

Australian Capital Territory

# Civil Law (Wrongs) Chartered Accountants Australia and New Zealand Professional Standards Scheme 2019 (No 1)

Disallowable instrument DI2019–210

made under the

Civil Law (Wrongs) Act 2002, sch 4, s 4.10 (Schemes are subject to disallowance)

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## 1 Name of instrument

This instrument is the *Civil Law (Wrongs) Chartered Accountants Australia and New Zealand Professional Standards Scheme 2019 (No 1)*.

## 2 Commencement

This instrument commences on 8 October 2019, despite anything to the contrary contained in the attached instrument ‘Chartered Accountants Australia and New Zealand Professional Standards Scheme’.

## 3 Notice

I give notice of the Professional Standards Council of New South Wales’ approval of the attached ‘Chartered Accountants Australia and New Zealand Professional Standards Scheme’.

Gordon Ramsay MLA  
Attorney-General  
3 October 2019

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#### PREAMBLE

A.	Chartered Accountants Australia and New Zealand (“ <b>CA ANZ</b> ”) is a national Occupational Association.
B.	CA ANZ has applied to the Professional Standards Council, appointed under the <i>Professional Standards Act 1994</i> (NSW) (“ <b>the Act</b> ”), for approval of a scheme under the Act, as set out in this document (“ <b>the Scheme</b> ”).
C.	The Scheme has been prepared by CA ANZ 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 clause 2.1 below, in respect of services provided in Australia.
E.	CA ANZ 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 clause 2.1 of the Scheme are subject to disciplinary measures under the By-laws of CA ANZ, and are also subject to the professional indemnity insurance requirements of Regulation R2A of CA ANZ’s regulations.
G.	The Scheme is to commence on 8 October 2019 and remain in force for a period of 5 years (unless it is revoked, extended or ceases in accordance with section 32 of the Act).
H.	Occupational liability limited by this Scheme may also be subject to the provisions of Commonwealth legislation, which may provide for a different limitation of liability, or unlimited liability, in a particular case, and thereby alter the effect of the Scheme.

<b>1.</b>	<b>OCCUPATIONAL ASSOCIATION</b>
1.1	This Scheme is a scheme under the Act prepared by CA ANZ, 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.

<b>2.</b>	<b>PERSONS TO WHOM THE SCHEME APPLIES</b>
2.1	The Scheme applies to:

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	<p>(a) all CA ANZ members who:</p> <ul style="list-style-type: none"><li>(i) hold a current Australian Certificate of Public Practice;</li><li>(ii) are Affiliate Members; or</li><li>(iii) are incorporated Practice Entity Members;</li></ul> <p>(b) all persons to whom it applies by virtue of the Act and of the cognate provisions of the corresponding Acts of the other Australian jurisdictions in which the Scheme has effect. (collectively “<b>Participants</b>” and each a “<b>Participant</b>”).</p>
2.2	No Participant to whom the Scheme applies may choose not to be subject to the Scheme, provided that CA ANZ may, on application by a Participant, exempt the Participant from the Scheme if CA ANZ is satisfied that he or she would suffer financial hardship in meeting the business asset and/or professional indemnity insurance requirement to the levels set out in clause 3 below.
2.3	All participating members referred to in clause 2.1 are subject to disciplinary measures under the By-Laws of CA ANZ, and are also subject to the professional indemnity insurance requirements of Regulation CR2A of CA ANZ's regulations.

<b>3.</b>	<b>LIMITATION OF LIABILITY</b>
3.1	The Scheme only limits the Occupational Liability of a Participant for Damages arising from a claim to the extent to which the liability results in Damages exceeding \$2 million.
	<b><u>LIMITATION OF LIABILITY FOR CATEGORY 1 SERVICES</u></b>
3.2	<p>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 the claim above the monetary ceiling specified in clause 3.3:</p> <ul style="list-style-type: none"><li>(a) the Participant has the benefit of an Insurance Policy insuring the 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 Participant by way of excess under or in relation to the Insurance Policy) is not less than the amount of the Category 1 monetary ceiling specified in clause 3.3 below; OR</li><li>(b) the Participant has business assets the net current market value of which is not less than the amount of that Category 1 monetary ceiling; OR</li><li>(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 assets and the amount payable under the</li></ul>

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	Insurance Policy in respect of the Occupational Liability relating to that claim (including any amount payable by the Participant by way of excess under or in relation to the Insurance Policy), if combined, would total an amount that is not less than the amount of the Category 1 monetary ceiling.
3.3	<p>The Category 1 monetary ceiling is:</p> <ul style="list-style-type: none"> <li>(a) \$2 million, where the claim arises from services in respect of which the Fee is less than \$100,000; OR</li> <li>(b) \$5 million, where the claim arises from services in respect of which the Fee is \$100,000 or more, but less than \$300,000; OR</li> <li>(c) \$10 million where the claim arises from services in respect of which the Fee is \$300,000 or more, but less than \$500,000; OR</li> <li>(d) \$20 million where the claim arises from services in respect of which the Fee is \$500,000 or more, but less than \$1,000,000; OR</li> <li>(e) \$50 million where the claim arises from services in respect of which the Fee is \$1,000,000 or more but less than \$2,500,000; OR</li> <li>(f) \$75 million where the claim arises from services in respect of which the Fee is \$2,500,000 or more.</li> </ul>
	<b><u>LIMITATION OF LIABILITY FOR CATEGORY 2 SERVICES</u></b>
3.4	<p>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 claim above the monetary ceiling specified in clause 3.5:</p> <ul style="list-style-type: none"> <li>(a) the Participant has the benefit of an Insurance Policy insuring the 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 Participant by way of excess under or in relation to the Insurance Policy) is not less than the amount of the Category 2 monetary ceiling specified in clause 3.5; OR</li> <li>(b) the 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 3.5; OR</li> <li>(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 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 Participant by way of excess under or in relation to the Insurance Policy), if combined, would total an amount that is not less than the amount of the Category 2 monetary ceiling specified in clause 3.5.</li> </ul>
3.5	<p>The Category 2 monetary ceiling applicable to Participants is:</p> <ul style="list-style-type: none"> <li>(a) \$2 million, where the claim arises from services in respect of which the Fee is less than \$100,000; OR</li> <li>(b) \$5 million, where the claim arises from services in respect of which the Fee is \$100,000 or more, but less than \$300,000; OR</li> <li>(c) \$10 million, where the claim arises from services in respect of which the Fee is \$300,000 or more, but less than \$500,000; OR</li> </ul>

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	<p>(d) \$20 million where the claim arises from services in respect of which the Fee is \$500,000 or more.</p> <p>For the purposes of this sub-clause 3.5 only, the “<b>Fee</b>” means:</p> <p>(a) the highest total of fees billed by a Participant (or if the Participant is a member of a Practice Entity [whether a Practice Entity member of CA ANZ or not] by all Participants who are members or part of the Practice Entity) for a single financial year of services pursuant to an appointment for the provision of Category 2 services:</p> <p>(i) over the three full financial years immediately prior to the financial year in which the Participant provides the Category 2 services which are the subject of the claim against the Participant, or</p> <p>(ii) if the Participant has less than three full financial years’ but more than two years’ Category 2 services fee history immediately prior to the financial year in which the Participant provides the Category 2 services which are the subject of the claim against the Participant, over the two full financial years, or</p> <p>(iii) if the 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 Participant provides the Category 2 services which are the subject of the claim, OR</p> <p>(b) if the 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 Participant provides the Category 2 services which are the subject of the claim against the Participant, the amount actually charged for those services.</p>
	<p><b><u>LIMITATION OF LIABILITY FOR CATEGORY 3 SERVICES</u></b></p>
3.6	<p>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 claim above the Category 3 monetary ceiling specified in clause 3.7:</p> <p>(a) the Participant has the benefit of an Insurance Policy insuring the 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 Participant by way of excess under or in relation to the Insurance Policy) is not less than the amount of the Category 3 monetary ceiling specified in clause 3.7; OR</p> <p>(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 specified in clause 3.7: OR</p> <p>(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 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 Participant by way of excess under or in relation to the Insurance Policy), if combined, would total an amount that is not less than the amount of the Category 3 monetary ceiling specified in clause 3.7.</p>

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3.7	<p>The Category 3 monetary ceiling applicable to Participants is:</p> <p>(a) \$2 million, where the claim arises from services in respect of which the Fee is less than \$100,000; OR</p> <p>(b) \$5 million where the claim arises from services in respect of which the Fee is \$100,000 or more, but less than \$300,000: OR</p> <p>(c) \$10 million where the claim arises from services in respect of which the Fee is \$300,000 or more, but less than \$500,000; OR</p> <p>(d) \$20 million where the claim arises from services in respect of which the Fee is \$500,000 or more.</p>
	<b><u>GENERAL</u></b>
3.8	<p>Pursuant to section 24(1)(b) of the Act, this Scheme confers on CA ANZ a discretionary authority to specify, on application by a Participant, a higher maximum amount of Occupational 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 Occupational Liability will apply if CA ANZ exercises its discretion and approves the higher maximum amount of Occupational Liability prior to the Participant beginning to provide the relevant services.</p>
3.9	<p>In circumstances where a proceeding is brought against a Participant relating to Occupational Liability in connection with a combination of Category 1 services and any of:</p> <p>(a) Category 2 services;</p> <p>(b) Category 3 services;</p> <p>(c) Category 2 services and Category 3 services,</p> <p>the Participant's Occupational Liability under this Scheme for Damages in excess of the amount specified in clause 3.1 will be determined in accordance with those provisions of the Scheme relating to Category 1 services only, namely clauses 3.2 and 3.3.</p>
3.10	<p>In circumstances where a proceeding is brought against a Participant relating to Occupational Liability in connection with a combination of Category 2 services and Category 3 services, the participant's Occupational Liability under this Scheme for Damages in excess of the amount specified in clause 3.1 will be determined in accordance with those provisions of the Scheme relating to Category 2 services only, namely clauses 3.4 and 3.5.</p>
3.11	<p>Nothing in this Scheme is intended to increase, or has the effect of increasing, a Participant's Occupational Liability for Damages to a person beyond the amount that, but for the existence of this Scheme, the Participant would be liable in law.</p>
3.12	<p>This Scheme only limits the amount of Damages for which a Participant is liable if and to the extent that the Damages exceed the amount specified in clause 3.1. Where the amount of Damages for which a Participant otherwise would be liable on a claim entailing Occupational Liability exceeds the amount specified in clause 3.1 liability for Damages will be limited to the amount</p>

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	specified in the applicable other provisions of this clause 3, as provided for by section 28 of the Act.
3.13	Notwithstanding anything to the contrary contained in this Scheme, if in the circumstances giving rise to Occupational Liability, the liability of any Participant should be capped both by this Scheme and also by any other Scheme or Schemes under Professional Standards Legislation, be it the Act or the law of any other Australian state or territory, then should the amounts of such caps differ, the highest of them shall apply.

4.	<b>DEFINITIONS</b>
4.1	In this Scheme, the following words and phrases have the following meanings:
	“ <b>Act</b> ” means the <i>Professional Standards Act 1994</i> (NSW)
	“ <b>Acts</b> ” mean state and territory legislation other than the Act, including: <ul style="list-style-type: none"> <li>(a) <i>Professional Standards Act 2003</i> (Vic);</li> <li>(b) <i>Professional Standards Act 2004</i> (Qld);</li> <li>(c) <i>Professional Standards Act 2004</i> (SA);</li> <li>(d) <i>Professional Standards Act 1997</i> (WA);</li> <li>(e) <i>Professional Standards Act 2005</i> (Tas);</li> <li>(f) <i>Professional Standards Act</i> (NT); and</li> <li>(g) <i>Civil Law (Wrongs) Act 2002</i> (ACT).</li> </ul>
	“ <b>Affiliate Member</b> ” as defined by the CA ANZ By Laws
	“ <b>By Laws</b> ” means the By Laws of CA ANZ
	“ <b>CA ANZ Charter</b> ” means the CA ANZ Supplemental Royal Charter dated 26 November 2014.
	“ <b>Certificate of Public Practice</b> ” means a certificate issued to a CA ANZ member under paragraph 34 of the By Laws in accordance with CA ANZ Regulation CR2 Certificates of Public Practice
	“ <b>Category 1 services</b> ” means the following services provided in Australia: <ul style="list-style-type: none"> <li>(i) all Corporations Act audits or reviews performed under auditing or assurance standards issued by the Auditing and Assurance Standards Board (including financial statement audits and reviews, Australian financial services licence audits, credit licence audits, and compliance plan audits);</li> <li>(ii) all audits or reviews performed by a registered company auditor for the purposes of prudential reporting to the Australian Prudential Regulation Authority;</li> <li>(iii) all audits of self-managed superannuation funds under section 35C of the <i>Superannuation Industry (Supervision) Act 1993</i>;</li> <li>(iv) all other audits of financial statements which are filed with a regulator, and audit procedures performed on financial</li> </ul>

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	information which forms part of a financial statement filed with a regulator
	<p><b>“Category 2 services”</b> means the following services provided in Australia:</p> <ul style="list-style-type: none"> <li>(i) services to which Chapter 5 or Chapter 5A of the <i>Corporations Act 2001</i> applies;</li> <li>(ii) services provided pursuant to s.233(2) of the <i>Corporations Act 2001</i>;</li> <li>(iii) services to which the <i>Bankruptcy Act 1966</i> applies;</li> <li>(iv) services arising out of any court appointed liquidation or receivership</li> </ul>
	<p><b>“Category 3 services”</b> means any services provided in Australia by a Participant, or anything done or omitted to be done by a Participant, in the performance of his, her or its occupation, which are not Category 1 services or Category 2 services</p>
	<p><b>“Damages”</b> as defined in section 4 of the Act means</p> <ul style="list-style-type: none"> <li>(a) damages awarded on a claim entailing Occupational Liability whether in satisfaction of claim, counter-claim or by way of set-off, and</li> <li>(b) costs in or in relation to proceedings with respect to (a) above 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</li> <li>(c) any interest payable on the amount of those damages or costs.</li> </ul>
	<p><b>“Fee”</b> means a payment made to a Participant in exchange for services but excludes disbursements and goods and services taxes. For the purposes of sub-clause 3.5, Fee is as calculated in accordance with that sub-clause.</p>
	<p><b>“Insurance Policy”</b> means an insurance policy that complies with By-Law CA ANZ Regulation CR 2A and section 27 of the Act.</p>
	<p><b>“Occupational Liability”</b> has the meaning given in section 4 of the Act.</p>
	<p><b>“Practice Entity Member”</b> as defined in the CA ANZ By Laws</p>
	<p><b>“Practice Entity”</b> as defined in the CA ANZ By Laws</p>
	<p><b>“Professional Standards Legislation”</b> means state and territory legislation, including:</p> <ul style="list-style-type: none"> <li>(a) <i>Professional Standards Act 1994 (NSW)</i></li> <li>(b) <i>Professional Standards Act 2003 (Vic)</i>;</li> <li>(c) <i>Professional Standards Act 2004 (Qld)</i>;</li> <li>(d) <i>Professional Standards Act 2004 (SA)</i>;</li> <li>(e) <i>Professional Standards Act 1997 (WA)</i>;</li> <li>(f) <i>Professional Standards Act 2005 (Tas)</i>;</li> <li>(g) <i>Professional Standards Act (NT)</i>; and</li> <li>(h) <i>Civil Law (Wrongs) Act 2002 (ACT)</i>.</li> </ul>



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<b>5.</b>	<b>JURISDICTION</b>
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, Tasmania and Western Australia by way of mutual recognition under the Professional Standards Legislation.
<b>6.</b>	<b>COMMENCEMENT DATE AND DURATION</b>
6.1	This Scheme will commence on the following day: (a) In New South Wales, the Northern Territory, Queensland, Western Australia and Tasmania, on the day after the date on which the instrument is published in the Gazette; (b) In Victoria, on the day that is two (2) months after the date on which the instrument is published in the Gazette; and (c) In the Australian Capital Territory and in South Australia; (i) On the date provided for in the Minister's notice in relation to the amendments, if a date is provided; or (ii) On the first day two months after the day on which notice was given, in any other case.
6.2	The Scheme will operate for and is intended to remain in force for a period of five (5) years from the date of commencement in each jurisdiction for which it is in force unless it is revoked, extended or ceases in accordance with section 32 of the Act.