



# The Complaints Process for Members

## What happens when a complaint is made about a Member of Chartered Accountants Australia and New Zealand (CA ANZ)?

**NB** this guide does not relate to complaints made about Members of NZICA

### What is CA ANZ's role and purpose?

- CA ANZ's role in relation to complaints is to investigate under the By-Laws, and take appropriate disciplinary action.
- CA ANZ's purpose is to ensure that Members uphold the highest ethical and technical standards, in the public interest.
- CA ANZ cannot require Members to:
  - take a particular course of action or
  - make restitution for any financial loss which it is claimed was caused by Members.
- CA ANZ cannot make payments for any financial loss claimed to be caused by Members and does not have a fidelity fund. Any claims that Members have caused financial loss may need to be pursued through the court system.

### What happens when CA ANZ receives a complaint?

#### *Registration*

- Every complaint received is registered on our system.

#### *Initial Review*

- The Professional Conduct Committee (PCC) will decide whether it is able to investigate the complaint and if so, whether any further information from the complainant is required before commencing the investigation. The PCC is assisted by CA ANZ's Conduct & Discipline staff (Staff). The Staff are your principal point of contact during investigation of the complaint.
- There are certain circumstances under the By-Laws in which the PCC is unable to investigate the complaint. In these circumstances you will not be notified of the complaint.

#### *Investigation*

- If the PCC is able to investigate the complaint, Staff will provide you with a copy of the complaint and this information sheet.
- You will be provided with a timeframe within which to respond to the complaint (generally 14 days). If you require additional time to respond, an extension may be granted in appropriate circumstances (and in the discretion of CA ANZ). Please advise the Staff of your request and the reasons for it as soon as possible and in writing.
- Your response will usually be sent to the complainant for comment, unless it is not appropriate to do so.
- The process of exchanging comments continues until there is sufficient information for the PCC to make a decision in relation to the complaint.
- The PCC may wish to meet with the parties to discuss the complaint or to obtain further information.

#### *Decision*

- The PCC can make the following decisions about a complaint:
  - take no further action
  - convene a case conference
  - require you or your practice entity to submit to a review or reviews
  - issue you with a professional reminder that your conduct has fallen short of best practice

- caution you
- seek your consent to enter into a consent agreement
- refer the complaint to the Disciplinary Tribunal for hearing
- require you to pay costs of the investigation.

## What you need to provide

- Make sure you respond to the PCC within the time required. If you don't, the PCC will take this very seriously and refer you to the Disciplinary Tribunal.
- Give clear and direct responses to the complaint and provide any documentary support.
- Treat the complaint seriously and be frank about any deficiencies that you identify.
- You should respond with courtesy even if you consider that the complaint is baseless.
- If the complainant has not contacted you to discuss the complaint, try to talk to them about it.
- Depending on the nature of the complaint you may wish to consider advising your insurers.
- You may wish to provide:
  - a detailed timeline/chronology of events
  - copies of communications (letters, emails and faxes)
  - any agreement/s between you and the complainant
  - any additional information you feel is relevant to your response.

## Complaints CA ANZ can investigate

- CA ANZ can only investigate complaints which could be a breach of the By-Laws (refer to [By-Law 40\(2.1\)](#))

## Complaints CA ANZ cannot investigate

- CA ANZ may not be able to investigate a complaint if the PCC considers that the complaint:
  - cannot result in disciplinary sanctions under the By-Laws
  - is trivial, vexatious or in bad faith
  - is lacking in substance, vague, imprecise or unsupported by evidence
  - is, or may be, an abuse of process
  - relates to matters of historical issues which would not be practical to investigate
  - is of an insufficient nature to warrant investigation
  - falls within the jurisdiction of another forum and it is reasonable to be determined there.

## CAAG

- At any stage during the investigation of a complaint you may wish to contact a member of your regional CA Advisory Group (CAAG). The CAAG representative can confidentially discuss the complaint with you.
- CAAG members have a wide range of experience and have demonstrated a clear commitment to CA ANZ.
- This service is free of charge and can be accessed by contacting your Regional Manager.

## How often will CA ANZ update you?

- You will be contacted by Staff if the PCC needs further information in relation to the information received from the complainant.
- Staff will let you know when a decision has been made by the PCC.
- If you wish to receive any more updates during the investigation of the complaint, please contact the Staff.

## When will you be informed of the outcome?

- Staff will tell you the PCC's decision and the reasons for the decision within 21 days of the decision being made.

- If the PCC has decided to take no further action, to issue you with a professional reminder, to caution you, or you enter into a consent agreement with the PCC, it is the end of the complaint process.
- If a case conference has been convened, the investigation moves to the next stage.

## What happens at a case conference?

- A case conference is convened for complaints that need more detailed investigation.
- The case conference is an opportunity for you to discuss the complaint and your evidence with the PCC. The PCC may also invite the complainant to attend.
- The case conference is not open to the public and witnesses do not attend.

## What is a consent agreement?

- At the case conference the PCC may, in limited circumstances, offer you the option of entering into a consent agreement. This is an agreement by a Member to accept certain sanctions without the need to go before the Disciplinary Tribunal.
- The consent agreement will be recorded on the Member's record with CA ANZ.

## What if you are dissatisfied with the PCC's decision?

- If you are dissatisfied with the PCC's decision to finalise a complaint after it has been investigated (except by way of consent agreement), you have 21 days after notification of that decision to request a review of the decision (although this period may be extended in exceptional circumstances).
- You must request this review by using the proper form, signing the costs agreement and paying the application fee. Further details and copies of these documents are on our website.
- The review will be conducted by an independent reviewer (Reviewer). The Reviewer will consider whether the PCC's procedure and decision were appropriate.
- You cannot request a review in relation to your entry into a consent agreement.
- The Reviewer will not review a decision if it considers that the application is frivolous, vexatious, in bad faith or not made in accordance with the By-Laws.
- The Reviewer may direct the PCC to reconsider the decision made in relation to the complaint.
- The Reviewer will also consider whether you should pay the costs and expenses of the review.
- The Reviewer will report to you, the complainant, the PCC and the Professional Conduct Oversight Committee in relation to the review.
- The complainant is also able to request a review in certain circumstances.

## What happens if you fail to respond?

- If you fail to respond in writing to a complaint or attend a case conference, the PCC may refer this failure, as well as the subject matter of the complaint, to the Disciplinary Tribunal.
- The PCC, the Disciplinary Tribunal and the Appeals Tribunal take very seriously the failure by a Member to respond to a complaint.

## The Disciplinary Tribunal

- If the PCC refers you to the Disciplinary Tribunal, the Staff will provide you with more information at that time.
- You will receive the PCC's written advice of the decision to refer you to the Disciplinary Tribunal within 21 days after that decision has been made.
- You will receive the exact details of the allegations made against you and the time, date and location of the hearing at least 35 days before the hearing.

- A Disciplinary Tribunal hearing is a formal process, at which you are requested to attend. If you do not attend the hearing it can take place in your absence.
- A Disciplinary Tribunal hearing is generally in public and any finding of breach by a Member and any sanctions must be reported. This report will include your name and location unless the Tribunal considers that there are exceptional circumstances for not identifying you.
- Publication is generally in the journal and on the website of CA ANZ, and in any other place decided by the Tribunal.
- The Tribunal also has a discretion to notify interested parties including other professional bodies, regulatory authorities, your current and/or former employers, partners, or clients who are or may be affected by the conduct to which the disciplinary action relates.
- You will receive written notice of the Disciplinary Tribunal's decision and any sanctions imposed, including the reasons for the decision.

## The Appeals Tribunal

- If you wish to appeal the decision of the Disciplinary Tribunal, you have 21 days after receipt of the written decision of the Disciplinary Tribunal to lodge an appeal.
- The PCC may also appeal the decision. The complainant is not able to appeal the decision.
- You must lodge the appeal by using the form prescribed by the Regulations which is available on our website.
- If an appeal is brought, it will be scheduled as soon as possible, but this may take a number of months.
- An Appeals Tribunal hearing is a formal process, at which you are requested to attend. If you do not attend the hearing it can take place in your absence.
- An Appeals Tribunal hearing is generally in public and the outcome must be reported. This report will include your name and location unless the Tribunal considers that there are exceptional circumstances for not identifying you.
- Publication is generally in the journal and on the website of CA ANZ, and in any other place decided by the Tribunal.
- The Appeals Tribunal also has a discretion to notify interested parties including other professional bodies, regulatory authorities, your current and/or former employers, partners, or clients who are or may be affected by the conduct to which the disciplinary action relates.
- You will receive written notice of the Appeals Tribunal's decision and any sanctions imposed, including the reasons for the decision.

## Procedural fairness

- In dealing with a complaint the PCC will observe procedural fairness to ensure that its decision-making is fair and impartial. This means that both sides get to tell their story.
- The PCC will generally give any information or documents it receives from one party to the complaint to all other parties. The PCC need not do so if the information or documents are irrelevant, are already in the possession of the parties or in circumstances where the PCC is unable to investigate the complaint.
- The PCC will ensure that:
  - the parties are informed about the issues being considered, so that they can respond to those issues properly
  - information received from the complainant and Member is exchanged between the parties where appropriate
  - all information is received and considered before a decision is made.

## How long will the investigation take?

- Investigations will usually be completed within 4 - 9 months if all relevant information is provided. This may take longer if the complaint is complex or if relevant information is not provided.
- If your complaint is referred to the Disciplinary Tribunal then it may take approximately 12 months to complete.

## Confidentiality

- Please remember that all information, correspondence and other documentation sent or received by CA ANZ or disclosed or made available to you in connection with the complaint and its outcome, including the investigation and, if applicable, review is confidential.
- If you do not comply with this requirement, further investigations and potentially disciplinary action may result.

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