

Australian Capital Territory

Civil Law (Wrongs) Approved CPA Australia Ltd (ACT) Scheme 2008 (No 1)

Disallowable instrument DI2008–8

made under the

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

EXPLANATORY STATEMENT

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.

CPA Australia (CPAA) is an occupational association for accountants who meet CPAA's educational and professional requirements. The CPAA prepared the CPA Australia Ltd (ACT) Scheme (the CPAA 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 CPAA Scheme to the Minister in accordance with the Act.

The CPAA Scheme submitted by the ACT Council has been approved by the Minister and the instrument evidences the approved CPAA Scheme. The CPAA Scheme will remain in force for a period of 5 years from its commencement unless the scheme is revoked, extended, or its operation ceases as specified by section 34 of the Act. The CPAA Scheme commences on 1 February 2008.

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

SUMMARY OF THE CPA AUSTRALIA LIMITED (AUSTRALIAN CAPITAL TERRITORY) SCHEME

Occupational Association

CPA Australia (Australian Capital Territory) scheme ("**the scheme**") is a scheme prepared by CPA Australia Limited ("**CPA Australia**") under the *Civil Law (Wrongs) Act 2002 (ACT)* ("**the Act**").

CPA Australia is a national professional association whose address 385 Bourke Street, Melbourne, VICTORIA 3000. CPA Australia's website is www.cpaaustralia.com.au.

CPA Australia is an occupational association for accountants who meet CPA Australia's educational and professional requirements, and is one of Australia's oldest and largest representative professional bodies. Limited by guarantee, it was incorporated in 1952. CPA Australia's affairs are managed through the Board of Directors, who manage and control the Divisions within their policy guidelines.

CPA Australia currently has approximately 112,000 members, of which about 2,732 represent the Australian Capital Territory. Of this, approximately 71 Australian Capital Territory members hold a public practice certificate.

Nature of the Liability to be Limited

The scheme operates for the purpose of improving the occupational standards of accountants, and to protect the consumers of their services. It also limits the civil liability of persons to whom the scheme applies. The scheme applies to all CPA Australia members who hold a current Public Practice Certificate issued by CPA Australia and affiliate members of CPA Australia other than financial services licensees, all practice entity members other than financial services licensees and to all persons to whom the Scheme applied at the time of the relevant act or omission on which a cause of action for damages for occupational liability is founded.

The liability limited by the scheme includes, to the extent permitted by the Act, all civil liability arising (in tort, contract or otherwise) directly or vicariously from anything done or omitted by any person to whom the scheme applies in acting in the performance of his or her occupation. The scheme does not apply to liability for damages arising from any matter to which the Act does not apply, including but not limited to, liability for damages arising from death of, or personal injury to, a person, anything done or omitted to be done by a legal practitioner in acting for a client in a personal injury claim, a breach of trust, fraud or dishonesty.

The scheme does not affect liability for damages which are below:

- (a) \$500,000 where the act or omission giving rise to the cause of action occurred on or before 30 June 2008;
- (b) \$750,000 where the act or omission giving rise to the cause of action occurred between 1 July 2008 and 30 June 2009; and
- (c) \$1 million where the act or omission giving rise to the cause of action occurred after 1 July 2009.

Liability is limited by reference to the type of services provided by the member, as detailed in clauses 3.2 to 3.9 of the Scheme.

No person to whom the Scheme applies may choose not to be subject to the Scheme, provided that CPA Australia may, on application by a person, exempt the person 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 the Scheme.

Standards of Insurance

A member to whom the scheme applies must have the benefit of an insurance policy which complies with the standards set from time to time by CPA Australia in accordance with section 4.23 of Schedule 4 of the Act. The amount payable under the insurance policy in respect of occupational liability is to be not less than the member's limitation of liability.

Risk Management

All CPA Australia members offering services to the public, are bound by the CPA Australia Code of Ethics for Professional Accountants and other professional, ethical and quality assurance requirements set out in CPA Australia's Risk Management Statement RMS1 and must hold a current Public Practice Certificate.

CPA Australia imposes additional responsibilities on members taking up public practice. As a CPA Australia Public Practice Certificate holder, members must complete the CPA Australia Public Practice Program. Relevant knowledge must be maintained and professional indemnity insurance must be held.

Membership levels and their minimum requirements

At the forefront of the risk management strategies of CPA Australia are the entry requirements set for membership. Applicants for membership of CPA Australia must satisfy stringent educational and experience pre-requisites. Members must possess a recognised Bachelor or Master degree from a CPA Australia accredited university and have completed the relevant post-graduate educational requirements of CPA Australia.

Compliance with Continuing Professional Development Requirements

CPA Australia members are required to keep up-to-date on the many aspects of accounting and business today. The Continuing Professional Development Program ("CPD") helps to ensure that the professional knowledge of all CPA Australia members is current. All members must undertake at least 120 hours CPD per triennium.

Mandatory Quality Assurance Reviews for members in Public Practice

All CPA Australia members who hold a Public Practice Certificate must comply with CPA Australia quality assurance programs.

Mandatory PI Insurance and monitoring of claims

Participating members, as defined in clause 2.1 of the scheme, are required to maintain a current professional indemnity (PI) insurance policy that meets the standards specified from time-to-time by CPA Australia. Participating members are required to take measures to ensure that the levels of PI insurance they maintain meet the required standards.

CPA Australia, with assistance from indemnity insurance brokers, will regularly review and monitor liability claims to identify areas for improvement in order to reduce claims against scheme members.

Complaints and discipline

Members to whom the scheme applies are subject to the complaints and discipline systems administered by CPA Australia under the Constitution and By-Laws. CPA Australia has complaints and discipline procedures in respect of members who have acted contrary to CPA Australia's general or specific requirements. These procedures, including the imposition of sanctions and penalties, are regularly reviewed to reflect community expectations and changing commercial circumstances. Investigations may be commenced as a result of a complaint received from any member of the public, or from a fellow member, or by CPA Australia itself on its own initiative.

Scheme Management

The management of the scheme is undertaken by CPA Australia through a Scheme Administration Committee ("SAC"). CPA Australia's SAC will also review the outcomes of disciplinary matters to determine trends in the nature of complaints and put in place remedial actions, such as special CPD seminars, to reduce the incidence of future complaints when required. Participating members will be required to confirm that they have complied with the requirements of the scheme in such manner as may be determined by the SAC. A breach of the requirements of the scheme by a participating member may be referred by the SAC to the professional conduct officer of CPA Australia.