



AMENDMENT OF BY-LAWS OF CHARTERED ACCOUNTANTS AUSTRALIA AND NEW ZEALAND, 2023 MEMBER VOTE

Chartered Accountants Australia and New Zealand (**CA ANZ**) sought approval to amend its By-Laws, with the amendments approved by the Governor-General on 25 January 2024.

The proposed amendments to the By-Laws were approved by resolutions passed by Member vote in a ballot of Members conducted in accordance with the Supplemental Royal Charter (**Charter**) and By-Laws of CA ANZ in September and October 2023.

Article 21 of the Charter provides that, subject to the provisions of Article 22, CA ANZ may from time to time, by resolution approved by a ballot conducted in accordance with the By-Laws, make such By-Laws for the better execution of the Charter, the furtherance of the objects of CA ANZ and generally for regulating the affairs of CA ANZ as CA ANZ sees fit, and may from time to time rescind, vary or add to any By-Laws and make others in their stead, but so that the By-Laws for the time being be not in any respect repugnant to the laws of the Commonwealth of Australia or any of the States or Territories comprised in the said Commonwealth, the laws of New Zealand or of any territory or dependency in respect of which the Parliament of New Zealand may make laws, or inconsistent with the expressed provisions of the Charter.

Article 22 of the Charter provides that no By-Law or any rescission or variation thereof or addition thereto shall come into operation until the same shall have been submitted to and approved by the Governor-General in and over the Commonwealth of Australia (**Governor-General**) or the person for the time being administering the Government of the Commonwealth of Australia.

Article 23 of the Charter provides that the Board of CA ANZ shall cause all such By-Laws, when approved, to be printed and published together with the formal approval of the Governor-General in the Official Gazette of the Commonwealth of Australia.

Further information regarding the proposed amendments is set out below:

Background

In July 2022, CA ANZ announced a comprehensive periodic review (**Review**) of its professional conduct framework (**Professional Conduct Framework**), including CA ANZ's By-Laws dated 30 March 2022. The purpose of the Review was to ensure that CA ANZ's conduct and discipline rules and arrangements continue to uphold the trust in, and integrity of the profession and respond effectively to challenges.

As a member of the International Federation of Accountants (**IFAC**), CA ANZ is obliged to periodically self-assess its Professional Conduct Framework against IFAC's standards. The Review found that the Professional Conduct Framework met or exceeded IFAC's standards for conduct and discipline systems and compared favourably with similar professional organisations worldwide but also found areas that could be strengthened.

The Review resulted in 37 recommendations, which were released in June 2023. Thirty-three of the recommendations are directed to enhancing and aligning CA ANZ's By-Laws and the Rules of the New Zealand Institute of Chartered Accountants (**NZICA**) applicable to CA ANZ members resident in New Zealand by:

- giving the CA ANZ and NZICA disciplinary bodies stronger powers to address serious misconduct;
- increasing maximum fines for proven misconduct by Practice Entities (i.e. '**Firm Events**'); and

- including efficiency enhancements and procedural fairness protections for Members.

In addition to amendments relating to the Professional Conduct Framework, amendments were also proposed to the By-Laws to clarify the eligibility requirements for election to Regional Councils and Overseas Regional Councils, as well as corrective and editorial amendments, as part of CA ANZ's commitment to continuous improvement of its By-Laws.

The proposed amendments to the By-Laws covered three topic areas - Conduct Rules, eligibility to be elected to Regional Council and editorial amendments - which were addressed by 9 resolutions for approval to amend the CA ANZ By-Laws.

The principal amendments to the By-Laws are summarised below:

Conduct Rules

1. **General amendments to align conduct and discipline rules in the By-Laws and NZICA Rules:** Section 5 of the By-Laws and Rule 13 of the NZICA Rules have been replaced with a single aligned and restructured rule set (the **Conduct Rules**) that incorporates the procedural and efficiency enhancements and additional rights for Members that were recommended by the Review, including: aligned Disclosure, Offence and Sanctions provisions, a conciliation process, express Members' rights to be legally represented at Case Conferences before the Professional Conduct Committee, discretion for the Disciplinary Tribunal to award costs in favour of a Member who is entirely successful in defending proceedings, clearer confidentiality and publication provisions, clearer interim suspension rules and Members' rights to be notified of all complaints (including dismissed complaints), which currently only applies under the NZICA Rules.

The amendments also build on existing provisions (that make each Member who is a Principal of a Practice Entity responsible for notifying the Professional Conduct Committee of certain conduct of that Practice Entity (**Firm Events**) and liable for a sanction) to allow any Member who is a Principal of that Practice Entity, and who is authorised to act on behalf of their fellow Principals, to submit a single notification to the Professional Conduct Committee and to represent their fellow Principals at Case Conferences and throughout the disciplinary process.
2. **New General Offences for Misconduct and Conduct Unbecoming of a Member:** The amendments align the By-Laws with the NZICA Rules by creating two new general offences of 'Professional Misconduct' and 'Conduct Unbecoming of a Member' which are general descriptors used to distinguish serious from less serious misconduct, respectively.
3. **Stronger investigation powers for the PCC:** The Professional Conduct Committee is given power to make a request for information and documents required for an investigation about a Member from any Member and to interview complainants and others relevant to an investigation.
4. **Increased Fines for Members as Principals of Practice Entities (Firm Events), Practice Entity Members and Non-Member Practice Entities:** The amendments increase the maximum fines that may apply to the Members (collectively) who are the Principals of a Practice Entity that has experienced a Firm Event from \$25,000 at the Professional Conduct Committee to \$100,000 and from \$50,000 at the Disciplinary Tribunal level to \$250,000, to reflect the significant reputational impact that misconduct by Practice Entities can have on the profession. For consistency, the maximum fines for Practice Entity Members and Non-Member Practice Entities are also increased. The disciplinary bodies are required to consider the number of Members who are Principals in the Practice Entity, and the size of the Practice Entity Member and Non-Member Practice Entity, when calculating a fair and appropriate fine.
5. **Former Member Jurisdiction:** The amendments align the By-Laws with the NZICA Rules by providing that any Member who has ceased to be a Member will remain subject to the Conduct Rules in respect of serious misconduct occurring whilst in membership.

6. **New Sanction:** The amendments align the By-Laws with the NZICA Rules by enabling the Professional Conduct Committee to propose, and the Disciplinary Tribunal to impose, orders that the Member be required to refund fees paid by a complainant or to waive fees owed by a complainant.
7. **Extending the Board's powers to exclude a Member for failure to comply with disciplinary sanctions:** The Board may exclude a Member from membership for the reasons currently set out in By-Law 23. The amendment allows the Board to exclude a Member from membership if the Member refuses or fails, without just cause, to comply with a disciplinary sanction imposed under Section 5 of the By-Laws.

Eligibility to stand for election to and remain on Regional Council

8. **Amendments to clarify the existing provisions relating to eligibility to stand for election and to remain on Regional Council:** The amendments include:
 - a. removing the reference to 'resident' in By-Law 90 to make it clear that eligibility to stand for election to a Regional Council is not conditional on being a resident in the Region but rather on being validly registered on the Regional Register in accordance with existing By-Laws 142 and 143 which make the place of business or principal place of business the key address for registration on a Regional Register, with residential address being relevant only if the Member has no place of business;
 - b. deleting provisions that make residing in the Region a condition of an elected Councillor's right to remain on a Council; and
 - c. inserting new provisions to give Regional Councils the right to resolve to remove a Councillor who materially fails to fulfil their duties as a Regional Councillor.

Typographical, editorial and minor drafting changes

9. **Editorial Amendments:** a number of editorial, typographical and clarificatory amendments to other sections of the By-Laws have been made.

A complete version of the new By-Laws is available on the CA ANZ website.