

Australian Capital Territory

# **Civil Law (Wrongs) Approved Institute of Chartered Accountants in Australia (ACT) Scheme 2008 (No 1)**

**Disallowable instrument DI2008–7**

made under the

**Civil Law (Wrongs) Act 2002, section 4.10, Schedule 4 (Approval of schemes by Minister)**

## **EXPLANATORY STATEMENT**

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Professional Standards Legislation (PSL) was developed on a national basis following the insurance crisis of 2002. PSL which has been passed by all States and Territories involves a trade-off whereby professionals have their negligence liability for economic loss capped in return for a commitment to higher standards of service delivery, monitored by a professional standards council operating on a national basis.

In 2004, the ACT passed its own PSL, which was incorporated as schedule 4 of the *Civil Law (Wrongs) Act 2002* (the Act).

Section 4.10, schedule 4 of the Act provides that the Minister may, in writing, approve a scheme submitted by the ACT Professional Standards Council.

The Institute of Chartered Accountants in Australia (ICAA) is a national occupational association which trains, governs and supports Australia's Chartered Accountants. The ICAA prepared the Institute of Chartered Accountants in Australia (ACT) Scheme (the ICAA Scheme) for the purposes of limiting occupational liability to the extent to which such liability may be limited under the Act. The ACT Professional Standards Council (ACT Council) submitted the ICAA Scheme to the Minister in accordance with the Act.

The ICAA Scheme submitted by the ACT Council has been approved by the Minister and the instrument evidences the approved ICAA Scheme. The ICAA Scheme will remain in force for a period of 5 years from its commencement unless the scheme is revoked, extended, or its operation ceases in accordance with the Act. The ICAA Scheme commences on 1 February 2008.

A summary of the ICAA Scheme is attached for further information.

# THE INSTITUTE OF CHARTERED ACCOUNTANTS IN AUSTRALIA (ACT) SCHEME SUMMARY

## **The Institute of Chartered Accountants in Australia**

The Institute of Chartered Accountants in Australia is the professional body that trains, governs and supports Australia's Chartered Accountants. It is a national association constituted by Royal Charter in 1928. The Institute now operates under a Supplemental Royal Charter (as amended from time to time) granted by the Governor-General on behalf of Queen Elizabeth II.

## **Jurisdictions where scheme is to apply**

The Institute of Chartered Accountants in Australia (the Institute) is applying to the ACT Professional Standards Council for the approval of a scheme under the Civil Law (Wrongs) Act 2002 (ACT). It is also the intention of the Institute that this scheme be prescribed by the Commonwealth under the Treasury Legislation Amendment [Professional Standards] Act 2004.

## **Participating members of the scheme**

The eligible members of the proposed Institute Scheme will be:

- Members of the Institute holding Certificates of Public Practice (CPP) other than financial services licensees;
- Affiliate members of the Institute other than financial services licensees;
- Practice entity members of the Institute other than financial services licensees;
- Chartered Accountant employees of members with CPP; and
- Partners of the CPP holder who are not eligible for membership of the Institute.

Nationally these participating members of the scheme make up almost 50% of the membership of the Institute.

## **Accountancy services**

Accountancy encompasses a broad range of services and functions. Hence, the term "accountancy" encompasses, but is not limited to, the following areas and activities:

Accounting, auditing, management consulting, taxation, financial management, forensic accounting, risk management, corporate advisory and insolvency services.

## **Framework of the scheme**

As set out in professional standards legislation, the liability of participating members of the proposed scheme is to be limited on the basis of insurance, business assets or a combination of insurance and business assets.

The proposed Institute Scheme (SA) provides for a minimum cap of:

- \$500k in relation to an act or omission occurring on or before 30 June 2008 where a reasonable charge for the service is \$50k or less;
- \$750k in relation to an act or omission occurring between 1 July 2008 to 30 June 2009 where a reasonable charge for the service is \$75k or less; and
- \$1m in relation to an act or omission occurring after 1 July 2009 where a reasonable charge for the service is \$100k or less.

The limitation amount is calculated by applying a multiple of 10 to the reasonable charge for service over \$100,000, up to the monetary ceiling of \$75 million in the case of Category 1 engagements. There is to be no flexibility in relation to the monetary ceiling for Category 1 engagements.

In relation to Category 2 services, the limitation amount is calculated by applying a multiple of 10 to the highest fee received in any single year over a three year period where that fee is over \$100,000. In the case of Category 2 engagements the monetary ceiling is \$20 million, with provision for flexibility on the basis of the application of the discretion of the Institute. Where the participating member has less than three full year's engagement fee history, the monetary ceiling is to be calculated by applying a multiple of ten to either the full one or two year's fee history available. Where the participating member has no fee history, the monetary ceiling for the Category 2 services is to be the minimum cap.

In relation to Category 3 services, the limitation amount is calculated by applying a multiple of 10 to the reasonable charge for service over \$100,000, up to the monetary ceiling of \$20 million. As in the case of Category 2 services, the scheme provides the capacity for flexibility on the basis of the application of the discretion of the Institute for Category 3 services.

These engagements are defined in the scheme as:

“Category 1 services” means:

- all services required by Australian law to be provided only by a registered company auditor;
- all other services provided by a registered company auditor in his or her capacity as auditor; and
- All services the deliverables from which:
  - will be used in determining the nature, timing and extent of audit procedures in the context of an audit of a financial report; or
  - will be incorporated into the financial report of an entity; or
  - are required by law or regulation to be filed with a regulator (excluding returns signed by a registered tax agent);

“Category 2 services” means:

- services to which Chapter 5 or Chapter 5A of the Corporations Act applies;
- services provided pursuant to s.233(2) of the Corporations Act;
- services to which the Bankruptcy Act 1966 applies; and
- services arising out of any court appointed liquidation or receivership

“Category 3 services” means any service provided by a participating member in the performance of his or her occupation, which is not a Category 1 service or Category 2 service.”

## **Institute's obligations required of participating members**

Members of the Institute who will be participating members of the scheme agree to be bound by the Institute's supplemental Charter, By-laws and Regulations prescribing any ruling of the standards of practice and professional conduct, including the technical standards, as required by the Institute to be observed including:

For members generally

- to comply with the Code of Ethics for Professional Accountants, Standards issued by the APES Board and Miscellaneous Professional Statements; and
- to undertake 120 hours per three year period of continuing professional education in an area relevant to the member's area of practice.

For CPP holders

- to hold professional indemnity insurance as set out in the Appendix to Regulation 4;
- to undertake 40% of the minimum CPE requirement in the area of any specialty represented by the holding of a statutory registration;
- To undergo the Institute's quality review program; and
- To comply with the Institute's Public Practice requirements set out in Regulation 9.

## **Summary of risk management objectives**

The Institute has developed a risk management plan to be implemented over a five year period. The key risk management strategies to be implemented are:

- 1) To set the benchmark for the highest ethical and educational standards for accountants by recruiting, educating and training a body of members skilled in the theory and practice of accountancy in all its aspects;
- 2) To set the benchmark for the highest ethical and educational standards by prescribing high standards of practice and professional conduct for its members, non-member practice entities and candidates and maintaining the observance of such standards;
- 3) To preserve at all times the professional independence of accountants in whatever capacities they may be serving;
- 4) To prescribe disciplinary procedures and sanctions, to exercise disciplinary powers and to impose sanctions for the better observance of the standards of practice and professional conduct of the Institute by members, non-member practice entities and candidates;
- 5) To recruit, educate and train a body of members skilled in the theory and practice of accountancy in all its aspects through the provision of Continuing Professional Education; and
- 6) To do all such things in the area of risk management as may advance the profession of accountancy, whether in relation to the practice of public accountants, industry, commerce, education, the public service or otherwise.

Further information regarding the Institute of Chartered Accountants is available on our website at [www.charteredaccountants.com.au](http://www.charteredaccountants.com.au).