

**Disciplinary Tribunal of the New Zealand Institute of Chartered Accountants
Practice Note as to Costs and Expenses**

1. On 19 September 2012, the Disciplinary Tribunal issued a Practice Note As to Costs and Expenses ("the 2012 Practice Note") in which it gave notice of the procedure it intends to follow with regard to the making of orders as to costs and expenses under Rule 21.33 of the then Rules of the New Zealand Institute of Chartered Accountants. The Rules referred to in the 2012 Practice Note were, on 15 December 2014, repealed and replaced by a new set of Rules of the New Zealand Institute of Chartered Accountants ("the 2014 Rules"). This Practice Note adjusts the 2012 Practice Note only to the extent that it refers to Rule 13.42 of the 2014 Rules, rather than to Rule 21.33 of the 2012 Rules; both of which are in the same terms.
2. Accordingly, the Disciplinary Tribunal gives notice of the procedure it intends to follow with regard to the making of orders as to costs and expenses under Rule 13.42 of the 2014 Rules. The Rule provides:

"The Disciplinary Tribunal may make such order as it thinks fit as to the payment of the costs and expenses of:

- (a) The investigation and prosecution by the Professional Conduct Committee;*
 - (b) the Disciplinary Tribunal's hearing;*
 - (c) the consideration of any application to the Disciplinary Tribunal under Rules 13.26, 13.48 and 13.66; and*
 - (d) the publication of the Disciplinary Tribunal's decision."*
3. The Tribunal must determine any such application on the basis of its assessment of what is fair and reasonable in the circumstances.
 4. Where a charge is established, it will normally be fair and reasonable for the member to be ordered to pay a sum equal to all the costs and expenses as described in the Rule. Circumstances where it may be appropriate to award less than the full amount include:
 - Charges, or particulars not proven and/or withdrawn where, and to the extent that, additional costs to the member can be directly attributed to the withdrawal or failure to prove;
 - excessive or unnecessary expenses incurred; and



- demonstrated evidence of hardship by the member resulting in a significant inability to pay;

but these factors will be considered only where they are directly relevant to the issue of fairness, and where proper information is provided in respect of them.

5. If no charge is established, the Tribunal may nonetheless determine that the prosecution was justified and that it is therefore fair and reasonable to make an order that the member pay the costs and expenses incurred. What is fair and reasonable in these circumstances will be determined on a case by case basis.
6. An order in respect of costs and expenses is not a payment for a service provided to the member. Accordingly no GST is payable.
7. This Practice Note is made pursuant to Rule 13.35 of the Rules.

Dated at Auckland this 2nd day of February 2015

A handwritten signature in black ink, appearing to read 'MJ Whale', with a flourish at the end.

MJ Whale FCA
Chairman
Disciplinary Tribunal

For any queries please contact the Tribunal Secretariat as follows:

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