



31 August 2023

Ms Abigail Boyd MLC, Chair
Public Accountability and Works Committee
Parliament House
Macquarie Street
SYDNEY NSW 2000

Via email: PAWC@parliament.nsw.gov.au

Dear Ms Boyd

Inquiry into the NSW Government's use and management of consulting services

We refer to our submission made to the inquiry into the NSW government's use and management consulting services (**the Inquiry**) of the Public Accountability and Works Committee (**the Committee**) (**the CA ANZ Submission**) and to the Ms Kaine's request made during our appearance at the Inquiry on 28 July 2023 for clarification of the roles of the Professional Conduct Committee (PCC) and the Disciplinary Tribunal and the outcomes of their respective processes.

We attach a document explaining the PCC process of assessing, investigating and either resolving by consent, or referring complaints to the Disciplinary Tribunal and the orders that may be made in each forum. The document should be read in conjunction with our submission.

Yours sincerely,

Vanessa Chapman

Group Executive - General Counsel & Corporate Assurance

Supplementary information - PCC process of assessing, investigating and either resolving by consent, or referring complaints to the Disciplinary Tribunal

1. The By-Laws (and NZICA Rules that apply to New Zealand Members) are applied via a filtering approach, resolving the majority of complaints at the PCC level and reserving referral to the Disciplinary Tribunal for serious, complex or high public interest matters. Using 2023 complaints data as an example:
 - 416 complaints were initiated and resolved over the period.
 - All complaints were assessed.
 - 140 complaints were dismissed without investigation either by:
 - by the PCC secretariat for invalidity (Member not named, complaint form not completed); or
 - by the PCC Chair/PCC pursuant to By-Law 40(4.3), on the basis that the complaint:
 - was not within jurisdiction, that is, did not relate to one of the matters specified in By-Law [40\(2.1\)](#) as giving rise to disciplinary sanctions;
 - was determined to be trivial, vexatious or in bad faith;
 - was lacking in substance, vague, imprecise or unsupported by evidence;
 - was, or may have been, an abuse of process;
 - related to matters of historical issues which the PCC considered would not be practical to investigate;
 - was of an insufficient nature to warrant investigation; or
 - fell within the jurisdiction of another forum and in all the circumstances it was reasonable for the complaint to be determined in that forum.
 - 24 complaints were withdrawn by the complainant during the process.
 - 68 complaints proceeded to investigation and were closed by the PCC with no further action.
 - The PCC resolved 153 complaints by issuing the Member with a professional reminder, caution or by Consent Orders.
 - The PCC referred 26 complaints to the Disciplinary Tribunal. The Disciplinary Tribunal imposed a range of sanctions in respect of those 26 complaints and the decisions were published to the Register of Disciplinary Decisions.
 - Five separate complaints resolved by the Disciplinary Tribunal were subject of appeal to the Appeals Tribunal.

The PCC may refer any complaint to the Disciplinary Tribunal if:

- it relates to a Disclosure Event (being conviction of a serious indictable offence, an offence under the *Tax Administration Act 1953* or becomes insolvent);
- the Member has failed to respond to matters raised by the PCC;
- the Member has failed to attend before the PCC;
- the Member provides false or misleading information to CA ANZ or NZICA;
- the Member has failed to comply with a direction given by or an undertaking given to the PCC or disciplinary bodies;
- the complaint involves a breach of the Regulations relating to certificates of public practice or professional indemnity insurance;
- the matter is sufficiently serious that the Tribunal may suspend the Member on an interim basis;
- the Member PCC believes the complaint warrants higher sanctions than it can apply (that is, suspension, termination or a higher fine); or
- the member does not agree to Consent Orders.

The PCC will consider whether a complaint warrants referral to the Disciplinary Tribunal. When making that decision, the PCC considers whether the actions of the Member are of the level of seriousness which warrants the

taking of disciplinary action. [SMO 6](#) (which sets out the requirements imposed on CA ANZ by the International Federation of Accountants) notes at paragraph 28 that *“one of the established tests for invoking disciplinary processes is that the member’s ... conduct has fallen significantly short of what might reasonably have been expected in the circumstances.”* Prior to proposing Consent Orders the PCC needs to apply this test and may consider, in so doing, whether or not the subject matter of the complaint reflects upon the Member’s capacity as a chartered accountant or practitioner. For example, traffic offences may not reflect on the Member as a chartered accountant/practitioner; while some sexual or drug related offences, bankruptcy and false and misleading statements before a court or tribunal may well do.

In the context of Consent Orders, the PCC is required to give consideration to the fact that the acceptance of Consent Orders will bring the disciplinary process to an end and so the PCC must carefully consider the competing considerations as part of its decision. These include the relative timeframes and costs associated with the different disciplinary stages; the private nature of PCC meetings versus the presumption of public hearings at the Disciplinary Tribunal; any mitigating or aggravating factors in the Member’s conduct and his or her personal circumstances; and any written undertaking given by the Member as part of the Consent Orders agreement to do or not do something which reduces future risk. The PCC may propose the imposition of any of the sanctions listed in the second column of the table in paragraph 37 below in Consent Order agreements, for acceptance by the Member, to settle the complaint.

By-Law 40(6.2) also provides that the PCC must refer a complaint directly to the Tribunal if it has determined that the complaint involves matters of high public interest or significance to the accounting profession as a whole or the complaint involves a dispute that should be resolved with the benefit of evidence from an independent expert.

The PCC considers that what constitutes the public interest may vary from situation to situation. However, the following matters may give rise to public interest considerations:

- if the public might expect CA ANZ to act on a complaint or a particular type of complaint, eg removal of a licence or registration by a regulator or licensing body or entry into an enforceable undertaking;
 - if there are professional standards under consideration which it would be in the public interest to have investigated as part of the professional conduct process and, if necessary, considered by the Disciplinary Tribunal, eg adverse finding by a court;
 - if the public is affected by the Member’s conduct, eg criminal conviction related to accountancy, systemic problems with practice;
 - if the media is following the complaint or the general issue underpinning it; and
 - the breach otherwise warrants referral to the Disciplinary Tribunal.
2. The By-Laws establish the orders and sanctions that can be applied by the PCC, DT and AT/AC. The PCC has the power to issue **professional reminders** and **cautions**, **order practice reviews** and **make referrals to the Tribunal** without Member consent.

Other sanctions listed in the table below may be imposed by the PCC only pursuant to Consent Order agreements.

It is a fundamental principle of natural justice that sanctions be proportionate to the breach. The table below summarises the sanctions that can be applied (or in the case of the AT, affirmed on appeal) by the Australian disciplinary bodies.

Sanction	PCC ¹	DT ²	AT
Reprimand	✓		
Severe Reprimand	✓		
Fine (currently capped at \$25,000 at PCC and \$50,000 at DT) ³	✓	✓	✓
Pay Costs	✓	✓	✓
Complete professional development	✓	✓	✓
Notification of the decision to a regulatory body or other professional association ⁴	✓	✓	✓
Engage an adviser or consultant	✓	✓	✓
Publicise the decision	✓ ⁵	✓ ⁶	✓
Remove the member from the register of members		✓	✓
Suspend the member for up to 5 years		✓	✓
Cancel or suspend a member's certificate of public practice		✓	✓
Require a review of the member's practice	✓	✓	✓
Censure the member		✓	✓

3. Further detail can be found at By-Law 40 (6.1) and 40 (7.3) for the PCC and 40 (10.12) for the DT and 40 (11.12) for the AT.

¹ **The PCC can only apply these sanctions pursuant to a Consent Agreement.** A Consent Agreement may be proposed in relation to complaints which would otherwise be suitable for referral to the Disciplinary Tribunal. Such complaints include: Member convicted of an indictable offence, an offence under the Tax Administration Act 1953 (or analogous legislation), or Member (or the Member's firm) suffers an insolvency event.

² The Tribunal may impose these sanctions whether the Member consents or not.

³ The Review proposes that maximum fines be increased in respect of Firm Events to \$100,000 at the PCC and \$250,000 at the DT.

⁴ Notification requires special circumstances.

⁵ The name and location of the member are withheld unless there are special circumstances.

⁶ The name and location of the member are published unless there are exceptional circumstances.

About CA ANZ

Chartered Accountants Australia and New Zealand (CA ANZ) represents more than 136,000 financial professionals, supporting them to build value and make a difference to the businesses, organisations and communities in which they work and live.

Around the world, Chartered Accountants are known for their integrity, financial skills, adaptability and the rigour of their professional education and training.

CA ANZ promotes the Chartered Accountant (CA) designation and high ethical standards, delivers world-class services and life-long education to members and advocates for the public good. We protect the reputation of the designation by ensuring members continue to comply with a code of ethics, backed by a robust discipline process. We also monitor Chartered Accountants who offer services directly to the public.

Our flagship CA Program, the pathway to becoming a Chartered Accountant, combines rigorous education with practical experience. Ongoing professional development helps members shape business decisions and remain relevant in a changing world.

We actively engage with governments, regulators and standard-setters on behalf of members and the profession to advocate in the public interest. Our thought leadership promotes prosperity in Australia and New Zealand.

Our support of the profession extends to affiliations with international accounting organisations.

We are a member of the International Federation of Accountants and are connected globally through Chartered Accountants Worldwide and the Global Accounting Alliance. Chartered Accountants Worldwide brings together members of 13 chartered accounting institutes to create a community of more than 1.8 million Chartered Accountants and students in more than 190 countries. CA ANZ is a founding member of the Global Accounting Alliance which is made up of 10 leading accounting bodies that together promote quality services, share information and collaborate on important international issues.

We also have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents more than 870,000 current and next generation accounting professionals across 179 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications.