

Australian Capital Territory

Civil Law (Wrongs) Association of Taxation and Management Accountants (ATMA) Scheme 2012 (No 1)

Disallowable instrument DI2012– 266

made under the

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

1 Name of instrument

This instrument is the *Civil Law (Wrongs) Association of Taxation and Management Accountants (ATMA) Scheme 2012 (No 1)*.

2 Commencement

This instrument commences on 1 January 2013.

3 Notice

I give notice of the Victorian Professional Standards Council's approval of the attached Association of Taxation and Management Accountants (ATMA) Scheme.

Mr Simon Corbell MLA
Attorney-General
29/11/2012

THE ATMA SCHEME

PREAMBLE

- A. The Association of Taxation and Management Accountants (ATMA) is an occupational association.
- B. ATMA has made an application to the Professional Standards Council, constituted under the *Professional Standards Act 2003 (Vic)* (the Act), for a scheme under the Act.
- C. The scheme is prepared by ATMA 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 ATMA is to apply to all members of ATMA who hold a current Public Practice Certificate issued by ATMA.
- E. ATMA 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 five (5) years from its commencement unless prior to that time it is revoked, its operation ceases or it is extended pursuant to s34 of the Act.

The ATMA SCHEME

1. Occupational association

- 1.1 The ATMA Scheme (the scheme) is a scheme under the *Professional Standards Act 2003 (Vic)* (the Act) prepared by the ATMA whose address is: Suite 513/566 St Kilda Road, Melbourne, Victoria 3004.
- 1.2 The scheme is intended to operate in Victoria, the ACT, New South Wales, the Northern Territory, Queensland, South Australia and Western Australia.

2. Persons to Whom the Scheme Applies¹

- 2.1 This scheme applies to all members of ATMA who hold a current Public Practice Certificate issued by ATMA.

¹ Sections 20 and 21 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 the person, and if the scheme applies to a person the scheme also applies to each employee of the 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, but is not a member, the scheme does not apply to that officer, partner or employee. Section 22 provides that the scheme may also apply to other persons as specified in that section.

2.2 A person may, on application, be exempted from the scheme by ATMA. This clause does not apply to persons included in the scheme only by virtue of sections 20 and 21 of the Act.

2.3 This scheme also applies to all persons to whom the scheme applied under clause 2.1 at the time of any act or omission-giving rise to occupational liability².

2.4 This scheme does not apply to financial services licensees.

3. Limitation of liability

3.1 This scheme only affects the liability for damages³ arising from a single cause of action to the extent to which the liability results in damages exceeding \$1,000,000.

3.2 If a person, who was at the time of the act or omission giving rise to occupational liability, a person to whom the scheme applied, against whom a proceeding relating to occupational liability is brought, is able to satisfy the court that such person has the benefit of an insurance policy:

(a) of a kind which complies with the standards determined by ATMA,

(b) insuring such person against that occupational liability, and

(c) under which the amount payable in respect of that occupational liability is not less than the *monetary ceiling* specified in this scheme,

that person is not liable in damages in relation to that cause of action above the *monetary ceiling* specified in this scheme.

3.3 The *monetary ceiling* is \$1,000,000.

3.4 Clause 3.2 does not limit the amount of damages to which a person to whom the scheme applies is liable if the amount is less than the amount specified for the purpose in this scheme in relation to a person to whom the scheme applies.

² Occupational liability is defined in s4 (1) of the Act to mean '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. However, it is s5(1) of the Act provides that the Act does not apply to liability for damages arising from the death or personal injury to a person, a breach of trust or fraud or dishonesty. Section 5(2) of the Act also provides that the Act does not apply to liability which may be the subject of proceeding under s110 of the Transfer of Land Act 1958).

³ Damages as defined in section 4 of the Act means (a) damages awarded in respect of a claim or counter-claim or claim or or 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.

- 3.5 The damages which may be awarded against a person to whom the scheme applies are to be determined in accordance with clauses 3.2 and 3.4 but must not exceed the amount of the *monetary ceiling* specified in clause 3.3.
- 3.6 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 of any person to whom the scheme applied at the time the act or omission occurred.
- 3.7 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. Conferral of Discretionary Amount

- 4.1 Pursuant to s. 26 of the Act this scheme confers on ATMA a discretionary authority to specify, on application by a person to whom the scheme applies, in relation to that person, a higher monetary ceiling (maximum amount of liability) not exceeding \$100,000,000 in relation to that person either in all cases or in any specified case or class of case.

5. Duration

- 5.1 This scheme will be in force for a period of 5 years from the date of commencement in Victoria unless it is revoked, extended or ceases in accordance with section 34 of the Act.

6. Commencement

- 6.1 This scheme will commence on 1 January 2013. In the event the Scheme, or a Notice relating to the Scheme, is published in the Government Gazette of any jurisdiction after 1 January 2013, the Scheme will commence on such day 2 months after the date of its publication in that jurisdiction.