

Australian Capital Territory

Civil Law (Wrongs) CPA Australia Ltd Professional Standards (Accountants) Scheme 2019 (No 1)

Disallowable instrument DI2019–284

made under the

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

1 Name of instrument

This instrument is the *Civil Law (Wrongs) CPA Australia Ltd Professional Standards (Accountants) Scheme 2019 (No 1)*.

2 Commencement

This instrument commences on 23 December 2019.

3 Notice

I give notice of the Professional Standards Council of New South Wales' approval of the attached CPA Australia Ltd Professional Standards (Accountants) Scheme.

4 Revocation

This instrument revokes *Civil Law (Wrongs) Certified Public Accountants Australia Limited Professional Standards Scheme 2017* [DI2017-310].

Gordon Ramsay MLA
Attorney-General
20 December 2019

THE CPA AUSTRALIA LTD PROFESSIONAL STANDARDS (ACCOUNTANTS) SCHEME

Professional Standards Act 1994 (NSW)

PREAMBLE

- A. CPA Australia Ltd ("**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 approval of 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 and as otherwise stated in that clause.
- 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. All participating members referred to in clause 2 of the Scheme are subject to disciplinary measures under the Constitution and By-Laws of CPA Australia and are also subject to the professional indemnity insurance requirements under the By-Laws of CPA Australia.
- G. The Scheme 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.
- 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.

THE CPA AUSTRALIA LTD PROFESSIONAL STANDARDS (ACCOUNTANTS) SCHEME

1. Occupational Association

- 1.1. The CPA Australia Ltd Professional Standards (Accountants) Scheme (the "**Scheme**") is a scheme under "the Act" of CPA Australia, Level 20, 28 Freshwater Place, Southbank Victoria 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; and
- (b) all persons to whom the Scheme applies, by virtue of the Act and the corresponding provisions of the Acts of other jurisdictions in which the Scheme applies.

(collectively "**Participants**" and each 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 written application by a Participant, 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 below.
- 2.3. All participating members referred to in this clause 2 of the Scheme are subject to disciplinary measures under the Constitution and By-Laws of CPA Australia and are also subject to the professional indemnity insurance requirements under the By-Laws of CPA Australia.

3. Limitation of Liability

- 3.1. This Scheme only affects the Occupational Liability of a participant for Damages 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 that 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, then 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.

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 which generated total annual Fee income, for the financial year immediately preceding the Relevant Time, of 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 which generated total annual Fee income, for the financial year 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 that 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 below, then 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.

3.5 The Category 2 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 which generated total annual Fee income, for the financial year immediately preceding the Relevant Time, of 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 which generated total annual Fee income, for the financial year 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 that 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 below, then 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.

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 which generated total annual Fee income, for the financial year immediately preceding the Relevant Time, of 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 which generated total annual Fee income, for the financial year 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.

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 will be determined in accordance with those provisions of the Scheme relating to Category 1 services only.

- 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 will be determined (subject to clause 3.9) in accordance with those provisions of the Scheme relating to Category 2 services only.
- 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 it exceeds the amount specified in clause 3.1. Where the amount of damages in relation to a Cause of Action exceeds the amount specified in clause 3.1 liability for those Damages will instead be limited to the amount specified in the applicable other provision of this clause 3.
- 3.13. Notwithstanding anything to the contrary contained in this Scheme, if in particular circumstances giving rise to Occupational Liability, the liability of any Participant 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 which is higher shall be the applicable cap.

4. Definitions

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

"Accounting Practice" means the activities of a member including those who provide Public Accounting Services through an Approved Practice Entity (in accordance with the requirements of By-Law 9.3 of the By-Laws).

"Act" means *Professional Standards Act 1994 (NSW)*

"Acts" means state and territory legislation other than the Act, including:

- (a) *Professional Standards Act 2003 (Vic)*;
- (b) *Professional Standards Act 2004 (Qld)*;
- (c) *Professional Standards Act 2004 (SA)*;

- (d) *Professional Standards Act 1997 (WA)*;
- (e) *Professional Standards Act 2005 (Tas)*;
- (f) *Professional Standards Act 2004 (NT)*; and
- (g) *Civil Law (Wrongs) Act 2002 (ACT)*

"Approved Practice Entity" means such entities as defined as Approved Practice Entity in By-Law 9.3 of the By-Laws.

"By – Laws" means the By-Laws of CPA Australia Limited.

"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*;
- (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 or Category 2 services.

“Cause of Action” means and includes all causes of action arising from the same source or originating cause.

"Damages" as defined in section 4 of the Act means:

- (a) damages awarded on a claim entailing Occupational Liability whether in satisfaction of a claim, counter claim or by way of set-off, and
- (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
- (c) any interest payable on the amount of those damages.

"Fee" means a payment made to a Participant in exchange for services but excludes disbursements and goods and services taxes.

"Insurance Policy" means an insurance policy that complies with By-Law 9.8 of the By-Laws and section 27 of the Act.

"Occupational Liability" has the same meaning given to it as in section 4 of the Act. .

"Public Accounting Services" means those services defined as public accounting services in the By-Laws.

“Principal(s)” for the purposes of clauses 3.3, 3.5, and 3.7 means a person(s) in a Public Accounting Practice who is affiliated with the Controlled Person within the meaning of By-Law 1.2(c) of the By-Laws.

“Public Practice Certificate” means a Public Practice Certificate issued by CPA Australia Ltd, permitting a Member to provide Public Accounting Services.

“Relevant Time” means, in respect of a liability potentially limited by the Scheme, the period from the time(s) of the act(s) or omission(s) giving rise to the liability until the date that is seven years after the last such act or omission took place.

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, Tasmania and Western Australia by way of mutual recognition under the professional standards legislation.

6. Commencement date and duration

6.1 The 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 n 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.