



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

## Written decision dated 20 October 2021

- Case Number:** DT-1268
- Member:** Christopher Michael Matthews CA of New South Wales
- Hearing Date:** 29 September 2021
- Tribunal:** Simon Wallace-Smith FCA (Chair)  
Ross Gavin FCA  
Elizabeth Gavey, lay member of the Tribunal
- Tribunal Legal Adviser:** Joshua Kangisser
- Representation:** Michael Bradley for the Professional Conduct Committee (PCC)  
There was no appearance by or on behalf of the Member
- Decisions:**
1. The Tribunal determined that:
    - (a) the Member was the subject of an adverse finding in relation to his professional conduct, competence and integrity by the Tax Practitioners Board, in breach of By-Law 40(2.1)(e);
    - (b) a condition or restriction was imposed on the Member's professional registration as a tax agent, in breach of By-Law 40(2.1)(g);
    - (c) 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);
    - (d) the Member's acts, omissions or defaults brought, or may bring, discredit upon him, CA ANZ and the profession of accountancy, in breach of By-Law 40(2.1)(k).
  2. The Tribunal determined to terminate the Member's membership.
  3. The Tribunal imposed a cost sanction in the sum of \$12,837 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:
    - (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) 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;
- (d) the decision regarding confidentiality takes effect immediately from 29 September 2021.

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) The PCC dealt with a complaint against the Member on 15 April 2019 and decided that a quality review of the Member and his practice should be undertaken with the review result to be provided to the PCC. The Member did not respond adequately to the quality review team which resulted in the quality review not being performed, and the matter was referred back to the PCC whereupon the PCC initiated a complaint pursuant to the powers conferred by By-Laws 40(4.1) and 40(5.1) (the **First Complaint**).
- (b) CA ANZ became aware that the Member's tax agent registration was terminated by the Tax Practitioners Board (**TPB**) with effect from 2 March 2020. The Member was also disqualified from re-registering for a period of four years concluding on 2 March 2024. The TPB found the Member had engaged in conduct which was in breach of sections of the Code of Professional Conduct of the *Tax Agent Services Act 2009* (Cth) (the **Code**) and that he no longer met the registration requirements as he was not a fit and proper person (the **TPB Decision**). The PCC initiated a complaint pursuant to the powers conferred by By-Laws 40(4.1) and 40(5.1) (the **Second Complaint**) (collectively with the First Complaint, the **Complaints**).
- (c) After investigating the Complaints, the PCC referred the Member to the Tribunal by way of Notice of Disciplinary Action (set out in full in Schedule 1) (the **NDA**) which in summary alleged that the Member:
  1. had been subject of an adverse finding by the TPB;
  2. had a condition or restriction imposed on his tax agent registration;
  3. failed to comply with a reasonable and lawful direction from CA ANZ which related to a matter concerning the good order and management of CA ANZ;
  4. brought or may bring discredit on himself, CA ANZ or the profession of accountancy.

## 2. The issues for determination

- (a) Should the hearing proceed in the absence of the Member?
- (b) Was the Member the subject of an adverse or unfavourable finding by the TPB in relation to his professional or business conduct, competence or integrity, in breach of By-Law 40(2.1)(e)? (allegation 1)
- (c) Was a condition or restriction imposed on the Member's professional registration, in breach of By-Law 40(2.1)(g)? (allegation 2)
- (d) Did the Member fail to comply with reasonable and lawful directions of CA ANZ which related to a matter concerning the good order and management of CA ANZ, in breach of By-Law 40(2.1)(i)? (allegation 3)
- (e) Had the Member's acts, omissions or defaults associated with allegations 1, 2 or 3 brought, or may they bring, discredit on himself, CA ANZ or the profession of accountancy, in breach of By-Law 40(2.1)(k)? (allegation 4)
- (f) If the answer to (b), (c), (d) or (e) was yes, what sanctions should be imposed on the Member?
- (g) Should the Member be required to pay costs and if so, in what amount?

- (h) Should notice of the Tribunal's decision be published?
- (i) Should other parties be notified of the Tribunal's decision?
- (j) Should any confidentiality orders be made?

### 3. Should the hearing proceed in the absence of the Member?

- (a) The Member did not attend the hearing before the Tribunal.
- (b) The PCC's casefile and a questionnaire to be completed were served on the Member on 4 August 2021 by email.
- (c) On 15 September 2021, the Member sent an email to the Tribunal attaching a completed copy of the questionnaire. In the questionnaire, the Member advised that he did not admit the allegations contained in the NDA and that he would attend the hearing before the Tribunal.
- (d) On 21 September 2021 the Member provided submissions to the Tribunal seeking that his membership not be suspended or terminated and advised that he would not attend the hearing.
- (e) The Tribunal was satisfied that the Member was on notice of the hearing and the allegations made, and that the Member made an election not to attend the hearing.
- (f) In the circumstances, the Tribunal was satisfied that the hearing should proceed in the absence of the Member.

### 4. Was the Member the subject of an adverse or unfavourable finding by the TPB in relation to his professional or business conduct, competence or integrity, in breach of By-Law 40(2.1)(e)? (allegation 1)

#### 4.1 PCC submissions

- (a) The PCC submitted that:
  - (i) the TPB terminated the Member's tax agent registration on 2 March 2020 for four years and disqualified him from applying for registration during the termination period;
  - (ii) according to the publicly available reasons that the TPB published, the termination was ordered because the Member engaged in a number of breaches of the Code and had ceased to meet the registration requirements, in that he was no longer a fit and proper person to be a tax agent;
  - (iii) the Tribunal did not have to test the validity or the veracity of the TPB's findings or its decision to terminate the Member;
  - (iv) the findings had been made and had been publicly recorded, and accordingly the breach of By-Law 40(2.1)(e) was made out.
- (b) In making this submission, the PCC referred to the following evidence:
  - (i) the Member's TPB registration details extracted from the public TPB Register (the **Member's TPB Registration Details**);
  - (ii) the TPB Decision.

## 4.2 Member submissions

The Member did not make any submissions in regard to this allegation.

## 4.3 Tribunal decision and reasons

- (a) The Tribunal determined that the allegation was established because:
- (i) the Tribunal was provided with a copy of the TPB Decision;
  - (ii) the Tribunal was of the opinion that the Member was the subject of adverse or unfavourable findings about the Member's professional or business conduct, competence and integrity because the TPB found that he had committed breaches of the Code as below:

*“Code breach(es)*

- *30-10(01) Code - failed to act honestly with integrity*
- *30-10(02) Code - failed to comply with taxation laws in conduct of personal affairs*
- *30-10(11) Code - knowingly obstructed proper administration of taxation laws*
- *30-10(13) Code - failed to maintain professional indemnity insurance required*

*Registration requirement not met*

- *20-5(1)(a) Individual has ceased to meet registration requirement that they are a fit and proper person”.*

- (b) The Tribunal was not given details of the reasons for the TPB's findings. Nevertheless the Tribunal noted that it only had to be satisfied that the Member was the subject of an adverse or unfavourable finding about the Member's professional or business conduct, competence or integrity and did not need to consider the circumstances giving rise to that adverse or unfavourable finding. The evidence provided satisfied the Tribunal such adverse or unfavourable findings were made.

## 5. Was a condition or restriction imposed on the Member's professional registration, in breach of By-Law 40(2.1)(g)? (allegation 2)

### 5.1 PCC submissions

- (a) The PCC submitted that:
- (i) the Tribunal did not have to look behind the TPB's decision to terminate the Member's registration and disqualify him from re-applying;
  - (ii) there was clearly a restriction on the Member's professional registration as a tax agent and that automatically triggered a breach of By-Law 40(2.1)(g).
- (b) In making this submission, the PCC referred to the Member's TPB Registration Details.

### 5.2 Member submissions

The Member did not make any submission in relation to this allegation.

### 5.3 Tribunal decision and reasons

The Tribunal determined that the allegation was established because:

- (a) the Tribunal was provided with a copy of the Member's TPB Registration Details which stated:

*“Registration type: Individual Tax Agent”*  
*“Registration status: Terminated”*  
*“Disqualification: Period of Effect: 02/03/2020 to 02/03/2024  
Reason: 40-25 Period during which you may not apply for registration”*  
*Termination: Date of Effect: 02/03/2020  
Reason: 40-5(1)(b) individual no longer meets registration requirements Details”* (see paragraph 4.3(a)(ii) above)

- (b) the Tribunal decided that as the Member's registration had been terminated and he was not entitled to reapply for registration for four years, this constituted a condition and restriction imposed on his professional registration with the TPB and was therefore a breach of By-Law 40(2.1)(g).

## 6. Did the Member fail to comply with reasonable and lawful directions of CA ANZ which related to a matter concerning the good order and management of CA ANZ, in breach of By-Law 40(2.1)(i)? (allegation 3)

### 6.1 PCC submissions

- (a) The PCC submitted that:
- (i) the Member failed to respond to reasonable and lawful directions of the quality review team and the PCC in respect of the Complaints;
  - (ii) the failure of a member to comply with any reasonable and lawful direction of an officer of CA ANZ which related to a matter concerning the good order and management of CA ANZ can render the member liable to disciplinary proceedings under By-Law 40(2.1)(i);
  - (iii) in respect of the First Complaint, the Member failed to comply with a long list of lawful and reasonable directions to complete and return the quality review program questionnaire form (the **QR Questionnaire**) originally due by 26 August 2019;
  - (iv) CA ANZ made six requests for the Member to complete the QR Questionnaire over an extended period of time being 29 July 2019 to 24 January 2020. The Member finally returned the questionnaire on 31 January 2020;
  - (v) the Member then failed to respond to further requests from the Reviewer assigned to conduct his Practice Review and Quality Review Manager;
  - (vi) the Member then did not respond to reasonable and lawful directions of CA ANZ to contact the Reviewer and complete the Practice Review by 30 October 2020, which resulted in the complaint being referred to the PCC on 15 December 2020;
  - (vii) the PCC contacted the Member on four occasions between 11 February 2021 and 19 May 2021 requesting a response to the First Complaint. A substantive response was not received until 15 September 2021;

- (viii) there was a clear breach of By-Law 40(2.1)(i) in that the Member failed to respond to lawful and reasonable directions to complete the QR Questionnaire, contact the Reviewer and then provide a substantive response to the First Complaint;
  - (ix) in respect of the TPB matter, the PCC wrote to the Member eight times seeking a response between 15 December 2020 and 19 May 2021. The Member indicated a response would be arriving shortly on six occasions but the Member did not provide a substantive response until 15 September 2021;
  - (x) there was a serial failure to comply with the lawful and reasonable directions in respect of providing a substantive response to the Second Complaint.
- (b) In making this submission, the PCC referred to the following evidence:
- (i) the First Complaint
    - (1) letters and emails from the quality review team to the Member requesting that he complete the QR Questionnaire, dated 29 July 2019, 12 September 2019, 15 October 2019 and 21 January 2020;
    - (2) letter from the quality review team to the PCC dated 10 December 2020;
    - (3) further requests from the quality review team dated 6 July 2020 and 28 September 2020, requesting that the Member contact the reviewer;
    - (4) correspondence from the PCC dated 11 February 2021, 6 May 2021, 12 May 2021 and 19 May 2021;
    - (5) response from the Member stating his response would be received shortly dated 12 May 2021, 18 May 2021 and 19 May 2021;
  - (ii) the Second Complaint
    - (1) letters and emails from the PCC to the Member dated 15 December 2020, 11 February 2020, 10 March 2020, 26 March 2020, 22 April 2020, 6 May 2020, 12 May 2020 and 19 May 2020;
    - (2) responses from the Member stating he would provide a substantive response shortly dated 11 February 2021, 10 March 2021, 20 April 2021, 12 May 2021, 18 May 2021 and 19 May 2021;
- (collectively, the **Correspondence**).

## 6.2 Member submissions

The Member submitted that:

- (a) he had taken action to reposition his practice following the original complaint that led to his agreement for a Practice Review;
- (b) the Practice Review had not been done but this was a time when the Member and his staff were working from home due to COVID-19;
- (c) there had been a number of challenges in his personal life and these were further complicated by the COVID-19 pandemic;
- (d) the events that led to the Tribunal hearing had been largely beyond the Member's control and all had been compounded by the COVID-19 pandemic.

### 6.3 Tribunal decision and reasons

The Tribunal determined that the allegation was established because:

- (a) the Quality Review Manager could give directions to the Member pursuant to Regulations CR 2 *Certificates of Public Practice* and CR 3 *Public Practice Regulations* which say:

#### 2.22 Quality Control

A CPP holder will establish and maintain systems and procedures of quality control in accordance with APES 320 Quality Control for Firms and, where applicable, ASQC 1 Quality Control for Firms that Perform Audits and Reviews of Financial Reports and Other Financial Information, Other Assurance Engagements and Related Services Engagements, and comply with the following conditions of holding a CPP:

...

- (c) To enable the program to be conducted in an effective and timely manner Chartered Accountants are required to co-operate with all reasonable requests by the Board, any committee or officer of CA ANZ or any person employed by CA ANZ to conduct a quality review, and to produce such documents or other materials in the Chartered Accountant's possession as may be required to enable a review to be conducted.

#### 3.15 Quality Control

...

- (e) To enable CA ANZ's quality and practice review programme to be conducted in an effective and timely manner, each Member subject to such review must:
- (i) co-operate with all reasonable requests made by the Board, any committee or officer of CA ANZ or any person employed by CA ANZ to conduct a quality and practice review; and
  - (ii) produce all such documents or other materials in the Member's possession as may be required to enable a review to be conducted.

- (b) the PCC could give directions to the Member pursuant to By-Law 40(5.2)(b) which says:

For the purposes of any investigation, the Professional Conduct Committee may ... 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) it was satisfied that the following correspondence from the Quality Review Manager contained reasonable and lawful directions to provide a completed questionnaire with which the Member did not comply:

- (i) letter dated 29 July 2019;
- (ii) letter dated 12 September 2019;
- (iii) letter dated 15 October 2019;
- (iv) letter dated 21 January 2020;

and the following correspondence which contained reasonable and lawful directions to contact the Reviewer, with which the Member did not comply:

- (v) letter dated 6 July 2020;
- (vi) letter dated 28 September 2020;

- (d) the conduct of quality reviews is necessary for the maintenance of good order and management of CA ANZ because it is important that members' practices are monitored to maintain high standards of practice and professional conduct for, and to maintain the observance of, such standards by its members;

- (e) it was satisfied that at least the following correspondence from the PCC contained reasonable and lawful directions with which the Member did not comply:
  - (i) in relation to the First Complaint:
    - (1) letter dated 11 February 2021;
  - (ii) in relation to the Second Complaint:
    - (1) letter dated 15 December 2020;
    - (2) email sent 11 February 2021;

(the communication referred to in paragraphs 6.3(c)(i)-(vi) and 6.3(e)(i) and (ii) collectively, the **Directions Correspondence**);

- (f) 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;
- (g) the Tribunal was satisfied that there was a large body of evidence demonstrating that the Member had failed to comply with directions contained in the Directions Correspondence, in breach of By-Law 40(2.1)(i).

## **7. Had the Member's acts, omissions or defaults associated with allegations 1, 2 or 3 brought, or may they bring, discredit on himself, CA ANZ or the profession of accountancy, in breach of By-Law 40(2.1)(k)? (allegation 4)**

### **7.1 PCC submissions**

- (a) The PCC submitted that:
  - (i) the TPB reasoning for its decision to terminate his registration was fundamentally on the basis the Member was not a fit and proper person;
  - (ii) the factual findings and the publication of those findings by the TPB clearly brought discredit on the Member as a member of CA ANZ and, as a flow on effect, discredited the membership body itself, CA ANZ and the entire profession;
  - (iii) members of the public are entitled to expect a CA ANZ member will conduct himself in an honest and professional manner and maintain his own tax affairs in proper order;
  - (iv) publicly-available findings that the Member had engaged in dishonest conduct, had failed to act with integrity and had knowingly obstructed the proper administration of taxation law brought the Member below the standards members of the public would be entitled to expect;
  - (v) the Member's failure to respond to reasonable and lawful directions over a long period of time prevented CA ANZ from conducting its internal processes, both in terms of quality review and the disciplinary process, efficiently and effectively;
  - (vi) those failures were below the standard of conduct the public should expect from a member. They also showed a pattern of behaviour rather than a one-off incident;
  - (vii) it was important that CA ANZ signalled to both the membership and the public that this kind of behaviour is unacceptable in a member and a discredit finding would underline that.

- (b) In making this submission, the PCC referred to the following evidence:
  - (i) the Member's TPB Registration Details;
  - (ii) the TPB Decision;
  - (iii) the Correspondence.

## 7.2 Member submissions

Save for the submissions noted at paragraph 6.2 above, the Member made no submissions in regard to this allegation.

## 7.3 Tribunal decision and reasons

The Tribunal determined that the allegation was established because:

### Disqualification by TPB

- (a) the TPB Decision was in the public domain and made reference to the Member's CA ANZ membership;
- (b) the TPB found the Member was no longer a fit and proper person and in particular had failed to act honestly with integrity, failed to comply with taxation laws and knowingly obstructed proper administration of taxation laws, and therefore brought discredit on himself;
- (c) members of the public should be confident that Chartered Accountants and those working in the profession of accountancy maintain high professional standards;
- (d) by defaulting on his obligations under the Code in the ways found by the TPB, the Member had failed to meet the high professional standards expected by members of the public and as a result had brought discredit upon himself, CA ANZ and the profession of accountancy, in breach of By-Law 40(2.1)(k);

### Failure to respond

- (e) the Member did not comply with reasonable and lawful directions given to him by the quality review team and PCC that related to the good order and management of CA ANZ; ie cooperating with the quality review process and the PCC's investigation of the Complaints;
- (f) the principal objects of CA ANZ, set out in the Supplemental Royal Charter, include:
  - ...
  - (e) to promote quality, expertise and integrity in the profession of accountancy by its members;
  - (f) to prescribe high standards of practice and professional conduct for, and to maintain the observance of such standards by:
    - (i) its members;...
  - (g) to prescribe disciplinary procedures and sanctions, to exercise disciplinary powers and to impose sanctions for the better observance of the standards of practice and professional conduct of CA ANZ by its members...
- (g) the Member's failure to engage in the quality review process and investigation of the Complaints were acts, omissions or defaults that:
  - (i) were contrary to the principal objects of CA ANZ. Members of the public are entitled to expect, and should have the confidence, that members will comply with the obligations of their membership and that if a member is required to undertake a quality review or a complaint is raised against a member, that the quality review will

occur and that CA ANZ will and can properly investigate that complaint. A breach of that confidence does discredit CA ANZ and the profession of accountancy;

- (ii) failed to meet the high professional standards expected of him and as a result had brought discredit upon himself;

in breach of By-Law 40(2.1)(k).

## 8. What sanctions should be imposed on the Member?

- (a) Regulation CR 8.11, *Guidelines for the imposition of sanctions (Guidelines)* sets out the matters that may be considered by the Tribunal in deciding what sanctions to impose. In this regard the Guidelines refer to:
  - (a) ... (i) the seriousness of the conduct;
  - (ii) whether the conduct has occurred before and, if so, the nature, extent and frequency of the conduct;
  - (iii) the Member's responsibility and accountability for the conduct in the context of that Member's Practice Entity ...
  - (iv) whether the Member has failed to comply with any undertaking or agreement to remedy the conduct;
  - (v) any aggravating or mitigating factors raised which are relevant to the conduct in question;
  - (vi) the personal circumstances of the Member to the extent they are raised and relevant to the conduct;
  - (vii) any character and/or other references provided in writing in support of the good standing of the Member;
  - (viii) the maintenance of public confidence in the profession;
  - (ix) the maintenance of proper standards of professional conduct;
  - (x) deterrence; and
  - (xi) any other circumstances relevant to the practice of the Member and the profession.
- (b) However, the Guidelines are not an exhaustive list of the matters that may be considered when deciding what sanction to impose and the Tribunal may have regard to any other relevant matters that are before it.
- (c) The PCC submitted that suspending the Member's membership for the remaining duration of the TPB disqualification, ending on 2 March 2024, was the appropriate sanction and that the Tribunal should have regard to the following matters:
  - (i) this was a serious case of misconduct. The suspension of membership was necessary and proportionate in these circumstances where the Member had been subject of adverse findings that had been published by the TPB and were publicly available. In addition, the Member had demonstrated he was unwilling or unable to comply with lawful and reasonable directions in a timely manner;
  - (ii) the sanction would signal that CA ANZ is committed to ensuring that the public receives an appropriate level of service from its members;
  - (iii) general deterrence among the membership would also be achieved through the publication of the decision as well as making it clear to members of the public that the findings against the Member represented an unacceptable failing below the standards expected of members of CA ANZ and that CA ANZ holds its members to a much higher standard;

- (iv) the Member had put forward reasons why he failed to cooperate with the quality review team including personal and COVID-related issues. It should be noted that the TPB decision to terminate and disqualify the Member took effect on 2 March 2020 which was actually before, or at the start of the pandemic, but before any lockdowns;
  - (v) while the PCC submitted it was sympathetic to the Member's personal issues he had failed to communicate the issues and problems he said he was experiencing in any substantive way to the PCC;
  - (vi) the Member had been reprimanded for previous breaches of By-Laws in a relatively recent matter and, by his delays and failures to act, had shown disregard for the standards required to remain a CA ANZ member;
  - (vii) while the sanction being sought was suspension of membership, having regard to the seriousness of the wrongdoing, the PCC would not object to termination of membership for the Member;
  - (viii) there was a pattern of behaviour that predated any of the COVID-19 issues the Member had put forward.
- (d) The Member submitted that:
- (i) he had taken action to reposition his practice following the original complaint that led to his agreement for a Practice Review;
  - (ii) the Practice Review had not been done but this was a time when the Member and his staff were working from home due to COVID-19;
  - (iii) there had been a number of challenges in his personal life and these were further complicated by the COVID-19 pandemic;
  - (iv) the events that led to the Tribunal hearing had been largely beyond the Member's control and all had been compounded by the COVID-19 pandemic;
  - (v) he was no longer practising as an accountant and was in the process of selling his practice.
- (e) In balancing the interest of the Member against the public interest, reputation of CA ANZ and the need to support the integrity of the profession of accounting and those of CA ANZ, the Tribunal determined to terminate the Member's membership and remove his name from the Registers on which it appears because:
- (i) the Tribunal considered the TPB Decision to be very serious against the Member, including findings of dishonesty, lack of integrity, and obstruction of the administration of taxation laws;
  - (ii) the Member's conduct regarding the quality review and failure to respond to legitimate requests from the PCC which took place over a lengthy period of time (at least 18 months), was also serious;
  - (iii) the Member had a tendency to advise the PCC and the Quality Review Manager that he would respond but failed to respond when he undertook to do so. The Member also failed to give any reason for the delay or failure to respond, until the Complaints were referred to the Tribunal;
  - (iv) it is unsatisfactory for a member of CA ANZ not to take seriously any investigation by the PCC and not to give total cooperation to the investigation process. It is also

unsatisfactory for a member to not take seriously a quality review when required. This conduct undermines CA ANZ's authority and its ability to regulate its members;

- (v) for CA ANZ to be able to administer its functions its members must comply with its policies and procedures. Therefore, deterrence of the wilful disregard of CA ANZ's procedures, as the Member had displayed, was necessary;
  - (vi) members of the public expect high standards of Chartered Accountants and it was clear the Member had fallen below those standards.
- (f) The Tribunal found that the appropriate sanction in this case should be termination of membership due to the serious and serial failure of the Member to abide by the By-Laws and Regulations of CA ANZ and that suspension of membership was not a sufficient sanction in this case.

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

- (a) Regulation CR 8.12, *Costs awards* states that when determining whether or not to require a Member to pay Costs, and the amount of such Costs, the Tribunal:

...must require the Member to pay all of the Costs claimed by CA ANZ unless it determines that, having regard to the following matters, it is appropriate that the Member be required to pay only part or none of the claimed Costs:

- (a) whether and to what extent the complaint against the Member is found to have merit and whether or not there is ultimately a finding in favour of the Member;
- (b) the substance or seriousness of the complaint;
- (c) the conduct of the Member in relation to the investigation and disciplinary process, including whether the Member was open, honest and timely in the Member's dealings with the Professional Conduct Committee, Disciplinary Tribunal or Appeals Tribunal in relation to the complaint and whether the Member complied with the provisions of Section 5 of the By-Laws and any applicable Regulations during the conduct of the disciplinary process;
- (d) the extent to which the final sanctions determined differ from those that the Professional Conduct Committee or Disciplinary Tribunal gave the Member the opportunity to agree by consent;
- (e) whether to do so is reasonable in the circumstances;
- (f) the amount of the Costs incurred by CA ANZ in the conduct of the investigation and proceedings;
- (g) whether and to what extent the Member has previously been required to pay Costs to CA ANZ in respect of the complaint, its investigation, hearing and determination; and
- (h) whether the amount is reasonable in the circumstances.

- (b) The PCC submitted that:
- (i) none of the factors in Regulation CR 8.12 militated against an award of full costs against the Member;
  - (ii) the Member had been found in breach of multiple By-Laws in a serious and serial way;
  - (iii) the Member had failed to comply with reasonable and lawful directions and essentially disregarded CA ANZ's attempts to conduct its own proper processes and enforce its own rules;
  - (iv) the Member had also failed to attend the Tribunal hearing;
  - (v) the Member had forced the PCC to prosecute its case by reason of non-admission of the allegations rather than accepting the inevitable. This had led to additional costs.
- (c) The Member made no submissions.

- (d) The Tribunal determined that the Member should pay \$12,837 for the full costs of the proceedings because:
- (i) having regard to the factors in Regulation CR8.12 the Tribunal concluded there was no reason to depart from the proposed cost sanction put forward by the PCC;
  - (ii) the complaints against the Member were found to have merit;
  - (iii) the Member was not open, honest and timely in his dealings with the PCC;
  - (iv) the detailed cost schedule handed up showed the costs were not excessive and had been reasonably incurred;
  - (v) the Member did not admit the allegations, but did not appear and put forward limited submissions regarding the allegations raised.

## 10. Should notice of the Tribunal's decision be published?

- (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 complaint was established and sanctions adverse to the Member were 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 and location 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*.

## 11. Should other parties be notified of the Tribunal decision?

- (a) By-Law 40(10.16) states:
- The Disciplinary Tribunal may notify interested parties including other professional bodies, regulatory authorities, the Member's current and/or former employers, partners, clients of the Member or the Member's Practice Entity who are or may be affected by the Member's conduct to which the disciplinary action relates, of so much of a decision ..., the reasons for it and/or the sanctions imposed, as it thinks fit ...

- (b) The Tribunal was not notified of any registrations and/or memberships held by the Member and no interested parties were identified by the Tribunal.

## 12. Should any details be kept confidential?

- (a) By-Law 40(13.12) states:
  - (d) The Disciplinary Tribunal ... may require, including as a condition of admission to a hearing, any person present to undertake to keep all or any part of a hearing, the evidence adduced at it or other information disclosed (including the identity of any persons present at or otherwise connected with the hearing) confidential on such terms as it determines.
- (b) The Tribunal directed that, except for the content of the Disciplinary Tribunal written decision with reasons, all written and oral evidence and submissions related to this determination are to remain confidential.

## 13. 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.

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) the Member is liable to disciplinary action in accordance with:

1. By-Law 40(2.1)(e) in that the Member has been the subject of an adverse or unfavourable finding in relation to his professional or business conduct, competence or integrity by a statutory authority or regulatory authority in circumstances where the Member's tax agent registration was terminated by the Tax Practitioner's Board (TPB) with effect from 2 March 2020 and he is unable to apply for reregistration for a period of 4 years, concluding on 2 March 2024, on the basis that he engaged in conduct which breached sections 30-10(01), 30-10(02), 30-10(11) and 30-10(13) of the Code of Professional Conduct and that the Member no longer meets the registration requirement to be a fit and proper person.
2. By-Law 40(2.1)(g) in that by reason of the matters set out in paragraph 1 above, the Member has had a restriction imposed on a professional registration in his name.
3. By-Law 40(2.1)(i) in that the Member failed to comply with a reasonable and lawful direction of an 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, in circumstances where he failed to respond to correspondence sent to him by CA ANZ.
4. By-Law 40(2.1)(k) in that:
  - (a) the defaults associated with the matters set out in paragraphs 1 and 2 above; and
  - (b) the acts or omissions or defaults associated with the matters set out in paragraph 3 above, bring, or may bring, discredit on the Member, CA ANZ or the profession of accountancy.

## **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:

...

(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;

...

### **Section 4 – Rights and Obligations of Members**

...

#### **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.

...

#### **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:

...

- (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);

...

(r) **Principal** means any person, who is a principal of a Practice Entity or a principal, partner, director, officer or trustee of a Related Entity of the Practice Entity and includes:

- (i) in the case of a Practice Entity or a Related Entity of the Practice Entity which is a partnership, a partner of that partnership;
- (ii) in the case of a Practice Entity or a Related Entity of the Practice Entity which is a body corporate, a director of that body corporate;
- (iii) in the case of a Practice Entity or a Related Entity of the Practice Entity that is conducted as a trust, an individual who, as an officer or employee of the trustee of that trust, or otherwise, provides or participates as a Principal in the provision of the services provided by the Practice Entity; and
- (iv) in the case of a Practice Entity or a Related Entity of the Practice Entity, an individual who, as an officer or employee or otherwise, of the Practice Entity or Related Entity of the Practice Entity, provides or participates as a Principal in the provision of the services provided by the Practice Entity;

...

**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:

...

- (e) has been the subject of an adverse or unfavourable finding in relation to that Member's professional or business conduct, competence or integrity by any court of law, professional body, royal commission, statutory authority, regulatory authority, statutory body, commission or inquiry in any jurisdiction in Australia or elsewhere;

...

- (g) has agreed to, or has had imposed, any condition or restriction on any professional membership, registration or licence in that Member's name;

...

- (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;

...

- (k) has committed any act, omission or default which, in the opinion of the Professional Conduct Committee, Disciplinary Tribunal or Appeals Tribunal brings, or may bring, discredit upon that Member, CA ANZ or the profession of accountancy;

...

#### **40(5) Investigation**

...

40(5.2) For the purposes of any investigation, the Professional Conduct Committee may:

...

- (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;

...

**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(10.11) 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
- ...
- (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(13.6) 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(13.9) 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(13.12) 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 CR2 - CERTIFICATES OF PUBLIC PRACTICE**

Issued 23 August 2018

...

### **2.22 Quality Control**

A CPP holder will establish and maintain systems and procedures of quality control in accordance with APES 320 Quality Control for Firms and, where applicable, ASQC 1 Quality Control for Firms that Perform Audits and Reviews of Financial Reports and Other Financial Information, Other Assurance Engagements and Related Services Engagements, and comply with the following conditions of holding a CPP:

- (a) Undergo a quality review from time to time in accordance with the policies and procedures laid down for the operation of the quality review program.
- (b) In addition to any review conducted in accordance with CR 2.22(a), the Chief Executive Officer may at any time in their absolute discretion direct that a quality review be undertaken of all or part of a Chartered Accountant's practice.
- (c) To enable the program to be conducted in an effective and timely manner Chartered Accountants are required to co-operate with all reasonable requests by the Board, any committee or officer of CA ANZ or any person employed by CA ANZ to conduct a quality review, and to produce such documents or other materials in the Chartered Accountant's possession as may be required to enable a review to be conducted.
- (d) If a Chartered Accountant does not comply within 60 days of a written request in accordance with CR 2.22(c), the Chartered Accountant will be referred to the Professional Conduct Committee.
- (e) Chartered Accountants are required to meet the costs imposed by CA ANZ for a review undertaken in accordance with CR 2.22(a) and/or 2.22(b) of their practice.

...

Issued 8 October 2019

### **2.22 Quality Control**

A CPP holder will establish and maintain systems and procedures of quality control in accordance with APES 320 Quality Control for Firms and, where applicable, ASQC 1 Quality Control for Firms that Perform Audits and Reviews of Financial Reports and Other Financial Information, Other Assurance Engagements and Related Services Engagements, and comply with the following conditions of holding a CPP:

- (a) Undergo a quality review from time to time in accordance with the policies and procedures laid down for the operation of the quality review program.
- (b) In addition to any review conducted in accordance with CR 2.22(a), the CEO may at any time in their absolute discretion direct that a quality review be undertaken of all or part of a Chartered Accountant's practice.
- (c) To enable the program to be conducted in an effective and timely manner Chartered Accountants are required to co-operate with all reasonable requests by the Board, any committee or officer of CA ANZ or any person employed by CA ANZ to conduct a

quality review, and to produce such documents or other materials in the Chartered Accountant's possession as may be required to enable a review to be conducted.

- (d) If a Chartered Accountant does not comply within 60 days of a written request in accordance with CR 2.22(c), the Chartered Accountant will be referred to the Professional Conduct Committee.
- (e) Chartered Accountants are required to meet the costs imposed by CA ANZ for a review undertaken in accordance with CR 2.22(a) and/or 2.22(b) of their practice.

...

## SCHEDULE 4: REGULATION CR<sub>3</sub> - PUBLIC PRACTICE REGULATIONS

Issued 23 August 2018

...

### 3.15 Quality Control

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

### **Commentary**

*A Chartered Accountant who continues to practise when their CPP is suspended under CR 3.15(f) will be referred to the Professional Conduct Committee.*

...

Issued 8 October 2019

...

### 3.15 Quality Control

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

#### **Commentary**

*A Chartered Accountant who continues to practise when their CPP is suspended under CR 3.15(f) will be referred to the Professional Conduct Committee.*

## **SCHEDULE 5: 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.*