

# Scheme instrument

Professional Standards Act 1994 (NSW)

## The Chartered Accountants Australia and New Zealand Professional Standards Scheme

### Preamble

- A. Chartered Accountants Australia and New Zealand (CA ANZ) is an occupational association for the purposes of the Professional Standards Act 1994 (NSW) (the Act).
- B. The scheme is prepared by CA ANZ for the purposes of limiting occupational liability to the extent to which such liability may be limited under the Act.
- C. The scheme applies to all participating members referred to in clause 2.1 below, in respect of services provided in Australia.
- A. The scheme will have force in New South Wales, 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. To the extent that the scheme applies to limit liability in the other jurisdictions, it is subject to the professional standards of those jurisdictions.
- B. CA ANZ has furnished the Council with a detailed list of the risk management strategies to be implemented in respect of its members, and the means by which those strategies are to be implemented.
- C. CA ANZ has furnished the Council with details of its insurance standards and professional indemnity insurance claims monitoring process. CA ANZ will not amend these insurance standards while the scheme is in force without prior approval of the Council.
- D. CA ANZ has advised its members to whom the scheme applies that they must have the benefit of a professional indemnity policy that complies with the association's insurance standards and that they remain liable for the amount of any difference between the amount payable to a plaintiff under the policy and the monetary ceiling specified in the scheme.
- D. CA ANZ has furnished the Council with details of its complaints system and discipline system.
- E. CA ANZ and its members to whom the scheme applies have undertaken to comply with all reporting obligations associated with the scheme, in furtherance of the statutory objects of improvement of the occupational standards of its members, and protection of the consumers of such members' services.
- E. CA ANZ has undertaken to remit all fees payable under Professional Standards Act 1994 (NSW) to the Council as and when these become due.
- F. The scheme is intended to commence on 13 July 2025 and remain in force for 5 years from its commencement unless, prior to that time, it is revoked, its operation ceases, or it is extended.
- G. Sections 12GNA of the Australian Securities and Investments Commission Act 2001 (Cth), 137(2) of the Competition and Consumer Act 2010 (Cth), and 1044B(2) of the 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 under regulations by the Commonwealth.

# The Chartered Accountants Australia and New Zealand professional standards scheme

## 1. Occupational association

1.1 The Chartered Accountants Australia and New Zealand Professional Standards Scheme (the scheme) is a scheme under the Professional Standards Act 1994 (NSW) (the Act) prepared by Chartered Accountants Australia and New Zealand (CA ANZ) whose business address is: 33 Erskine Street, Sydney, NSW 2000.

## 2. Persons to whom the scheme applies

2.1 The scheme applies to:

- (a) all Australian resident CA ANZ members who:
  - (i) hold a current Certificate of Public Practice;
  - (ii) are Affiliate Members; or
  - (iii) are incorporated Practice Entity Members;
- (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 "Participants" and each a "Participant").

2.2 A person referred to in clause 2.1(a) may, on application, be exempted from participation in 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 4 below. The exemption will take effect from the date specified by CA ANZ.

## 3. Jurisdiction

3.1 The scheme applies in New South Wales.

3.2 In addition to the jurisdiction listed in 3.1, the scheme is intended to operate in Australian Capital Territory, the Northern Territory of Australia, Victoria, 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 that legislation ("the corresponding laws"), 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 include references to 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.

## 4. Limitation of liability

4.1 This scheme only affects the liability for damages arising from a single cause of action to the extent to which the liability results in damages exceeding \$2,000,000.

4.2 If a person who is, or was, at the time of the act or omission giving rise to occupational liability, a person to whom the scheme applies, or applied, and against whom a proceeding relating to occupational liability is brought, is able to satisfy the court that such person has the benefit of an insurance policy:

- a) of a kind which complies with the standards determined by CA ANZ;
- b) insuring such person against the occupational liability to which the cause of action relates; and
- c) under which the amount payable in respect of that occupational liability is not less than the applicable monetary ceiling specified in clause 4.3 of this scheme;

then that person is not liable in damages in relation to that cause of action above the monetary ceiling specified in clause 4.3 of this scheme.

4.3 The monetary ceilings are as follows:

### **MONETARY CEILING FOR CATEGORY 1 SERVICES**

The Category 1 monetary ceiling is:

- (a) \$2 million, where the claim arises from services in respect of which the Fee is less than \$100,000; OR
- (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
- (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
- (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
- (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
- (f) \$75 million where the claim arises from services in respect of which the Fee is \$2,500,000 or more.

### **MONETARY CEILING FOR CATEGORY 2 SERVICES**

The Category 2 monetary ceiling is:

- (a) \$2 million where the claim arises from services in respect of which the Fee is less than \$100,000; OR
- (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
- (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
- (d) \$20 million where the claim arises from services in respect of which the Fee is \$500,000 or more.

For the purposes of the Monetary ceiling for Category 2 services only, the "Fee" means:

- (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:

- (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
  - (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
  - (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
- (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.

### **MONETARY CEILING FOR CATEGORY 3 SERVICES**

The Category 3 monetary ceiling is:

- (a) \$2 million where the claim arises from services in respect of which the Fee is less than \$100,000; OR
  - (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
  - (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
  - (d) \$20 million where the claim arises from services in respect of which the Fee is \$500,000 or more.
- 4.4 Clause 4.2 does not limit the amount of damages to which a person to whom the scheme applies is liable if the amount is less than the amount specified for the purpose in this scheme in relation to a person to whom the scheme applies.
- 4.5 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 person to whom the scheme applied at the time the act or omission occurred.
- 4.6 Notwithstanding anything to the contrary contained in this scheme if, in particular circumstances giving rise to occupational liability, the liability of any person 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 such person arising from such circumstances which is higher shall be the applicable cap.

## **5. Conferral of discretionary authority**

- 5.1 CA ANZ has discretionary authority, on application by a person referred to in clause 2.1, to specify in relation to that person a higher maximum amount of liability not exceeding \$75 million than would otherwise apply under the scheme, in all cases or in any specified case or class of case.

## 6. Commencement and duration

### 6.1 The scheme will commence:

- 6.1.1 in New South Wales, the Northern Territory, Tasmania, Western Australia, Victoria, and Queensland, on 13 July 2025;
- 6.1.2 in the Australian Capital Territory and in South Australia, on this same date, or such other later date, provided the date is specified in the relevant Minister's notice in relation to the scheme; or
- 6.1.3 in all other cases, subject to the statutory provisions of each applicable jurisdiction.

### 6.2 The scheme will be in force in all applicable jurisdictions for 5 years from the date of its commencement in New South Wales.

### 6.3 Clause 6.2 is subject to the provisions of each jurisdiction in relation to the revocation, extension, or cessation of a scheme.

## 7. Definitions

### 7.1 Relevant definitions for the purpose of this scheme are as follows:

“**Act**” means the Professional Standards Act 1994 (NSW).

“**Affiliate Member**” has the meaning given in the CA ANZ By-Laws.

“**By-Laws**” means the By-Laws of CA ANZ as amended from time to time.

“**CA ANZ Charter**” means the CA ANZ Supplemental Royal Charter as amended from time to time.

“**Category 1 services**” means the following services provided in Australia:

- (i) all *Corporations Act 2001* 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);
- (ii) all audits or reviews performed by a registered company auditor for the purposes of prudential reporting to the Australian Prudential Regulation Authority;
- (iii) all audits of self-managed superannuation funds under section 35C of the *Superannuation Industry (Supervision) Act 1993*;
- (iv) all other audits of financial statements which are filed with a regulator, and audit procedures performed on financial information which forms part of a financial statement filed with a regulator.

“**Category 2 services**” means the following services provided in Australia:

- (i) services to which Chapter 5 or Chapter 5A of the *Corporations Act 2001* applies;
- (ii) services provided pursuant to s.233(2) of the *Corporations Act 2001*;
- (iii) services to which the *Bankruptcy Act 1966* applies;

(iv) services arising out of any court appointed liquidation or receivership

**“Category 3 services”** 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.

**“Certificate of Public Practice”** means a certificate issued to a CA ANZ member under By-Law 34 in accordance with CA ANZ Regulation CR2, ‘Certificates of Public Practice’.

**“corresponding laws”** means:

- (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 (NT); and
- (g) Civil Law (Wrongs) Act 2002 (ACT).

**“court”** has the same meaning as it has in the Act.

**“damages”** has the same meaning as it has in the Act.

**“Fee”** means a payment made to a Participant in exchange for services but excludes disbursements and goods and services taxes. For the purposes of clause 4.3 (monetary ceiling for Category 2 services), any Fee is to be calculated in accordance with that sub-clause.

**“Insurance Policy”** means an insurance policy that complies with By-Laws, CA ANZ Regulation CR 2A and section 27 of the Act.

**“occupational liability”** has the same meaning as it has in the Act.

**“person”** means an individual or a body corporate as the context requires.

**“Practice Entity”** has the meaning given in the CA ANZ By-Laws.

**“Practice Entity Member”** has the meaning given in the CA ANZ By-Laws.