

Australian Capital Territory

# Civil Law (Wrongs) CPA Australia Limited Professional Standards Scheme 2014 (No 1)

Disallowable instrument DI2014–5

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) CPA Australia Limited Professional Standards Scheme 2014 (No 1)*.

**2 Commencement**

This instrument commences on 1 February 2014.

**3 Notice**

I give notice of the New South Wales Professional Standards Council's approval of the attached CPA Australia Limited Professional Standards Scheme.

Joy Burch  
Acting Attorney-General  
23 January 2014

# THE CPA AUSTRALIA LIMITED PROFESSIONAL STANDARDS SCHEME

*Professional Standards Act 1994 (NSW)*

## PREAMBLE

- A. CPA Australia Limited ("**CPA Australia**") is a national occupational association.
- B. CPA Australia has made an application to the Professional Standards Council, appointed under the *Professional Standards Act 1994 (NSW)* ("**the Act**") for a scheme under the Act.
- C. The Scheme is prepared by CPA Australia for the purposes of limiting occupational liability to the extent to which such liability may be limited under the Act.
- D. The Scheme propounded by CPA Australia is to apply to all participating members referred to in clause 2 of the Scheme.
- E. CPA Australia has furnished the Council with a detailed list of the 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. The Scheme is intended to remain in force for a period of three (3) years from its commencement unless it is revoked, extended or ceases in accordance with section 32 of the Act.

## THE CPA AUSTRALIA LIMITED PROFESSIONAL STANDARDS SCHEME

### 1. Occupational Association

- 1.1. The CPA Australia Limited Professional Standards Scheme (the "**Scheme**") is a scheme under "the Act" of CPA Australia, Level 20, 28 Freshwater Place, Southbank Vic 3006.
- 1.2. Definitions of terms used in the Scheme appear in the Scheme, including in Part 4.

### 2. Persons to Whom the Scheme Applies

- 2.1. This Scheme applies to:
  - (a) all CPA Australia members who hold a current Public Practice Certificate issued by CPA Australia;

- (b) all Approved Practice Entities<sup>1</sup> owned, managed or controlled by member/s who hold a current Public Practice Certificate issued by CPA Australia; and
- (c) all persons to whom the scheme applies, by virtue of the Act<sup>2</sup>;

Each such participating member and person is referred to in the Scheme as a "participant".

- 2.2. No participant to whom the Scheme applies may choose not to be subject to the Scheme, however CPA Australia may, on application by a participant referred to in clause 2.1(a), exempt the participant from the Scheme if CPA Australia 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. This Scheme only affects the Occupational liability of a participant for damages<sup>3</sup> arising from a cause of action to the extent to which the liability results in damages exceeding \$2 million.
- 3.2. Where 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 participant is not liable in damages in relation to that cause of action above the Category 1 monetary ceiling specified in clause 3.3:

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<sup>1</sup> An Approved Practice Entity is a practice entity which has been approved by the Board of CPA Australia pursuant to the CPA Australia By-laws. Approved Practice Entities are not members of CPA Australia but are, for the purposes of section 17(1) of the Act, "persons within an occupational association being CPA Australia. Application of the Scheme to Approved Practice Entities is limited to civil liability arising (in tort, contract or otherwise) directly or vicariously from anything done or omitted by a member of CPA Australia.

<sup>2</sup> Sections 18 and 19 of the Act provide that if the Scheme applies to a body corporate, the Scheme also applies to each officer of the body corporate and if the Scheme applies to a person, the Scheme also applies to each partner of a person, and if the Scheme applies to a person, the Scheme also applies to each employee of that person, provided that if such officer of the corporation or partner of the person or employee of the person is entitled to be a member of the same occupational association, such officer, partner or employee is a member of the occupational association. Section 20 provides that the Scheme may also apply to other persons as specified in that section. Section 20A extends the limitation of liability of persons whom the scheme applies by virtue of sections 18 to 20.

<sup>3</sup> Damages as defined in section 4 of the Act means:

- (a) damages awarded in respect of a claim or counter-claim or by way of set-off; and
- (b) costs in or in relation to the proceedings ordered to be paid in connection with such an award (other than costs incurred in enforcing a judgment or incurred on an appeal made by a defendant); and
- (c) any interest payable on the amount of those damages or costs.

(a) the participant has the benefit of an insurance policy insuring the participant against the occupational liability and the amount payable under the insurance policy in respect of the occupational liability relating to the cause of action (including any amount payable by the person by way of excess under or in relation to the policy) is not less than the Category 1 monetary ceiling determined in accordance with the table in clause 3.3;

OR

(b) the participant has business assets the net current market value of which is not less than the Category 1 monetary ceiling determined in accordance with the table in clause 3.3;

OR

(c) the participant has business assets and the benefit of an insurance policy insuring the participant against that occupational liability, and the net current market value of the business assets and the amount payable under the insurance policy in respect of that occupational liability relating to that cause of action (including any amount payable by the participant by way of excess under or in relation to the policy), if combined, is not less than the Category 1 monetary ceiling determined in accordance with the table in clause 3.3.

3.3. The Category 1 monetary ceiling is an amount specified in the table below.

Groups	Monetary ceiling
1. Participants who at the Relevant Time were in an Accounting Practice that as at the 30 June immediately preceding the Relevant Time: (a) consisting of less than 20 principals; AND (b) which generated total annual fee income for the financial year ended on 30 June immediately preceding the Relevant Time less than \$10 million.	\$2 million
2. Participants other than those in Groups 1 and 3 below.	\$10 million
3. Participants who at the Relevant Time were in an Accounting Practice that as at the 30 June immediately preceding the Relevant Time: (a) consisting of greater than 60 principals; or (b) which generated total annual fee income for the financial year ended on 30 June immediately preceding the Relevant Time greater than \$20 million.	\$75 million

3.4. Where 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 participant is not liable in damages in relation to that cause of action above the Category 2 monetary ceiling specified in clause 3.5:

- (a) the participant has the benefit of an insurance policy insuring the participant against the occupational liability, and the amount payable under the insurance policy in respect of the occupational liability relating to that cause of action (including any amount payable by the person by way of excess under or in relation to the policy) is not less than the Category 2 monetary ceiling determined in accordance with the table in clause 3.5;

OR

- (b) the participant has business assets the net current market value of which is not less than the Category 2 monetary ceiling determined in accordance with the table in clause 3.5;

OR

- (c) the participant has business assets and the benefit of an insurance policy insuring the participant against that occupational liability, and the net current market value of the business assets and the amount payable under the insurance policy in respect of that occupational liability relating to that cause of action (including any amount payable by the participant by way of excess under or in relation to the policy), if combined, would total an amount that is not less than the Category 2 monetary ceiling determined in accordance with the table in clause 3.5.

3.5. The Category 2 monetary ceiling is the amount specified the table below.

Groups	Monetary ceiling
1. Participants who at the Relevant Time were in an Accounting Practice that as at the 30 June immediately preceding the Relevant Time: (a) consisting of less than 20 principals; AND (b) which generated total annual fee income for the financial year ended on 30 June immediately preceding the Relevant Time up to \$10 million.	\$2 million
2. Participants other than those in Groups 1 and 3 below.	\$10 million
3. Participants who at the Relevant Time were in an Accounting Practice that as at the 30 June immediately preceding the Relevant Time: (a) consisting of greater than 60 principals; or (b) which generated total annual fee income for the financial year ended on 30 June immediately preceding the Relevant Time greater than \$20 million.	\$20 million

3.6. Where 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 participant is not liable in damages in relation to that cause of action above the Category 3 monetary ceiling specified in clause 3.7:

(a) the participant has the benefit of an insurance policy insuring the participant against the occupational liability, and the amount payable under the insurance policy in respect of the occupational liability relating to that cause of action (including any amount payable by the person by way of excess under or in relation to the policy) is not less than the amount of the Category 3 monetary ceiling determined in accordance with the table in clause 3.7;

OR

(b) the participant has business assets the net current market value of which is not less than the amount of the Category 3 monetary ceiling amount determined in accordance with the table in clause 3.7;

OR

(c) the participant has business assets and the benefit of an insurance policy insuring the participant against that occupational liability, and the net current market value of the business assets and the amount payable under the insurance policy in respect of that occupational liability relating to that cause of action (including any amount payable by the participant by way of excess under or in relation to the policy), if combined, would total an amount that is not less than the Category 3 monetary ceiling amount determined in accordance with the table in clause 3.5.

3.7. The Category 3 monetary ceiling is the amount specified in the table below.

Groups	Monetary ceiling
1. Participants who at the Relevant Time were in an Accounting Practice that as at the 30 June immediately preceding the Relevant Time: (a) consisting of less than 20 principals; AND (b) which generated total annual fee income for the financial year ended on 30 June immediately preceding the Relevant Time less than \$10 million.	\$2 million
2. Participants other than those in Groups 1 and 3.	\$10 million
3. Participants who at the Relevant Time were in an Accounting Practice that as at the 30 June immediately preceding the Relevant Time: (a) consisting of greater than 60 principals; or (b) which generated total annual fee income for the financial year ended on 30 June immediately preceding the Relevant Time greater than \$20 million.	\$20 million

3.8. Pursuant to section 24 of the Act, this Scheme confers on CPA Australia a discretionary authority to specify, on application by a participant member, 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. The higher maximum amount of liability will apply if CPA Australia exercises its discretion and approves the higher maximum amount of liability prior to the participant member beginning to provide the relevant services.

3.9. In circumstances where the services provided by a participant comprise a combination of Category 1 services and any of:

- (a) Category 2 services;
- (b) Category 3 services;
- (c) Category 2 services and Category 3 services,

the participant's liability under this Scheme for damages in respect of a proceeding in relation to occupational liability in excess of the applicable amount specified in clause 3.1 brought against it will be determined in accordance with those provisions of the Scheme relating to Category 1 services only, that is, clauses 3.2 to 3.4.

3.10. In circumstances where the services provided by a participant comprise a combination of Category 2 services and Category 3 services, the participant's liability under this Scheme for damages in respect of a proceeding in relation to occupational liability in excess of the applicable amount specified in clause 3.1 brought against it will be determined (subject to clause 3.10) in accordance with those provisions of the Scheme relating to Category 2 services only, that is clauses 3.5 and 3.6.

3.11. 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.

3.12. 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 cause of action 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.

3.13. Notwithstanding anything to the contrary contained in this scheme, if in particular circumstances giving rise to Occupational liability, the liability of any person who is subject to this scheme should be capped both by this scheme and also by any other scheme under Professional Standards legislation (whether of this jurisdiction or under the law of any other Australian state or territory) and, if the amount of such caps should

differ, then the cap on the liability of such person arising from such circumstances which is higher shall be the applicable cap.

#### 4. Definitions

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

**"Category 1 services"** means:

- (a) all services required by Australian law to be provided only by a registered company auditor;
- (b) all other services provided by a registered company auditor in his or her capacity as auditor;
- (c) 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:

- (a) services to which Chapter 5 or Chapter 5A of the *Corporations Act 2001* (Cth) applies;
- (b) services provided pursuant to section 233(2) of the *Corporations Act 2001* (Cth);
- (c) services to which the *Bankruptcy Act 1966* (Cth) applies; or
- (d) 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, Category 2 or financial planning services, other than such financial planning services provided pursuant to a Limited Australian Financial Services Licence or pursuant to regulation 7.1.29A of the *Corporations Regulations*.



**"Occupation liability"** has the same meaning as is ascribed to that term in the Act.<sup>4</sup>

**"Relevant Time"** means, in respect of a liability potentially limited by the Scheme, the time(s) of the act(s) or omission(s) giving rise to the liability;

**"Accounting Practice"** means a member or an approved practice entity (that meets the requirements of By-Law 9.3 of CPA Australia's By-Laws) which provides public accounting services.

**"Cause of action"** means and includes all causes of action founded on the same act or omission.

**"principal(s)"** for the purposes of clauses 3.3, 3.4 and 3.5 means a person(s) in an Accounting Practice who is affiliated with the Controlled Person within the meaning of By-Law 1.2(c) of CPA Australia's By-Laws.

**"Public Practice Certificate"** means a Public Practice Certificate issued pursuant to By-Law 9.4 of CPA Australia's By-Laws permitting a Member to provide Public Accounting Services as described in By-Law 1.1 of CPA Australia's By-Laws.

## **5. Jurisdiction**

- 5.1. This Scheme is intended to operate in New South Wales. This Scheme is also intended to operate in the Australian Capital Territory, the Northern Territory of Australia, Victoria, Queensland, South Australia and Western Australia by way of mutual recognition under the professional standards legislation.

## **6. Commencement date and duration**

- 6.1. This Scheme will commence on 8 October 2013 ("the commencement date") in New South Wales, and on 1 February 2014, after the date of publication or notification in the *Government Gazette* of the Australian Capital Territory, the Northern Territory of Australia, Victoria, Queensland, South Australia and Western Australia in the respective jurisdictions.
- 6.2. This Scheme will operate for three (3) years from commencement in New South Wales.

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<sup>4</sup> Occupational liability is defined in the Act as meaning "civil liability arising (in tort, contract or otherwise) directly or vicariously from anything done or omitted by a member of an occupational association acting in the performance of his or her occupation".