



# Costs Guidelines - Disciplinary and Appeals Tribunals and Professional Conduct Committee

## 1. Introduction

1.1 The Australian Disciplinary and Appeals Tribunals and Professional Conduct Committee set out below the procedure they intend to follow with regard to decisions to require Members to pay “Costs” under By-Law 40. For a definition of *Costs*, see paragraph 6.3 below.

## 2. Professional Conduct Committee (PCC)

2.1 The PCC is entitled to require a Member to pay all or some of the *Costs* incurred by or on behalf of CA ANZ in carrying out an investigation into the conduct of that Member.

2.2 The Member may be required to pay *Costs* at any of the following stages:

- (a) when the Committee decides that a complaint is not to be set down for a Case Conference or referred to the Disciplinary Tribunal for hearing (By-Law 40(6.4));
- (b) when the Member enters into a Consent Agreement (By-Law 40(7.3)(g)(iv)); or
- (c) following a Case Conference at which the Committee decides to Caution a Member in respect of a complaint or to take no further action (By-Law 40(7.10)).

## 3. Reviewer

3.1 An application made to CA ANZ requesting the review of a final decision of the Committee must be accompanied by payment of an application fee of \$500 and a duly executed costs agreement (By-Law 40(8.2)).

3.2 The Reviewer must consider whether and to what extent the party seeking the review should pay the associated *Costs* (By-Law 40(8.4)(d)).

3.3 The application fee is generally non-refundable, but the Reviewer may recommend that CA ANZ refund all or part thereof (By-Law 40(8.7)(d)).

## 4. Disciplinary Tribunal

4.1 The Disciplinary Tribunal may require a Member to pay all or some of the *Costs* incurred by or on behalf of CA ANZ (including by or on behalf of the Committee) in investigating and dealing with a complaint and the disciplinary hearing (By-Law 40(10.12)(k)).

4.2 Where the PCC refers a Member to the Disciplinary Tribunal following a Case Conference, the Disciplinary Tribunal may include within any determination requiring the Member to pay some or all of CA ANZ’s *Costs*, any *Costs* associated with the PCC’s investigation, including the Case Conference.

## 5. Appeals Tribunal

5.1 The Appeals Tribunal may require a Member to pay such *Costs* in relation to the investigation and conduct of a matter before the Appeals Tribunal as it deems fit (By-Law 40(11.13)).

5.2 The Appeals Tribunal may make such a determination for *Costs* where a Member discontinues an appeal prior to its hearing. Any such determination will usually be less than the potential full costs, where the discontinuance is received in enough time to avoid the *Costs* of convening the Tribunal.

- 5.3 The Appeals Tribunal may, at its discretion, require a Member to pay to CA ANZ an amount as security against *Costs* which may be incurred in the conduct and hearing of the appeal. If a Member required to pay such an amount fails to do so by the due date, the Member's appeal will lapse (By-Laws 40(11.4) and 40(11.5)).

## 6. General

- 6.1 By-Law 40(13.7) requires the PCC, the Disciplinary Tribunal and the Appeals Tribunal, when determining whether or not to require a Member to pay *Costs*, and the amount of any such order as to *Costs*, to have regard to the Guidelines set out in the Regulations.
- 6.2 The Disciplinary Procedures Regulation (CR8) provides at 8.12 that the PCC, the Disciplinary Tribunal or the Appeals Tribunal must take into account the following:
- (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 Member's conduct in relation to the investigation and disciplinary process, including whether the Member was open, honest and timely in the Member's dealings with the PCC, Disciplinary Tribunal and/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 disciplinary process;
  - (d) the extent to which the final sanctions determined differed from those to which the PCC or Disciplinary Tribunal gave the Member the opportunity to agree by consent;
  - (e) whether it is reasonable in the circumstances to make a determination that the Member should pay *Costs* and, if so, the amount of such *Costs* which it is reasonable to require the Member to pay;
  - (f) the amount of *Costs* actually incurred by CA ANZ in the investigation and proceedings; and
  - (g) whether and to what extent the Member has previously been required to pay *Costs* to CA ANZ in respect of the same complaint, including its investigation, hearing and determination.
- 6.3 *Costs* are defined in By-Law 39(h) as:
- “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”.*
- 6.4 At each stage prior to the PCC meeting at which the Member may be required to pay *Costs* the Member will be given an opportunity to make submissions on any *Costs* which he or she may be required to pay.
- 6.5 At each stage prior to the Disciplinary Tribunal or the Appeals Tribunal requiring a Member to pay *Costs*, a schedule of *Costs* will be distributed to the Member by the Tribunal Secretary, setting out the amount of the *Costs* claimed by the PCC on behalf of CA ANZ to that point of the disciplinary process.
- 6.6 The Member and the PCC representative will both be entitled to make submissions to the Disciplinary Tribunal or the Appeals Tribunal at the relevant stage of the hearing regarding the amount of *Costs* which the Member may be required to pay.

- 6.7 While the *Costs* will vary in each case, as an approximate guide for Members the *Costs* of:
- (a) an initial meeting of the PCC will typically be no more than A\$500 based on standard costing;
  - (b) a Case Conference held by the PCC will typically be at least A\$1,300 per hour based on standard costing;
  - (c) a hearing by the Disciplinary Tribunal will typically be at least A\$12,400 per ½ day based on standard costing;
  - (d) a hearing by the Appeals Tribunal will typically be at least A\$12,400 per ½ day based on standard costing.
- 6.8 The *Costs* guides in paragraph 6.7 will be reviewed and updated regularly.

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