Professional Standards Act 1994 (NSW)
CHARTERED ACCOUNTANTS AUSTRALIA AND NEW ZEALAND PROFESSIONAL STANDARDS SCHEME (NSW)

PREAMBLE

A. Chartered Accountants Australia and New Zealand ("CA ANZ") is a national occupational association.

B. CA ANZ has applied to the Professional Standards Council, appointed under the Professional Standards Act 1994 (NSW) ("the Act"), for approval of a scheme under the Act, as set out in this document (the Scheme).

C. The Scheme has been prepared by CA ANZ 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 referred to in clause 2.1 below, in respect of services provided in Australia. The Scheme will not apply to services provided by participating members in New Zealand, or to services provided in Australia by a member of the New Zealand Institute of Chartered Accountants who does not hold a current Australian Certificate of Public Practice.

E. CA ANZ has provided the Professional Standards Council with a detailed list of 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 2.1 of the scheme are subject to disciplinary measures under the By-laws of CA ANZ, and are also subject to the professional indemnity insurance requirements of Regulation R4A of CA ANZ's regulations.

G. The Scheme is intended to commence on 8 October 2014 and remain in force for a period of 5 years (unless it is revoked, extended or ceases in accordance with section 32 of the Act).

CHARTERED ACCOUNTANTS AUSTRALIA AND NEW ZEALAND PROFESSIONAL STANDARDS SCHEME (NSW)

1. OCCUPATIONAL ASSOCIATION

1.1 This Scheme is a scheme under the Act prepared by CA ANZ, whose business address is 33 Erskine Street, Sydney NSW 2000.

1.2 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 CA ANZ members who hold a current Australian Certificate of Public Practice issued by CA ANZ (for the avoidance of doubt, the Scheme will only apply to a CA ANZ member who is also a member of the New Zealand Institute of Chartered Accountants, if the member holds a current Australian Certificate of Public Practice), other than holders of an Australian financial services licence and their authorised representatives and employees, not being limited licensees, as defined in the Corporations Regulations 2001 as amended, their authorised representatives or employees; and

(b) all affiliate members of CA ANZ; and

(c) all practice entity members of CA ANZ other than holders of an Australian financial services licence and their authorised representatives and employees, not being limited licensees, as defined in the Corporations Regulations 2001 as amended, their authorised representatives or employees; and

(d) all persons (including persons in categories (a), (b) and (c) above) 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[1], whether or not the Scheme would otherwise still apply to those persons

(collectively, “Participants”, and each, a "Participant").

2.2 No Participant to whom the Scheme applies may choose not to be subject to the Scheme, provided that CA ANZ may, on application by a Participant, exempt the Participant from the Scheme if CA ANZ is satisfied that he or she would suffer financial hardship in obtaining professional indemnity insurance to the levels set out in clause 3.1 below.

3. LIMITATION OF LIABILITY

3.1 The Scheme only limits the liability of a Participant for damages arising from a claim to the extent to which the liability results in damages exceeding $2 million.

LIMITATION OF LIABILITY FOR CATEGORY 1 SERVICES

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 of (a), (b) or (c) below, the Participant is not liable in damages in relation to that claim above the applicable monetary ceiling specified in clause 3.3:

(a) the Participant has the benefit of an insurance policy insuring the Participant against that occupational liability, and the amount payable under the insurance policy in respect of the occupational liability relating to that claim (including any amount payable by the Participant by way of excess under or in relation to the policy) is not less than the amount of the Category 1 monetary ceiling specified in clause 3.3 below;

OR

(b) the Participant has business assets the net current market value of which is not less than the amount of the Category 1 monetary ceiling;

OR

(c) the Participant has business assets and the benefit of an insurance policy insuring the Participant against that occupational liability, and the net current market value of the assets and the amount payable under the insurance policy in respect of the occupational liability relating to that claim (including any amount payable by the Participant by way of excess under or in relation to the policy), if combined, would total an amount that is not less than the amount of the Category 1 monetary ceiling.

3.3 The Category 1 monetary ceiling is:

(a) $2 million, where the claim arises from a service in respect of which the fee is less than $100,000;

OR

(b) $5 million where the claim arises from a service in respect of which the fee is $100,000

1 Sections 18 and 19 of the Act provide that if the scheme applies to a body corporate or a person, it also applies to each officer of the body corporate and to each partner and employee of the person, provided that if the officer, partner or employee is entitled to be a member of the same occupational association as the body corporate or person, but is not a member, the scheme does not apply to that officer, partner or employee. Section 20 provides that the scheme will also apply to any associated persons who are prescribed by regulations.

or more, but less than $300,000;

OR

(c) $10 million where the claim arises from a service 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 a service 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 a service 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 a service in respect of which the fee is $2,500,000 or more.

LIMITATION OF LIABILITY FOR CATEGORY 2 SERVICES

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 of (a), (b), or (c) below, the Participant is not liable in damages in relation to that claim above the monetary ceiling specified in clause 3.5:

(a) the Participant has the benefit of an insurance policy insuring the Participant against that occupational liability, and the amount payable under the insurance policy in respect of the occupational liability relating to that claim (including any amount payable by the Participant by way of excess under or in relation to the policy) is not less than the amount of the Category 2 monetary ceiling specified in clause 3.5;

OR

(b) the Participant has business assets the net current market value of which is not less than the amount of the Category 2 monetary ceiling specified in clause 3.5;

OR

(c) the Participant has business assets and the benefit of an insurance policy insuring the Participant against that occupational liability, and the net current market value of the assets and the amount payable under the insurance policy in respect of the occupational liability relating to that claim (including any amount payable by the Participant by way of excess under or in relation to the policy), if combined, would total an amount that is not less than the amount of the Category 2 monetary ceiling specified in clause 3.5.

3.5 The Category 2 monetary ceiling applicable to Participants is:

(a) $2 million, where the relevant fee is less than $100,000;

OR

(b) $5 million, where the relevant fee is $100,000 or more, but less than $300,000;

OR

(c) $10 million, where the relevant fee is $300,000 or more, but less than $500,000;

OR

(d) $20 million where the relevant fee is $500,000 or more.

For the purposes of this clause, the relevant fee is:

(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 of or a part of the practice entity) in respect of services provided in a single financial year pursuant to a contract for the provision of Category 2 services or pursuant to or in the course of an appointment for, or which requires, the provision of Category 2 services:

(i) over the three full financial years immediately prior to the financial year in which the Participant commences to provide 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' Category 2 services fee history immediately prior to the financial year in which the Participant commences to provide the Category 2 services which are the subject of the claim against the Participant, over the two full financial years or (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 commences to provide 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 commences to provide the Category 2 services which are the subject of the claim against the Participant, the amount specified in clause 3.1.

LIMITATION OF LIABILITY FOR CATEGORY 3 SERVICES

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 of (a), (b), or (c) below, the Participant is not liable in damages in relation to that claim above the Category 3 monetary ceiling specified in clause 3.7:

(a) the Participant has the benefit of an insurance policy insuring the Participant against that occupational liability, and the amount payable under the insurance policy in respect of the occupational liability relating to that claim (including any amount payable by the Participant by way of excess under or in relation to the policy) is not less than the amount of the Category 3 monetary ceiling specified in clause 3.7;

OR

(b) the Participant has business assets the net current market value of which is not less than the amount of the Category 3 monetary ceiling specified in clause 3.7;

OR

(c) the Participant has business assets and the benefit of an insurance policy insuring the Participant against that occupational liability, and the net current market value of the assets and the amount payable under the insurance policy in respect of the occupational liability relating to that claim (including any amount payable by the Participant by way of excess under or in relation to the policy), if combined, would total an amount that is not less than the amount of the Category 3 monetary ceiling specified in clause 3.7

3.7 The Category 3 monetary ceiling applicable to Participants is:

(a) $2 million, where the claim arises from a service in respect of which the fee is less than $100,000;

OR

(b) $5million where the claim arises from a service in respect of which the fee is greater than $100,000 or more, but less than $300,000;

OR

(c) $10 million where the claim arises from a service 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 a service in respect of which the fee is $500,000 or more.

GENERAL

3.8 Pursuant to section 24(1)(b) of the Act, this Scheme confers on CA ANZ a discretionary authority to specify, on application by a Participant, 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, where the fee for the service or services is, or is reasonably expected to be, $2 million or greater. The higher maximum amount of liability will apply if CA ANZ exercises its discretion and approves the higher maximum amount of liability prior to the Participant beginning to provide the relevant services.

3.9 In circumstances where a proceeding is brought against a Participant relating to occupational liability in connection with 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 the 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, namely clauses 3.2 and 3.3.

3.10 In circumstances where a proceeding is brought against a Participant relating to occupational liability in connection with a combination of Category 2 services and Category 3 services, the participant's liability under this Scheme for damages in respect of the occupational liability in excess of the applicable amount specified in clause 3.1 brought against it will be determined in accordance with those provisions of the Scheme relating to Category 2 services only, namely clauses 3.4 and 3.5.

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 the damages exceed the applicable amount specified in clause 3.1. Where the amount of damages in relation to a claim exceeds the applicable amount specified in clause 3.1 but the damages which may be awarded as determined by this Scheme are equal to or less than the applicable amount specified in clause 3.1, liability for those damages will instead be limited to the applicable amount specified in clause 3.1.

4. DEFINITIONS

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

"Category 1 services" means the following services provided in Australia:

(i) all Corporations Act 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 the following services provided in Australia: any services provided by a Participant in the performance of his, her or its occupation, which are not Category 1 services or Category 2 services.

"occupational liability" has the meaning given in the Act.