



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

Written decision dated 6 October 2021

- Case Number:** DT-1270
- Member:** Charles Roborg-Sondergaard CA of Western Australia
- 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:** Paul Forbes for the Professional Conduct Committee (PCC)
The Member did not appear but consented to the application
- Decisions:**
1. The Tribunal determined:
 - (a) to suspend the Member from membership of CA ANZ on an interim basis pending further investigation and determination of the complaint;
 - (b) that the interim suspension would end on the earlier of:
 - (i) six months after the full and final resolution of the later of:
 - A. all criminal proceedings against the Member; and
 - B. all regulatory investigations into the Member's conduct arising from the matters referred to in the Notice of Disciplinary Action; or
 - (ii) further investigation and determination of the complaints arising from the matters referred to in the Notice of Disciplinary Action.
 2. Costs were reserved until final determination of the complaint. The Tribunal noted the PCC estimate of costs to date of \$10,123.
 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 Tax Practitioners Board and Tax Institute 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 29 September 2021.

The date of effect of this decision is 21 October 2021 (By-Law 40(10.18)).



1. Introduction

- (a) In May 2021 it was reported that an investigation by the Australian Financial Security Authority (AFSA) had resulted in charges being laid against the Member. On becoming aware of the report the PCC initiated a complaint pursuant to the powers conferred by By-Laws 40(4.1) and 40(5.1) (the **Complaint**).
- (b) The PCC commenced an investigation and the Member supplied information that showed he was on 19 March 2021 charged with committing an offence or offences individually or by joint commission with the intent to defraud creditors of a client, a bankrupt, by concealing his property contrary to section 263(1)(a)(i) of the *Bankruptcy Act 1966* (Cth) and section 11.2A(1) of the *Criminal Code Act 1995* (Cth) (the **Charges**).
- (c) The matter was considered by the PCC on 29 July 2021. The PCC made the decision to refer the Member directly to the Tribunal as it was satisfied that the Complaint received about the Member was sufficiently serious that the Tribunal may suspend the Member on an interim basis.
- (d) The PCC also decided, having regard to the information available, its investigation should be adjourned on the basis that the issues arising from the Complaint were *“the same as or substantially similar to those in the court proceedings currently on foot”*.
- (e) The Member did not oppose the PCC’s application for interim suspension of his membership however advised *“I am defending myself against”* the Charges.

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) Should notice of the Tribunal’s decision be published?
- (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 Agreed facts

The PCC and the Member agreed that the Member was subject to the Charges.

3.2 PCC submissions

(a) The PCC submitted that:

- (i) this was a clear example of where the power to suspend on an interim basis should be exercised;
- (ii) the Tribunal did not need to decide if the Member had committed the offences, the relevant factor was that he had been charged;
- (iii) all four criteria the Tribunal should have regard to in By-Law 40(9.1) in deciding whether it was necessary or desirable to suspend the Member on an interim basis were satisfied;
- (iv) the Charges involved serious offences and concerned allegations of dishonesty;
- (v) the conduct related to the Member's practice as an accountant. Because of that, CA ANZ needed to be seen to enforce its rules. The interim suspension power exists to protect the public from this kind of conduct;
- (vi) with respect to whether it was in the interests of the public to suspend the Member on an interim basis, the seriousness of the criminal charges struck at the heart of the public's expectation regarding a member of CA ANZ, that they are dealing with a person of high integrity and honesty regarding their affairs;
- (vii) with respect to the urgency of the matter:
 - (1) it had been six months since the Member was charged and it was unclear when the criminal proceedings would conclude, therefore it was not appropriate to wait for the matter to resolve through the court process;
 - (2) CA ANZ must be seen to act promptly, especially if the matters are reported in the media;
 - (3) public confidence in the profession may be affected if adequate and urgent steps were not taken;
- (viii) with respect to the reputation of CA ANZ and the integrity of the profession of accountancy:
 - (1) the Charges related directly to the Member's practice as an accountant;
 - (2) in circumstances where members are charged with criminal offences relating to their practice as an accountant it is important that CA ANZ enforces its own rules and disciplines members to protect the reputation of CA ANZ and the profession of accountancy.

(b) In making this submission, the PCC referred to the following evidence:

- (i) the Magistrates Court of Western Australia Prosecution Notice dated 19 March 2021;

- (ii) media articles:
 - (1) 'Charges laid following allegations of misusing funds before bankruptcy', Australian Financial Security Authority (online, 4 May 2021);
 - (2) Jotham Lian, 'Accountant charged over bankruptcy fraud advice', Accountants Daily (online, 5 May 2021).

3.3 Member submissions

The Member consented to the interim suspension and submitted that:

- (a) he was defending the Charges;
- (b) he is and has been experiencing certain personal hardships;
- (c) his court matter may not be finalised for six to eight months.

3.4 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 being investigated by the PCC. The power of interim suspension is intended as a protective provision for the benefit of the public, the reputation of CA ANZ and integrity of 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, having regard to each of the factors of By-Law 40(9.1) and the parties' submissions, that it was both necessary and desirable to suspend the Member's membership on an interim basis because:
 - (i) the Tribunal was satisfied that the Charges were serious, if proved, because they related to the Member's practice as an accountant and the advice he gave;
 - (ii) the Member acknowledged that the Charges had been laid against him;
 - (iii) the 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 expected duration of those proceedings;
 - (iv) the public interest would be protected by not allowing the Member to hold himself out as a member while serious criminal charges remained unresolved;
 - (v) the public places trust in professional accountants to exercise due skill, care and honesty in their dealings with clients. If the Member were allowed to continue practising as a Chartered Accountant while the alleged conduct of concealment of assets were unresolved it would very significantly damage the trust of the public in CA ANZ and the accountancy profession;

- (vi) pending resolution of the 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;
- (vii) the Member consented to the imposition of an interim suspension of his membership;
- (viii) the determination to suspend the Member was not for the purpose of ‘disciplining’ the Member, as no findings relating to the underlying allegations were made. The determination was rather for protective purposes, as outlined above.

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

4.1 PCC submissions

- (a) 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 criminal proceedings against the Member; and*
 - ii. all regulatory investigations into the Member’s conduct arising from the matters referred to [in the Notice of Disciplinary Action]; or*
 - (b) *further investigation and determination of the complaints arising from the matters referred to” in the Notice of Disciplinary Action.*
- (b) At the time the PCC resolved to refer this matter to the Tribunal, it also decided to adjourn its investigation until the determination of the Charges, on the basis that the issues arising in the complaint were the same as or substantially similar to those in the court proceedings.

4.2 Member submissions

The Member consented to the interim suspension on the terms proposed which were notified to him by the PCC on 6 September 2021.

4.3 Tribunal decision and reasons

- (a) The Tribunal determined that the period of interim suspension should end on the earlier of:
 - (i) six months after the full and final resolution of the later of:
 - (1) all criminal proceedings against the Member; and
 - (2) all regulatory investigations into the Member’s conduct arising from the matters referred to in the Notice of Disciplinary Action; or
 - (ii) further investigation and determination of the complaints arising from the matters referred to in the Notice of Disciplinary Action.
- (b) Having had regard to the parties’ submissions, the Tribunal made this decision on the basis that:
 - (i) while the Member submitted that the hearing of the Charges would take place in the next six to eight months, it was unknown what the duration of the criminal proceedings would be;
 - (ii) the PCC submitted that its own investigation was suspended until the conclusion of the criminal proceedings, unless any relevant information was received prior;

- (iii) it may take up to six months to evaluate any outcome of the criminal proceedings, or any associated regulatory investigations, 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 \$10,123. The Tribunal determined that it was appropriate to reserve costs until a final determination of the complaint because the substantive allegations had not yet been proved and therefore the Tribunal did not consider it appropriate to impose upon the Member a requirement that he pay costs at this time.

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

- (a) By-Law 40 states:

12.3 Where the Disciplinary Tribunal ... decides to suspend a Member on an interim basis, it must direct that a notice be published by CA ANZ of its decision and the sanctions imposed (if any). Any such publication must disclose the name and location of the relevant Member unless the Disciplinary Tribunal ... 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 Tribunal decided to suspend the Member on an interim basis, pursuant to By-Law 40(12.3) it must direct that a notice of its decision 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. 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.
- (d) The Tribunal further determined that it was appropriate that:
 - (i) this written decision with reasons mentioning the Member's name and location be published on the CA ANZ website (the **Published Decision**); and
 - (ii) a summary of the Published Decision mentioning the Member's name and location with a web address for the Published Decision be published in the CA ANZ official publication, *Acuity*.

7. Should other parties be notified of the Tribunal decision?

- (a) By-Law 40(10.16) states:

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

- (b) The Member holds registrations and/or memberships with the Tax Practitioners Board and Tax Institute.

- (c) The Tribunal determined that, due to the Member's association with those bodies, the Tax Practitioners Board and Tax Institute 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 (CA ANZ) be suspended on an interim basis.

It is alleged that on or about 19 March 2021, while a Member of CA ANZ, the Member was charged with committing an offence or offences either individually or by joint commission with the intent to defraud creditors of [the Member's client], a bankrupt, by concealing his property contrary to section 263(1)(a)(i) of the Bankruptcy Act 1966 (Cth) and 11.2A(1) of the Criminal Code Act 1995 (Cth).

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 criminal proceedings against the Member; and
 - ii. all regulatory investigations into the Member's conduct arising from the matters referred to above; or
- b. further investigation and determination of the complaints arising from the matters referred to above.

SCHEDULE 2: RELEVANT BY-LAWS

...

Section 4 – Rights and Obligations of Members

...

Certificates of Public Practice

...

34.

- (d) The certificate of public practice of a Member upon whom any of the sanctions referred to in By-Laws 40(9.1), 40(10.12)(a) to (d) of By-Law 40 or By-Law 41 has been imposed, shall, subject to any appeal under By-Law 40(11), ipso facto, be cancelled and, accordingly, cease to be a current certificate of public practice in terms of By-Law 34(a).

...

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);

...

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(10.11) 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:
- ...
- (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(13.12) 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.

...

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.