Tribunal could not await a final determination of the criminal proceedings before action was taken, particularly given the lack of information on the expected duration of those proceedings;
  - (iii) the public interest is protected by not allowing the Member to hold himself out as a member while serious criminal charges remain unresolved;
  - (iv) the public places trust in professional accountants to exercise due skill, care and honesty in their dealings with clients but the alleged fraudulent misappropriation of client funds would very significantly damage the trust of the public in CA ANZ and the accountancy profession if the Member were allowed to continue practising as a Chartered Accountant;
  - (v) pending resolution of the criminal charges, the reputation of CA ANZ and the integrity of the profession of accountancy should be protected from being associated with a member who is an accused in such serious criminal proceedings.

#### **4. For what period should the Member be interim suspended?**

##### **4.1 PCC submissions**

The PCC sought that the interim suspension apply until "*the earlier of:*

- (a) *six months after the full and final resolution of the later of:*
  - (i) *all civil and criminal proceedings against the Member; and*
  - (ii) *all regulatory investigations into the Member's conduct; or*
- (b) *further investigation and determination of the complaints arising from the matters referred to in paragraphs 1-2" of the Notice of Disciplinary Action.*

##### **4.2 Member submissions**

The Member made no submissions in relation to the possible period of interim suspension.

### 4.3 Tribunal decision and reasons

The Tribunal determined that the period of interim suspension should end on the earlier of:

- (a) six months after the full and final resolution of the later of:
  - (i) all civil and criminal proceedings against the Member; and
  - (ii) all regulatory investigations into the Member's conduct; or
- (b) further investigation and determination of the complaints arising from the matters referred to in paragraphs 1 and 2 of the Notice of Disciplinary Action.

The Tribunal was satisfied that the period sought by the PCC was appropriate and made this decision on the basis that:

- (a) it was unknown at this time what the expected duration of the criminal proceedings would be;
- (b) it was unknown whether any other regulatory investigations were underway, nor whether the reported outcome of an investigation by the Tax Practitioners Board had been the subject of any review or appeal;
- (c) the PCC submitted that its own investigation was suspended until the conclusion of the criminal proceedings, unless any relevant information was received prior;
- (d) it may take up to six months to evaluate any outcome of the criminal proceedings (or the status of other proceedings) and then refer the complaint to the relevant disciplinary body for determination, if needed.

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

The PCC did not seek a determination on costs however noted that the estimated costs to date were \$9,938. The Tribunal determined that it was appropriate to reserve costs until a final determination of the complaint.

### 6. Should the Member's name be suppressed?

- (a) By-Law 40 states:
  - 12.3 Where the Disciplinary Tribunal ... determines that a complaint is established or imposes a sanction adverse to the Member ... it must direct that a notice be published by CA ANZ of its decision and the sanctions imposed (if any). Any such publication must disclose the name of the relevant Member unless the Disciplinary Tribunal ... considers that there are exceptional circumstances for not doing so. [emphasis added]
  - 12.4 Publication ... may be in such form and publication as the ... Disciplinary Tribunal ... considers appropriate, including in CA ANZ's official publication, on CA ANZ's website or in any other manner that it may in its discretion direct.
- (b) The Tribunal determined there were no exceptional circumstances and therefore the Member's name should be disclosed in the publication.

**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 Tribunal determined that, due to the Member's association with those bodies, the Australian Taxation Office and Tax Practitioners Board 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 by the Tribunal, within 14 days after notice of the written reasons for such determination is given to them. Any such notice of appeal must be given using the form prescribed by the Regulations (By-Laws 40(9.4)(a), 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) interim suspension of membership
- (b) publication
- (c) notification.

The Tribunal decision as to confidentiality took effect immediately.



**Chair  
Disciplinary Tribunal**

## **SCHEDULE 1: THE PCC'S ALLEGATIONS**

The Professional Conduct Committee seeks a determination that the Member's membership of Chartered Accountants Australia and New Zealand (Chartered Accountants ANZ) be suspended on an interim basis.

It is alleged that on or about 12 March 2021, while a Member of Chartered Accountants ANZ, the Member was charged with a number of criminal offences including:

1. Eighteen counts of obtaining financial advantage by deception pursuant to section 134.2(1) of the Criminal Code Act 1995 (Cth); and
2. Sixteen counts of stealing by misappropriation pursuant to section 234 of the Criminal Code Act 1924 (Tas).

The Professional Conduct Committee is seeking an interim suspension on the basis that it is necessary or desirable having regard to the criteria in By-Law 40(9.1), being the urgency of the matter, interests of the public, reputation of Chartered Accountants ANZ or the integrity of the profession of accounting, which are likely to be satisfied by reason of the Member's alleged conduct.

The time period for which the Professional Conduct Committee is seeking that the interim suspension apply is the earlier of:

- a. six months after the full and final resolution of the later of:
  - i. all civil and criminal proceedings against the Member; and
  - ii. all regulatory investigations into the Member's conduct; or
- b. further investigation and determination of the complaints arising from the matters referred to in paragraphs 1-2 above.

## **SCHEDULE 2: RELEVANT 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 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(9) Interim suspension of Membership**

40(9.1) On application by the Professional Conduct Committee for the interim suspension of a Member, if the Disciplinary Tribunal is satisfied that it is necessary or desirable to do so, having regard to the urgency of the matter, the interests of the public, the reputation of CA ANZ, or the integrity of the profession of accountancy, the Disciplinary Tribunal may suspend the Member from Membership of CA ANZ on an interim basis pending further investigation and determination of the complaint.

40(9.2) For the period of a Member's suspension on an interim basis:

- (a) that Member's name shall be removed from the Registers on which it appears; and
- (b) that Member:
  - (i) loses the rights and privileges of Membership;
  - (ii) must surrender to CA ANZ that Member's certificate of Membership, certificate(s) of public practice and any other documents specified in By-Law 40(13.4); and
  - (iii) remains subject to the disciplinary processes and sanctions under these By-Laws (including this Section 5) as if still a Member.

40(9.3) The provisions of By-Law 40(10) apply to the procedures for a hearing on an application for interim suspension under this By-Law 40(9), except that:

- (a) the Notice of Disciplinary Action to be given in accordance with By-Law 40(10.1) must specify that the hearing is on an application by the Professional Conduct Committee for interim suspension;
- (b) the minimum 35 day time periods in By-Laws 40(10.1) and 40(10.3) are shortened to 14 days;

- (c) without prejudice to By-Law 40(13.8) , By-Laws 40(10.12)(a) to (j), and 40(10.13) (sanctions) do not apply; and
- (d) the maximum period within which the Disciplinary Tribunal is to notify its decision and give reasons in accordance with By-Law 40(10.15) is reduced to 7 days.

40(9.4) The provisions of By-Law 40(11) apply to the procedures for an appeal of a decision by the Disciplinary Tribunal in respect of the hearing of an application for interim suspension under this By-Law 40(9), except that:

- (a) the maximum 21 day time periods in By-Laws 40(11.1) and 40(11.2) (time for notifying appeal) are shortened to 14 days;
- (b) the minimum 28 day time period in By-Law 40(11.6) (notice of hearing) is reduced to 14 days; and
- (c) the maximum period within which the Appeals Tribunal is to notify its decision and give reasons in accordance with By-Law 40(11.15) is reduced to 7 days.

...

#### **40(10) Disciplinary Tribunal**

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

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

...

40(10.4) The Member receiving a Notice of Disciplinary Action 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(10.7) 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(10.12) 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:

...

- (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(10.15) 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(13.7) 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(13.12) 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.

## **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.*