

## Professional Conduct Committee – 23 August 2021

### **Dishonesty, Professional Care, Skill, Competence or Diligence, Adverse finding, Enforceable Undertaking, Professional Membership, Integrity, Professional Behaviour, Discredit - Member A**

At a meeting of the Professional Conduct Committee (PCC) of Chartered Accountants Australia and New Zealand held in private on 23 August 2021 by videoconference in respect of Member A, the PCC decided that the Disciplinary Tribunal would be likely to find that the Member's conduct did not comply with:

- By-Law 40(2.1)(a);
- By-Law 40(2.1)(e);
- By-Law 40(2.1)(f);
- By-Law 40(2.1)(g);
- By-Law 40(2.1)(h); and
- By-Law 40(2.1)(k).

The PCC considered that this matter is sufficiently serious to warrant referral to the Disciplinary Tribunal.

However, the PCC decided to propose that an agreement be made with the Member which shall be entered on the Member's record, on terms that:

1. the Member receive a reprimand;
2. the Member pay to CA ANZ the sum of \$770 by way of contribution towards the costs of investigating and dealing with the matters the subject of the complaint and the Case Conference; and
3. the PCC will publish:
  - a) details of these sanctions on the website of CA ANZ; and
  - b) a notice in the digital and print magazine "Acuity", with a link to the published decision,without disclosing the Member's name and locality.

The PCC notes that the costs of investigating and dealing with the matters the subject of the complaint and the Case Conference are significantly in excess of the amount referred to in item 2 above but the PCC decided it was appropriate that the Member be required to pay only part of those costs because of the forthright way in which the Member dealt with complaint before the PCC and the remorse demonstrated by him.

The PCC considers that it is in the public interest for this sanction to be published, but that there are no special circumstances which warrant disclosing the name of the Member.

#### Background

CA ANZ has become aware due to the Member's notification that the Member's tax agent registration was terminated by the Tax Practitioner's Board (TPB) and he was unable to apply for registration for a period of two years.

The TPB found that the Member had breached the Code of Professional Conduct as he had failed to act honestly and with integrity and to provide tax agent services competently and that he ceased to meet the registration requirement that they are a fit and proper person.

In particular, the TPB found that the Member failed to act honestly and with integrity and provide tax agent services competently as he lodged a large number of Superannuation Fund Annual Returns (SARs) for Self Managed Superannuation Fund (SMSFs) prior to the SMSFs being audited and falsely declared to the Commissioner of Taxation and misled his SMSF clients that the SMSFs had been audited by a particular auditor on a particular date when in fact they had not been audited on that date (or at all). The TPB also found that the Member lodged SARS for his own SMSF without them being audited which gave greater weight to the conduct and lack of integrity.

The Member made an application for a review of the decision of the TPB in the Administrative Appeals Tribunal (AAT). The Member's application was resolved with the TPB reducing the period in which the Member is unable to apply for registration to 18 months.

The Member also entered into an agreement with the Australian Taxation Office (ATO) which resulted in him entering into an enforceable undertaking regarding his SMSF with it being wound up and a monetary fine which has been paid in full. The Member has agreed not to act as a trustee of an SMSF in the future.

### Reasons

The Member indicated that the principals of the audit firm that he worked with were well known to him and he had worked with them for some time and trusted them. They had access to all of his files through their software.

The Member said they told him that the work was done and he believed them without checking that the reports were available for download as it was busy and deadlines were looming. He then lodged the income tax returns for the SMSFs. He was aware of the process and did not try to avoid his obligations. However, as it turned out, a large number of audits were not completed.

The Member admitted that most of his interactions with the auditors were over the telephone and he also failed to check the invoices issued for payment.

In hindsight, the Member said that he should not have trusted the auditors and his team has now implemented processes whereby every audit report must be sighted, downloaded and stored in their system before any income tax return for any SMSF is lodged. Invoices are now checked, and instructions are provided in writing and signed by all parties.

The Member indicated that the same issue occurred with his personal superannuation fund - he was told the audit had been done and he had no reason not to believe it, so he went and lodged the income tax return.

The Member said that he has suffered significant financial loss as he has paid for all of his clients' audits to be done at a much greater cost. None of his clients have been pursued by the ATO. All of his clients have been advised of the action taken by the TPB.

The Member has admitted breaches of By-Laws 40(2.1)(a), (e), (f), (g), (h) and (k). He has also admitted breaches of sections 110, 130 and 150 of APES 110 - Code of Ethics and section 3.3 of APES 220 - Taxation Services. In relation to the fundamental principle of integrity as set out in section 110 of APES 110, the Member said that while he accepts there was an issue, he did not intend to act without integrity or gain any benefit for himself. In relation to discredit, the Member said that the impact has been devastating both personally and financially. He demonstrated significant remorse for his actions.

The PCC decided that the Member has breached the By-Laws as set out above but understands that there were deficiencies in his processes which caused this to occur rather than any intention on his part. He has now changed his processes, so these breaches should not recur.

For the reasons set out above, the PCC decided that this matter was sufficiently serious to warrant referral to the Disciplinary Tribunal, but that a Consent Agreement should be proposed to the Member on the terms set out above.

**Professional Conduct Committee  
Chartered Accountants Australia and New Zealand**

23 August 2021