

Australian Capital Territory

# Civil Law (Wrongs) Institute of Chartered Accountants in Australia (ACT) Scheme 2013 (No 1)

Disallowable instrument DI2013–261

made under the

Civil Law (Wrongs) Act 2002, section 4.10, schedule 4 (Schemes are subject to disallowance)

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## 1 Name of instrument

This instrument is the *Civil Law (Wrongs) Institute of Chartered Accountants in Australia (ACT) Scheme 2013 (No 1)*.

## 2 Commencement

This instrument commences on 8 October 2013.

## 3 Notice

I give notice of the ACT Professional Standards Council's approval of the attached Institute of Chartered Accountants in Australia (ACT) Scheme.

## 4 Expiry

This instrument expires on 8 October 2014.

Simon Corbell  
Attorney-General  
7 October 2013

**Civil Law (Wrongs) Act 2002 (ACT)**  
**THE INSTITUTE OF CHARTERED ACCOUNTANTS IN AUSTRALIA (ACT) SCHEME**

**PREAMBLE**

- A. The Institute of Chartered Accountants in Australia (the Institute) is a national occupational association.
- B. The Institute has applied to the Professional Standards Council, appointed under the Civil Law (Wrongs) Act 2002 (ACT) (the Act), for approval of a scheme under the Act, as set out in this document (the Scheme).
- C. The Scheme has been prepared by the Institute for the purposes of limiting occupational liability to the extent to which such liability may be limited under the Act.
- D. The Scheme is to apply to all participating members referred to in clauses 2.1 and 2.2 below.
- E. The Institute has provided the Professional Standards Council with a detailed list of risk management strategies intended to be implemented in respect of its members and the means by which those strategies are intended to be implemented.
- F. All participating members referred to in clauses 2.2 and 2.3 of the scheme are subject to disciplinary measures under the By-laws of the Institute, and are also subject to the professional indemnity insurance requirements of Regulation R4A of the Institute's regulations.
- G. The Scheme is intended to commence on 8 October 2013 and remain in force for a period of 12 months (unless it is revoked, extended or ceases in accordance with section 4.28 of the Act).

**THE INSTITUTE OF CHARTERED ACCOUNTANTS IN AUSTRALIA (ACT) SCHEME**

**1. OCCUPATIONAL ASSOCIATION**

- 1.1 This Scheme is a scheme under the Act prepared by the Institute, whose business address is 33 Erskine Street, Sydney NSW 2000.
- 1.2 Terms used in the Scheme are defined in the Scheme, including in clause 4.

**2. PERSONS TO WHOM THE SCHEME APPLIES**

- 2.1 The Scheme applies to:
  - (a) all Institute members who hold a current Certificate of Public Practice, and affiliate members of the Institute other than Australian Financial Services Licensees; and
  - (b) those Institute members referred to in clause 2.2; and
  - (c) all persons to whom clause 2.1(a) applied at the time of the relevant act or omission on which a claim for damages for occupational liability is founded, but no longer applies; and
  - (d) all persons to whom clause 2.1(b) applied at the time of the relevant act or omission on which a claim for damages for occupational liability is founded, but no longer applies; and
  - (e) all other persons to whom the Scheme applied at the time of the relevant act or omission on which a cause of action for damages for occupational liability is founded<sup>1</sup>.

(collectively, "Participants" , and each, a "Participant")

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<sup>1</sup> Section 4.16 of the Act provides that if the scheme applies to a corporation or a person, it also applies to each officer of the corporation and to each partner and employee of the person, provided that if the officer, partner or employee is entitled to be a member of the same occupational association as the person, but is not a member, the scheme does not apply to that officer, partner or employee. Section 4.16 provides that the scheme will also apply to any associated persons who are prescribed by regulations.

- 2.2 All practice entity members of the Institute, other than Australian Financial Services Licensees.
- 2.3 No Participant to whom the Scheme applies may choose not to be subject to the Scheme, provided that the Institute may, on application by a Participant, exempt the Participant from the Scheme if the Institute is satisfied that he or she would suffer financial hardship in obtaining professional indemnity insurance to the levels set out in clause 3.1 below.

### **3. LIMITATION OF LIABILITY**

- 3.1 The Scheme only limits the liability of a Participant for damages arising from a claim to the extent to which the liability results in damages exceeding:
- (a) \$2 million where the Participant is a Participant referred to in Schedule A ("Schedule A Participant"); or
  - (b) \$1 million where the Participant is a Participant referred to in Schedule B ("Schedule B Participant").

#### **LIMITATION OF LIABILITY FOR CATEGORY 1 SERVICES**

##### **SCHEDULE A PARTICIPANTS**

- 3.2 Where a Schedule A Participant against whom a proceeding is brought relating to occupational liability in connection with Category 1 services is able to satisfy the court of (a), (b) or (c) below, the Schedule A Participant is not liable in damages in relation to that claim above the monetary ceiling specified in clause 3.3:
- a) the Schedule A Participant has the benefit of an insurance policy insuring the Schedule A Participant against that occupational liability, and the amount payable under the insurance policy in respect of the occupational liability relating to that claim (including any amount payable by the Schedule A Participant by way of excess under or in relation to the policy) is not less than the amount of the Category 1 monetary ceiling specified in clause 3.3 below;
- OR
- b) the Schedule A Participant has business assets the net current market value of which is not less than the amount of the Category 1 monetary ceiling;
- OR
- c) the Schedule A Participant has business assets and the benefit of an insurance policy insuring the Schedule A Participant against that occupational liability, and the net current market value of the assets and the amount payable under the insurance policy in respect of the occupational liability relating to that claim (including any amount payable by the Schedule A Participant by way of excess under or in relation to the policy), if combined, would total an amount that is not less than the amount of the Category 1 monetary ceiling.

3.3 The Category 1 monetary ceiling is \$75 million.

##### **SCHEDULE B PARTICIPANTS**

- 3.4 Where a Schedule B Participant against whom a proceeding is brought relating to occupational liability in connection with Category 1 services is able to satisfy the court of (a), (b) or (c) below, the Schedule B Participant is not liable in damages in relation to that claim above the lesser of the Category 1 limitation amount determined under clause 3.5 and the Category 1 monetary ceiling specified in clause 3.3:
- a) the Schedule B Participant has the benefit of an insurance policy insuring the Schedule B Participant against that occupational liability, and the amount payable under the

insurance policy in respect of the occupational liability relating to that claim (including any amount payable by the Schedule B Participant by way of excess under or in relation to the policy) is not less than the amount of the Category 1 monetary ceiling or the Category 1 limitation amount;

OR

- b) the Schedule B Participant has business assets the net current market value of which is not less than the amount of the Category 1 monetary ceiling or Category 1 limitation amount;

OR

- c) the Schedule B Participant has business assets and the benefit of an insurance policy insuring the Schedule B Participant against that occupational liability, and the net current market value of the assets and the amount payable under the insurance policy in respect of the occupational liability relating to that claim (including any amount payable by the Schedule B Participant by way of excess under or in relation to the policy), if combined, would total an amount that is not less than the amount of the Category 1 monetary ceiling or Category 1 limitation amount.

3.5 The Category 1 limitation amount applicable is an amount equal to a reasonable charge for the Category 1 services provided by the Schedule B Participant or which the Schedule B Participant failed to provide and to which the claim relates, multiplied by the multiplier specified in clause 3.7 below.

3.6 In determining the amount of a reasonable charge a court is to have regard to any amount actually charged and to:

- a) the amount that would ordinarily be charged in accordance with a scale of charges prescribed or accepted by the Institute; or
- b) if there is no such scale, the amount that a competent person of the same qualifications and experience as the Schedule B Participant would be likely to charge in the same circumstances.

3.7 The multiplier is 10.

## LIMITATION OF LIABILITY FOR CATEGORY 2 SERVICES

### SCHEDULE A PARTICIPANTS

3.8 Where a Schedule A Participant against whom a proceeding is brought relating to occupational liability in connection with Category 2 services is able to satisfy the court of (a), (b), or (c) below, the Schedule A Participant is not liable in damages in relation to that claim above the monetary ceiling specified in clause 3.9:

- a) the Schedule A Participant has the benefit of an insurance policy insuring the Schedule A Participant against that occupational liability, and the amount payable under the insurance policy in respect of the occupational liability relating to that claim (including any amount payable by the Schedule A Participant by way of excess under or in relation to the policy) is not less than the amount of the Category 2 monetary ceiling specified in clause 3.9;

OR

- b) the Schedule A Participant has business assets the net current market value of which is not less than the amount of the Category 2 monetary ceiling specified in clause 3.9;

OR

- c) the Schedule A Participant has business assets and the benefit of an insurance policy insuring the Schedule A Participant against that occupational liability, and the net current market value of the assets and the amount payable under the insurance policy in respect of the occupational liability relating to that claim (including any amount payable by the Schedule A Participant by way of excess under or in relation to the policy), if combined, would total an amount that is not less than the amount of the Category 2 monetary ceiling specified in clause 3.9.

3.9 The Category 2 monetary ceiling applicable to Schedule A Participants is:

- (a) \$2 million, where the claim arises from a service in respect of which the fee is \$150,000 or less

OR

- (b) \$20 million, where the claim arises from a service in respect of which the fee is greater than \$150,000.

### **SCHEDULE B PARTICIPANTS**

3.10 Where a Schedule B Participant against whom a proceeding is brought relating to occupational liability in connection with Category 2 services is able to satisfy the court of (a), (b), or (c) below, the Schedule B Participant is not liable in damages in relation to that claim above the monetary ceiling specified in clause 3.11:

- a) the Schedule B Participant has the benefit of an insurance policy insuring the Schedule B Participant against that occupational liability, and the amount payable under the insurance policy in respect of the occupational liability relating to that claim (including any amount payable by the Schedule B Participant by way of excess under or in relation to the policy) is not less than the amount of the Category 2 monetary ceiling specified in clause 3.11;

OR

- b) the Schedule B Participant has business assets the net current market value of which is not less than the amount of the Category 2 monetary ceiling specified in clause 3.11;

OR

- c) the Schedule B Participant has business assets and the benefit of an insurance policy insuring the Schedule B Participant against that occupational liability, and the net current market value of the assets and the amount payable under the insurance policy in respect of the occupational liability relating to that claim (including any amount payable by the Schedule B Participant by way of excess under or in relation to the policy), if combined, would total an amount that is not less than the amount of the Category 2 monetary ceiling specified in clause 3.11.

3.11 The Category 2 monetary ceiling applicable to Schedule B Participants is the lesser of:

- (a) \$20 million; and
- (b) the highest fee (or the highest total of fees) billed by a Schedule B Participant (or if the Schedule B Participant is a member of a practice entity [whether a practice entity member of the Institute or not] by all Schedule B Participants who are members of or a part of the practice entity) in a single financial year for a Category 2 engagement:
  - (i) over the three full financial years immediately prior to the financial year in which the Schedule B Participant commences to provide the Category 2 services which are the subject of the claim against the Schedule B Participant, or
  - (ii) if the Schedule B Participant has less than three full financial years' Category 2 services fee history immediately prior to the financial year in which the Schedule B

Participant commences to provide the Category 2 services which are the subject of the claim against the Schedule B Participant, over the two full financial years or (if the Schedule B Participant has less than two years' but one year's or more than one year's such fee history) that full financial year immediately prior to the financial year in which the Schedule B Participant commences to provide the Category 2 services which are the subject of the claim,

multiplied by 10

OR

- (c) if the Schedule B Participant has no, or less than one full financial year's, Category 2 services fee history immediately prior to the financial year in which the Schedule B Participant commences to provide the Category 2 services which are the subject of the claim against the Schedule B Participant, the amount specified in clause 3.1(b).

### **LIMITATION OF LIABILITY FOR CATEGORY 3 SERVICES**

#### **SCHEDULE A PARTICIPANTS**

3.12 Where a Schedule A Participant against whom a proceeding is brought relating to occupational liability in connection with Category 3 services is able to satisfy the court of (a), (b), or (c) below, the Schedule A Participant is not liable in damages in relation to that claim above the Category 3 monetary ceiling specified in clause 3.13:

- (a) the Schedule A Participant has the benefit of an insurance policy insuring the Schedule A Participant against that occupational liability, and the amount payable under the insurance policy in respect of the occupational liability relating to that claim (including any amount payable by the Schedule A Participant by way of excess under or in relation to the policy) is not less than the amount of the Category 3 monetary ceiling specified in clause 3.13;

OR

- (b) the Schedule A Participant has business assets the net current market value of which is not less than the amount of the Category 3 monetary ceiling specified in clause 3.13;

OR

- (c) the Schedule A Participant has business assets and the benefit of an insurance policy insuring the Schedule A Participant against that occupational liability, and the net current market value of the assets and the amount payable under the insurance policy in respect of the occupational liability relating to that claim (including any amount payable by the Schedule A Participant by way of excess under or in relation to the policy), if combined, would total an amount that is not less than the amount of the Category 3 monetary ceiling specified in clause 3.13.

3.13 The Category 3 monetary ceiling applicable to Schedule A Participants is:

- (a) \$2 million, where the claim arises from a service in respect of which the fee is \$150,000 or less

OR

- (b) \$20 million where the claim arises from a service in respect of which the fee is greater than \$150,000.

#### **SCHEDULE B PARTICIPANTS**

3.14 Where a Schedule B Participant against whom a proceeding is brought relating to occupational liability in connection with Category 3 services is able to satisfy the court of (a), (b), or (c) below,

the Schedule B Participant is not liable in damages in relation to that claim above the lesser of the Category 3 limitation amount determined under clause 3.16 and the amount of the Category 3 monetary ceiling specified in clause 3.15:

- (a) the Schedule B Participant has the benefit of an insurance policy insuring the Schedule B Participant against that occupational liability, and the amount payable under the insurance policy in respect of the occupational liability relating to that claim (including any amount payable by the Schedule B Participant by way of excess under or in relation to the policy) is not less than the amount of the Category 3 monetary ceiling or the Category 3 limitation amount;

OR

- b) the Schedule B Participant has business assets the net current market value of which is not less than the amount of the Category 3 monetary ceiling or Category 3 limitation amount;

OR

- c) the Schedule B Participant has business assets and the benefit of an insurance policy insuring the Schedule B Participant against that occupational liability, and the net current market value of the assets and the amount payable under the insurance policy in respect of the occupational liability relating to that claim (including any amount payable by the Schedule B Participant by way of excess under or in relation to the policy), if combined, would total an amount that is not less than the amount of the Category 3 monetary ceiling or Category 3 limitation amount.

3.15 The Category 3 monetary ceiling applicable to Schedule B Participants is \$20 million.

3.16 The Category 3 limitation amount is an amount equal to a reasonable charge for the Category 3 services provided by the Schedule B Participant or which the Schedule B Participant failed to provide and to which the claim relates, multiplied by the multiplier specified in sub-clause 3.16(b) below.

- (a) In determining the amount of a reasonable charge a court is to have regard to any amount actually charged and to:
  - (i) the amount that would ordinarily be charged in accordance with a scale of charges prescribed or accepted by the Institute; or
  - (ii) if there is no such scale, the amount that a competent person of the same qualifications and experience as the Schedule B Participant would be likely to charge in the same circumstances.

(b) The multiplier is 10.

### GENERAL

3.17 Pursuant to section 4.20 of the Act, this Scheme confers on the Institute a discretionary authority to specify, on application by a Participant, a higher maximum amount of liability not exceeding \$75 million than would otherwise apply under the scheme in respect of any specified case or class of case of Category 2 services or Category 3 services, where the fee for the service or services is, or is reasonably expected to be, \$2 million or greater. The higher maximum amount of liability will apply if the Institute exercises its discretion and approves the higher maximum amount of liability prior to the Participant beginning to provide the relevant services.

3.18 Nothing in this Scheme is intended to increase, or has the effect of increasing, a Participant's liability for damages to a person beyond the amount that, other than for the existence of this Scheme, the Participant would be liable in law.

- 3.19 This Scheme only limits the amount of damages for which a Participant is liable if and to the extent that the damages exceed the applicable amount specified in clause 3.1. Where the amount of damages in relation to a claim exceeds the applicable amount specified in clause 3.1 but the damages which may be awarded as determined by this Scheme are equal to or less than the applicable amount specified in clause 3.1, liability for those damages will instead be limited to the applicable amount specified in clause 3.1.

## 4. DEFINITIONS

- 4.1 In this Scheme, the following words and phrases have the following meanings:

“associated entities” has the meaning given in section 50AAA of the *Corporations Act 2001*

“Category 1 services” means:

- all services required by Australian law to be provided only by a registered company auditor;
- all other services provided by a registered company auditor in his or her capacity as auditor;
- all services the deliverables from which:
  - (i) will be used in determining the nature, timing and extent of audit procedures in the context of an audit of a financial report; or
  - (ii) will be incorporated into the financial report of an entity; or
  - (iii) are required by law or regulation to be filed with a regulator (excluding returns signed by a registered tax agent);

“Category 2 services” means:

- services to which Chapter 5 or Chapter 5A of the *Corporations Act 2001* applies;
- services provided pursuant to s.233(2) of the *Corporations Act 2001*;
- services to which the *Bankruptcy Act 1966* applies;
- services arising out of any court appointed liquidation or receivership

“Category 3 services” means any services provided by a Participant in the performance of his, her or its occupation, which are not Category 1 or Category 2 services.

“occupational liability” has the meaning given in the Act.



## **SCHEDULE A**

Participants who are partners, officers or employees of:

- (a) Deloitte Touche Tohmatsu in Australia and/or its associated entities;
- (b) Ernst & Young in Australia and/or its associated entities;
- (c) KPMG in Australia and/or its associated entities;
- (d) PricewaterhouseCoopers in Australia and/or its associated entities

## **SCHEDULE B**

All Participants other than those listed in Schedule A