

Australian Capital Territory

Civil Law (Wrongs) The Institute of Public Accountants Professional Standards Scheme 2018

Disallowable instrument DI2018–268

made under the

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

1 Name of instrument

This instrument is the *Civil Law (Wrongs) The Institute of Public Accountants Professional Standards Scheme 2018*.

2 Commencement

This instrument commences on 1 January 2019.

3 Notice

- (1) I give notice of the Professional Standards Councils' approval of the attached The Institute of Public Accountants Professional Standards Scheme.
- (2) The scheme is in force for a period of two years, beginning on the commencement of this instrument.

Gordon Ramsay MLA
Attorney-General
1 November 2018

THE INSTITUTE OF PUBLIC ACCOUNTANTS PROFESSIONAL STANDARDS SCHEME

PREAMBLE

- A. The Institute of Public Accountants Ltd ("**IPA**") is an occupational association.
- B. The IPA has made an application to the Professional Standards Council ("**Council**"), appointed under the *Professional Standards Act 2003* (VIC) ("**Act**"), for a scheme under the Act in Victoria.
- C. The scheme is prepared by the IPA for the purposes of limiting occupational liability¹ to the extent to which such liability may be limited under the Act; improving occupational standards of professional persons; and protecting consumers of their services, per the objects of the Act.
- D. The scheme is to apply to all members of the IPA who are ordinarily residents in Australia and who hold a current Professional Practice Certificate² ("**PPC**"), and who are not otherwise exempted or excluded.
- E. The scheme does not affect damages which are below the monetary ceiling specified in the scheme for each person to whom the scheme applies. The scheme limits liability for damages to the monetary ceiling specified for that person, provided that the person has insurance as required under s.23 of the Act.
- F. The IPA has furnished the Council with a detailed list of the risk management strategies³ in respect of its members and the means by which those strategies will be implemented.
- G. The IPA will report annually to the Council on the implementation and monitoring of its risk management strategies, the effect of those strategies, and any changes proposed to be made to them.
- H. The IPA will report to the Council on such other matters as the Council may require pursuant to s.47 of the Act.
- I. The scheme is intended to commence on 1 January 2019 and remain in force for two (2) years from its commencement unless, prior to that time, it is revoked, its operation ceases, or it is extended.
- J. The scheme is intended to apply in all Australian states and territories.
- K. All participating members referred to in clause 2 of the scheme are subject disciplinary measures under the Constitution and By-Laws of the IPA and are also subject to the professional indemnity insurance requirements under the By-Laws of the IPA.

THE INSTITUTE OF PUBLIC ACCOUNTANTS PROFESSIONAL STANDARDS SCHEME

1. Occupational association

- 1.1 The Institute of Public Accountants Professional Standards Scheme ("**scheme**") is a scheme under the Act, prepared by the IPA whose business address is:

Level 6, 555 Lonsdale Street,
Melbourne, Victoria, 3000.

¹ **Occupational liability** has the same meaning as it has in the Act

² A Professional Practice Certificate (**PPC**) is a certification, issued by the IPA to eligible members, which allows IPA members to offer professional accounting and/or related services to the public. The application and approval process of obtaining a PPC is governed by the IPA By-Laws Chapter 9 which can be found at <https://www.publicaccountants.org.au/media/1517245/MASTER-By-Laws-V-25-rebrand.pdf>

³ These risk management strategies are detailed in the application submitted by the IPA to the Council (**Application**). The Application includes sections on continuing occupational education, code of ethics / practice, complaints and discipline system, quality assurance and audit, and risk management

2. Persons to Whom the Scheme Applies

2.1 The scheme applies to:

- a) all IPA members who hold a current PPC issued by the IPA other than such members who are, or at the time of any act giving rise to occupational liability were:
 - i. holders of an Australian Financial Services Licence granted in accordance with section 913B of the *Corporations Act 2001* (Cth) ("**AFS licence holder**"), not being a Limited Licence⁴; and
 - ii. Representatives⁵ of an AFS licence holder, not being a Limited Licence;

and

- b) All persons to whom the scheme applies, by virtue of the Act⁶ and the corresponding provisions of the Acts of other jurisdictions in which the Scheme applies.

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

2.2 This scheme also applies to all persons to whom the scheme applied under either clause 2.1 at the time of any act or omission giving rise to occupational liability.

2.3 This scheme also applies to all persons to whom the scheme applies by virtue of ss20, 21 and 22 of the Act and the relevant provisions of the corresponding laws.

3. Exemption

3.1 No member to whom the scheme applies may be exempted from the scheme other than a member who, on application to the IPA Board of Directors⁷, is able to satisfy the Board that the member is also a participating member of another occupational association of accountants that is covered by a professional standards scheme, and has not been exempted from that scheme.

4. Jurisdiction

4.1 The scheme applies in Victoria in accordance with the Act.

4.2 In addition to Victoria, the scheme is intended to operate in the Australian Capital Territory, New South Wales, the Northern Territory, Queensland, South Australia, Tasmania, and Western Australia, in accordance with the professional standards legislation of those states and territories and subject to the requirements of that legislation, so that references to a provision of the Act, the application of the scheme to a liability, the limit of a liability under the Act or what constitutes Occupational Liability are intended to pick up the relevant provisions of the corresponding laws, applied *mutatis mutandis*, to the extent that is necessary for the application of the scheme in any of those jurisdictions as an interstate scheme.

4.3 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 is 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.

5 Limitation of liability

⁴ Limited Licence means a licence to provide only limited financial services as defined in regulations 7.8.12A and 7.8.14B of the *Corporations Regulations 2001* (Cth), as amended from time to time ("**Limited Licence**")

⁵ The term "Representatives" has the meaning that it has in section 910A of the *Corporations Act 2001* (Cth).

⁶ Sections 18 and 19 of the Act

⁷ Details on how the IPA Board of Directors manages membership can be found in Chapter 3 of the IPA's Constitution, Chapter 3 of the IPA's By-Laws, and various IPA Membership policies

- 5.1 Pursuant to s. 26 of the Act, and the relevant provisions of the corresponding laws, this scheme only affects the liability for damages arising from a single cause of action to the extent to which the liability results in damages⁸ exceeding \$2,000,000 (the **monetary ceiling**).
- 5.2 If a member who was at the time of the act or omission giving rise to occupational liability, a member to whom or to which the scheme applied, against whom a proceeding relating to occupational liability is brought, is able to satisfy the Court or tribunal that such member has the benefit of an insurance policy:
- (a) of a kind which complies with the IPA's requirements⁹;
 - (b) which insures the member against that occupational liability; and
 - (c) under which the amount payable in respect of that occupational liability is not less than the relevant monetary ceiling specified in this scheme.
- then the member is not liable for damages in relation to that cause of action above the monetary ceiling defined in this scheme.
- 5.3 This scheme limits the occupational liability in respect of a cause of action founded on an act or omission occurring during the period when the scheme was in force with respect to any member to whom the scheme applied at the time the act or omission occurred.

6 Conferral of Discretionary Amount

- 6.1 Pursuant to s24 of the Act this scheme confers on the IPA a discretionary authority to specify, on application by a member to whom the scheme applies, a higher monetary ceiling (maximum amount of liability) not exceeding \$20 million in relation to that member either in all cases or in any specified case or class of case.

7 Duration

- 7.1 This scheme will be in force for a period of two (2) years from the date of commencement.

8 Commencement

- 8.1 In Victoria, this scheme will commence:
- (a) on 1 January 2019, if the scheme is published in the Government Gazette by or on 31 October 2018; or
 - (b) on the first day two months after the scheme is published in the Government Gazette in any other case.
- 8.2 In New South Wales, the Northern Territory, Queensland, Tasmania and Western Australia, the scheme will commence:
- (a) on 1 January 2019, if the scheme is published in the Government Gazette by or on 31 December 2018; or
 - (b) on the day immediately following the date of the scheme's publication in the Government Gazette in any other case.
- 8.3 In the Australian Capital Territory and in South Australia, the scheme will commence:
- (a) on the date provided for in the Minister's notice in relation to the scheme, if a date is provided; or
 - (b) on the first day two months after the day on which notice was given in any other case.

⁸ Damages has the same meaning as it has in the Act

⁹ The IPA requirements on insurance cover can be found in IPA By-Law 9 and the relevant IPA membership policies

8.4 Clauses 8.1, 8.2 and 8.3 are subject to the provisions of the Act and the relevant provisions of the corresponding laws.