

Australian Capital Territory

Civil Law (Wrongs) The Institute of Public Accountants Professional Standards Scheme 2021

Disallowable instrument DI2021-296

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 2021*.

2 Commencement

This instrument commences on 1 January 2022.

3 Notice

I give notice of the Professional Standards Council of Victoria's approval of the attached Institute of Public Accountants Scheme, which has effect until 31 December 2026.

Shane Rattenbury MLA
Attorney-General
15 December 2021

Professional Standards Act 2003 (Vic)

**THE INSTITUTE OF PUBLIC ACCOUNTANTS
PROFESSIONAL STANDARDS SCHEME**

PREAMBLE

- A. The Institute of Public Accountants Ltd ("IPA") is a national occupational association.
- B. The IPA has made an application to the Professional Standards Council ("Council"), established by the Professional Standards Act 2003 (Vic) ("Act"), for approval of a scheme under the Act (Scheme).
- C. The Scheme has been prepared by the IPA 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 of the IPA who hold a current Professional Practice Certificate ("PPC"), and who are not otherwise exempted.
- 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. Subject to clause 7.1 of the Scheme, 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 provided the Council with a detailed list of Risk Management Strategies 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 to commence on 1 January 2022 and remain in force for a period of five (5) years unless it is revoked, extended or ceases in accordance with the Act.
- 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 to 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.
- L. Section 12GNA(2) of Australian Securities and Investments Commission Act 2001 (Cth); section 137(2) of Competition and Consumer Act 2010 (Cth); and section 1044B(2) of Corporations Act 2001 (Cth) provide for limited liability where a professional standards scheme is prescribed in the relevant regulation. The Scheme does not apply to limit any liability under a Commonwealth law unless it has been prescribed by the Commonwealth.

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.

1.2. The terms used in the Scheme are defined in the Scheme, including in clause 4.

2. Persons to Whom the Scheme Applies

2.1. The Scheme applies to:

(a) all IPA members and IPA Entity Members who hold a current PPC issued by the IPA;

and

(b) all persons to whom the Scheme applies, by virtue of the Act or the Corresponding Laws. (collectively "**Participants**" and each a "**Participant**")

3. Exemption

3.1. No Participant to whom the Scheme applies may be exempted from the Scheme other than a Participant who, on application to the IPA Board of Directors,¹ is able to satisfy the Board that the Participant:

(a) 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;

or

(b) would suffer financial hardship in meeting the business asset and/or professional indemnity insurance requirements to the levels required by this Scheme.

3.2. Clause 3.1 does not apply to a Participant who is a Participant by virtue of ss. 20, 21 or 22 of the Act or the equivalent provisions of the Corresponding Laws.

4. Definitions

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

"Act" means the Professional Standards Act 2003 (Vic).

"By-laws" means the IPA By-laws.

"Corresponding Laws" means the state and territory professional standards legislation corresponding with the Act (other than the Act itself) as follows:

(a) *Professional Standards Act 1994* (NSW);

(b) *Professional Standards Act 2004* (Qld);

¹ Details on how the IPA Board of Directors manages membership can be found in the IPA's Constitution, By-laws and various IPA Membership Policies.

- (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);

"Council" means the Professional Standards Council, established by the *Professional Standards Act 2003* (Vic).

"Damages" as defined in s.4 of the Act means:

- (a) damages awarded in respect of a claim, 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.

"Fee" means a payment made to a Participant in exchange for services but excludes disbursements and goods and services tax. For the purpose of sub-clause 6.3 Fee is calculated in accordance with sub-clause 6.3.

"Insurance Policy" means an insurance policy that complies with the By-laws and the Act.

"IPA Entity Members" are entities permitted to join the IPA and hold an IPA PPC in accordance with By-laws and the relevant Membership Policy.

"Occupational Liability" has the meaning given in s.4 of the Act.

"Professional Practice Certificate" or **"PPC"** means a certificate issued to an IPA member under the By-laws. A 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 for obtaining a PPC is governed by the IPA By-laws.

"Relevant Time" is the time when an act or omission that has given rise to Occupational Liability occurred.

"Risk Management Strategies" are those 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 disciplinary system, quality assurance and audit, and risk management.

5. Jurisdiction

5.1. The Scheme applies in Victoria in accordance with the Act.

5.2. In addition to Victoria, the Scheme is intended to operate in the Australian Capital Territory, New South Wales, 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 , 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 adopt 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.

6. Limitation of Liability

6.1. For the purposes of s.28 of the Act, this Scheme only affects a liability for Damages arising from a single cause of action to the extent to which the liability results in Damages exceeding \$2,000,000.

6.2. If a Participant who is, or was at the time of the act or omission giving rise to Occupational Liability, a Participant to whom or to which the Scheme applies or applied, against whom a proceeding relating to Occupational Liability is brought, is able to satisfy the Court that such Participant has the benefit of an Insurance Policy:

(a) which insures the Participant against the Occupational Liability to which the cause of action relates; and

(b) under which the amount payable in respect of that Occupational Liability is not less than the amount of the applicable Monetary Ceiling specified in clause 6.3 of this Scheme (“the **Monetary Ceiling**”) applicable to the Participant,

then the Participant is not liable for Damages in relation to that cause of action above the Monetary Ceiling specified in clause 6.3.

6.3. The Monetary Ceiling (maximum amount of liability) for the purposes of the Scheme is the applicable amount specified in this table:

Group	Monetary Ceiling
Participants who at the Relevant Time generated annual Fee income (excluding goods and services tax) of less than \$10 million for the financial year immediately preceding the Relevant Time	\$2 million
Participants who at the Relevant Time generated annual Fee income (excluding goods and services tax) of \$10 million or more for the financial year immediately preceding the Relevant Time	\$10 million

6.4. 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 Participant to whom the Scheme applied at the time when the act or omission occurred.

6.5. Notwithstanding anything to the contrary contained in this Scheme if, in particular circumstances giving rise to Occupational Liability, the liability of any Participant 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 that Participant arising from such circumstances which is higher shall be the applicable cap.

7. Conferral of Discretionary Authority

- 7.1. Pursuant to s.26 of the Act, this Scheme confers on the IPA a discretionary authority to specify, on application by a Participant to whom the Scheme applies, a higher Monetary Ceiling (maximum amount of liability) not exceeding \$75 million in relation to that Participant either in all cases or in any specified case or class of case.

8. Commencement and Duration

- 8.1. The Scheme will commence on the following day:

(a) In Victoria, New South Wales, the Northern Territory, Queensland, Western Australia and Tasmania, on 1 January 2022;

(b) In the Australian Capital Territory and South Australia:

- i. on the date provided for in the Minister's notice in relation to the Scheme, 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

- 8.2. The Scheme will operate, and is intended to remain in force, for a period of five years from the date of commencement unless it is revoked, is extended or ceases in accordance with s. 34 of the Act.

- 8.3. The Scheme will cease to operate in a jurisdiction referred to in clause 5.2 if it is revoked or otherwise ceases in accordance with the Corresponding Law of that jurisdiction.