



Disciplinary Tribunal of Chartered Accountants Australia and New Zealand (CA ANZ) Written decision dated 6 August 2021

- Case Number:** DT-1260
- Member:** Joseph Patrick Tonkin CA of Queensland
- Hearing Date:** 20 July 2021
- Tribunal:** Richard Rassi FCA (Chair)
Jayne Godfrey FCA
Jenni Millbank, lay member of the Tribunal
- Tribunal Legal Adviser:** Joshua Kangisser
- Representation:** Kate Dixon for the Professional Conduct Committee (PCC)
The Member was not required to appear
- Decisions:**
1. Pursuant to By-Law 40(10.13) and with the written consent of the PCC and the Member, the Tribunal determined to dispense with the procedures in By-Law 40(10).
 2. The Tribunal determined that the Member suffered an insolvency event, in breach of By-Law 40(2.1)(j).
 3. The Tribunal determined to suspend the Member's membership for the duration of his bankruptcy or a period of five years, whichever expires first.
 4. The Tribunal imposed a cost sanction in the sum of \$500 towards the costs and expenses of the proceedings.
 5. 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 20 July 2021.

The date of effect of this decision is 28 August 2021 (By-Law 40(10.18)).



1. Introduction

- (a) In February 2021 the Member notified CA ANZ that on 15 May 2020 he “*filed for personal bankruptcy*” following which the PCC initiated a complaint pursuant to the powers conferred by By-Laws 40(4.1) and 40(5.1) (the **Complaint**).
- (b) After investigating the Complaint 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 on 15 May 2020 the Member became bankrupt.
- (c) The PCC and the Member subsequently reached an agreement as to sanctions for the Tribunal’s consideration pursuant to By-Law 40(10.13) which states:
...the Disciplinary Tribunal may, with the written consent of the relevant Member and the Professional Conduct Committee, dispense with any or all of the procedures in this By-Law 40(10) and impose any of the sanctions permitted in By-Law 40(10.12)...

2. Proposed agreement as to sanctions

- (a) Effective 21 June 2021 the PCC and the Member reached an agreement as to sanctions (the **Agreement as to Sanctions**) in the following terms:

The Member ... and the [PCC] consent to the Disciplinary Tribunal ... dispensing with the procedures in By-Law 40(10) ... and proceeding directly to the imposition of sanctions on the following terms:

1. *The [PCC] will appear at the scheduled hearing of the matter at 2:00pm AEST on 20 July 2021. The Member will not be required to attend the hearing.*
2. *The [PCC] will present to the Disciplinary Tribunal a signed copy of this Agreement including the annexed Agreed Statement of Facts.*
3. *The Member admits to the allegations contained in the [NDA] dated 2 June 2021.*
4. *The Disciplinary Tribunal may determine the matter without further submissions or evidence being required from either the [PCC] or the Member and impose the following sanctions:*
 - (a) *The Member’s membership of CA ANZ be suspended for the duration of his bankruptcy or a period not exceeding 5 years (whichever is the lesser) and the Member’s name be removed from the Registers on which it appears;*
 - (b) *The Member will pay a contribution to CA ANZ of \$500 towards the costs and expenses of the disciplinary action;*
 - (c) *The Disciplinary Tribunal’s decision with reasons, mentioning the Member’s name and locality, will be published on the CA ANZ website (the **Published Decision**);*
 - (d) *A summary of the Published Decision mentioning the Member’s name and locality with a web address for the Published Decision will be published in the CA ANZ official publication, Acuity; and*
 - (g) *[sic] The Disciplinary Tribunal will notify its decision to any bodies with whom the Member holds a professional registration or membership.*
5. *If the Disciplinary Tribunal is not prepared to dispense with the procedures in By-Law 40(10) on the terms above then the Member and the Professional Conduct Committee jointly seek and will consent to the hearing of the complaint being adjourned for a period of not less than 14 days.*

Signed

[The Member]

9 June 2021

Signed

Chair of the [PCC]

21 June 2021

- (b) Annexed to the Agreement as to Sanctions was a statement of agreed facts:

Statement of Agreed Facts

Date	Event	Case File Page
4/02/2000	The Member became a Member of CA ANZ.	24
15/05/2020	The Member became bankrupt.	23
	The Member was last subject to quality review in March 2014 and is eligible for further review.	
	The Member has no previous disciplinary history.	
	The Member is not in good financial standing, and has not paid his membership subscriptions for 2020/2021.	

3. The issues for determination

- (a) Should the Tribunal dispense with the procedures in By-Law 40(10)?
- (b) Did the Member suffer an insolvency event, in breach of By-Law 40(2.1)(j)? (the allegation)
- (c) If the answer to (b) was yes, what sanctions should be imposed on the Member?
- (d) Should the Member be required to pay costs and if so, in what amount?
- (e) Was there any reason to suppress the Member's name from the published decision?
- (f) Should other parties be notified of the Tribunal's decision?
- (g) Should any confidentiality orders be made?

4. Should the Tribunal dispense with the procedures in By-Law 40(10)?

Pursuant to By-Law 40(10.13) and with the written consent of the PCC and the Member, the Tribunal determined to dispense with the procedures in By-Law 40(10). This was because there was agreement between the parties for the procedures to be dispensed with and the Tribunal considered in the circumstances, with the Member's agreement and the facts presented, such dispensation was a cost-effective and efficient way to determine the matter.

5. Did the Member suffer an insolvency event, in breach of By-Law 40(2.1)(j)? (the allegation)**5.1 Agreed facts**

The PCC alleged and the Member admitted, that the Member became bankrupt on 15 May 2020.

5.2 Tribunal decision and reasons

The Tribunal was satisfied the allegation was established because:

- (a) the Member admitted to becoming bankrupt on 15 May 2020;
- (b) it was provided with an extract from the National Personal Insolvency Index obtained by the PCC on 13 April 2021 which recorded the following information:

“Type	BANKRUPTCY - Debtor’s Petition”
“Date of Bankruptcy	15-May-2020”
“Name	TONKIN, Joseph Patrick”
“Summary	This individual is an undischarged bankrupt”

- (c) a member is liable to disciplinary sanctions pursuant to By-Law 40(2.1)(j) if that member:
suffers an Insolvency Event.

and By-Law 39(m)(i) defines Insolvency Event in relation to a natural person as meaning that person:

(1) becoming bankrupt under the Bankruptcy Act;

...

(3) presenting (as a debtor) a declaration to the Official Receiver under section 54A of the Bankruptcy Act of that person’s intention to present a debtor’s petition or that person’s presentation (as a debtor) of such a petition under section 55 of that Act.

- (d) section 55 of the *Bankruptcy Act 1966* (the **Bankruptcy Act**) says, amongst other things “Subject to this section, a debtor may present to the Office Receiver a petition against himself or herself”. The Tribunal was satisfied that the “Debtor’s Petition” referred to in the National Personal Insolvency Index was a petition presented under s 55 of the Bankruptcy Act. Further, the Tribunal was satisfied by reference to the National Personal Insolvency Index that the Member was bankrupt under the Bankruptcy Act.

6. 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 and the Member agreed to the imposition of a suspension of membership for the remaining duration of the Member’s bankruptcy or a period not exceeding five years

(whichever is the lesser) and the Member's name be removed from the Registers on which it appears.

- (d) The Tribunal determined to impose the agreed sanction because:
- (i) it is an expectation that CA ANZ members be solvent and financially prudent;
 - (ii) to protect the reputation of and confidence in CA ANZ, members should not be entitled to hold themselves out as members of CA ANZ when providing professional advice while undischarged bankrupts;
 - (iii) as to the duration of the suspension, the bankruptcy may be discharged within less than five years but it also may be extended for a longer period and the Tribunal only has a power to suspend membership for up to five years;
 - (iv) it was appropriate for the Tribunal to impose a reasonable sanction to which the parties had agreed.

7. **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 and the Member agreed that the Member should pay \$500 towards the costs and expenses of the disciplinary action.
- (c) Having considered the matters in Regulation CR 8.12, the Tribunal determined that the Member should pay \$500 towards the costs of the proceedings, which the PCC advised were \$4,682, because:
- (i) the Tribunal accepted the PCC's submission that costs should be reduced to \$500 in recognition of the bankrupt's financial hardship;
 - (ii) the Member cooperated in the presentation of agreed facts and sanctions such that the matter could be determined expeditiously;

- (iii) in the circumstances, a partial contribution towards the costs of the proceedings was accepted as reasonable.

8. Should the Member's name be suppressed?

- (a) By-Law 40 states:

12.3 Where the Disciplinary Tribunal ... determines that a complaint is established or imposes a sanction adverse to the Member ... it must direct that a notice be published by CA ANZ of its decision and the sanctions imposed (if any). Any such publication must disclose the name of the relevant Member unless the Disciplinary Tribunal ... considers that there are exceptional circumstances for not doing so. [emphasis added]

12.4 Publication ... may be in such form and publication as the ... Disciplinary Tribunal ... considers appropriate, including in CA ANZ's official publication, on CA ANZ's website or in any other manner that it may in its discretion direct.

- (b) The Tribunal determined there were no exceptional circumstances and therefore the Member's name should be disclosed in the publication.
- (c) The Member agreed to the publication of his name and location.

9. 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 current registrations and/or memberships held by the Member and no interested parties were identified by the Tribunal.

10. 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.

11. Rights of appeal

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

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

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

The Tribunal decision as to confidentiality took effect immediately.



Chair
Disciplinary Tribunal

SCHEDULE 1: THE PCC'S ALLEGATIONS

It is alleged that while a member of Chartered Accountants Australia and New Zealand (CA ANZ) the Member is liable to disciplinary action in accordance with By-law 40(2.1)(j), in that on 15 May 2020 the Member became bankrupt.

SCHEDULE 2: RELEVANT BY-LAWS

Section 5 - Professional Conduct

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

...

(b) **Bankruptcy Act** means the Bankruptcy Act 1966 (Cth);

...

(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;

...

(m) **Insolvency Event** in relation to:

- (i) a natural person, means that person:
 - (1) becoming bankrupt under the Bankruptcy Act;
 - (2) being served with notice of a creditor's petition presented to a court under section 43 of the Bankruptcy Act;
 - (3) presenting (as a debtor) a declaration to the Official Receiver under section 54A of the Bankruptcy Act of that person's intention to present a debtor's petition or that person's presentation (as a debtor) of such a petition under section 55 of that Act; or
 - (4) applying to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounding with that person's creditors or making an assignment of that person's remuneration for their benefit; or
- (ii) a corporation, means:
 - (1) that corporation becomes unable to pay its debts as and when they fall due;
 - (2) an order is made for the winding up or dissolution of, or the appointment of a provisional liquidator to, that corporation or a resolution is passed for the winding up or dissolution of that corporation (other than for the purpose of an amalgamation or reconstruction whilst solvent);
 - (3) an application is made for its winding up and, if the application is capable of being set aside is not set aside within 14 days of being made;
 - (4) that corporation becomes subject to external administration within the meaning of Chapter 5 of the Corporations Act by appointment of a receiver, receiver and manager, provisional liquidator, liquidator or administrator;

- (5) a Secured Party or mortgagee exercises its rights under any Encumbrance of which that corporation is the Grantor or mortgagor; or
- (6) the party enters into or resolves to enter into any arrangement, composition or compromise with or for the benefit of its creditors or any class of them (other than for the purpose of amalgamation or reconstruction whilst solvent); or
- (iii) a partnership, means the occurrence of any event specified in:
 - (1) paragraphs (i)(1) to (i)(4) to any partner who is a natural person; or
 - (2) paragraphs (ii)(1) to (ii)(6) to any partner that is a corporation; or
- (iv) any person or entity, the occurrence of any analogous event, circumstance, matter or thing to those specified in paragraphs (i), (ii) or (iii) above (as applicable) in any jurisdiction;

...

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

...

- (s) **Registers** means the General Register, Regional Register and/or Overseas Regional Register;

...

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:

...

(j) suffers an Insolvency Event;

...

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(10.8) The Disciplinary Tribunal may appoint a legal adviser who is an Australian legal practitioner to advise (attending the hearing as necessary) the Disciplinary Tribunal on matters of law, procedure and evidence.

40(10.9) At every hearing before the Disciplinary Tribunal, the Professional Conduct Committee shall be responsible for the presentation of the case against the Member. The Professional Conduct Committee may appoint an independent Australian legal practitioner to present the case on its behalf.

- 40(10.10) The Disciplinary Tribunal shall give the Member concerned or that Member's representative a reasonable opportunity of being heard and shall give due consideration to any material that Member may submit.
- 40(10.11) The Disciplinary Tribunal shall determine whether or not the complaint contained in the Notice of Disciplinary Action, or any part thereof, is established.
- 40(10.12) If the Disciplinary Tribunal determines that the complaint contained in the Notice of Disciplinary Action or any part thereof is established it may, subject to By-Law 40(9.3)(c), and having given the Member a reasonable opportunity of being heard on the question of sanctions, impose any one or more of the sanctions in the table below identified as applicable to that class of Member:
- ...
- (a) terminate that Member's Membership and remove the Member's name from the Registers on which it appears
 - (b) suspend the Member from membership of CA ANZ for a period not exceeding 5 years and remove the Member's name from the Registers on which it appears
 - (c) cancel or suspend any certificate of public practice held by the Member
 - (d) declare that the Member is ineligible to hold a certificate of public practice for a period not exceeding 5 years and on such terms and conditions as to the earlier termination of such period of ineligibility as the Disciplinary Tribunal may prescribe
 - (da) cancel any specialisation held by the Member
 - (e) remove the Member's Membership status as of Fellow and alter it to that of Chartered Accountant, Associate Chartered Accountant, or Accounting Technician (as the case may be)
 - (f) fine that Member an amount not exceeding \$50,000
 - (g) censure the Member
 - (h) require the Member, at the Member's own expense, to complete any professional development courses prescribed by the Disciplinary Tribunal within the time period and on the terms stipulated by the Disciplinary Tribunal
 - (i) require the Member to engage an adviser or consultant or other person at the Member's own expense as directed by the Disciplinary Tribunal
 - (j) require the Member or the Member's Practice Entity, at the Member's expense, to submit to an investigation or review or reviews, on such matters and on such terms as specified by the Disciplinary Tribunal, such terms to include that the results of such investigation or reviews are made available to the Professional Conduct Committee
 - (k) require the Member to pay to CA ANZ all or any portion of the Costs incurred by or on behalf of CA ANZ (including by or on behalf of the Professional Conduct Committee) in investigating and dealing with the original complaint and the matters the subject of the Notice of Disciplinary Action as the Disciplinary Tribunal determines
- ...

40(10.13) Subject to By-Law 40(9.3)(c) the Disciplinary Tribunal may, with the written consent of the relevant Member and the Professional Conduct Committee, dispense with any or all of the procedures in this By-Law 40(10) and impose any of the sanctions permitted in By-Law 40(10.12) or accept a written undertaking under By-Law 40(13.8).

...

40(10.15) 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 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.