

**This scheme commenced on 9 October 1997 and
ceased on 7 October 2001 and is now an archived
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**THE ACCOUNTANTS SCHEME
*Professional Standards Act 1994 (NSW)***

Preamble

Occupational Associations

The Accountants' Limitation of Liability Scheme is a scheme applying separately in respect of The Institute of Chartered Accountants in Australia (ICAA) and CPA Australia. They are national professional associations whose details are as follows:

The Institute of Chartered Accountants in Australia (ICAA)
Level 14
37 York Street
Sydney NSW 2000
And

CPA Australia
Level 287
385 Bourke St
Melbourne VIC 3000

The Accountants' Limitation of Liability Scheme limits the occupational liability of participating members of the Institute of Chartered Accountants and CPA Australia who provide services to the public within their professional competencies and any other person to whom the Scheme applies by virtue of sections 18, 19 and under the Regulations prescribed for the purpose of section 29(4) of the Professional Standards Act.

ICAA

The Institute of Chartered Accountants in Australia was constituted by Royal Charter in 1928. The ICAA now operates under a Supplemental Royal Charter (as amended from time to time) granted by the Governor-General on behalf of Queen Elizabeth II in 1988.

The ICAA has in excess of 11,000 members in New South Wales.

The ICAA is governed by a National Council comprising representatives nominated by the State Councils. The principal office bearers of the ICAA are the President, Deputy President, and Vice-President and Treasurer, who are elected annually. Between the twice-annual meetings of the National Council, an Executive Committee elected by the Council oversees the ICAA's affairs. State Branches are governed by their respective State Councils, elected by and from the members of the ICAA.

The Principal Objects of the ICAA, as recorded within the 1988 Supplemental Royal Charter, are:

- (a) to advance the theory and practice of accountancy in all its aspects;
- (b) to recruit, educate and train a body of members skilled in such theory and practice;
- (c) to preserve at all times the professional independence of accountants in whatever capacities they may be serving;
- (d) to prescribe high standards of practice and professional conduct for, and to maintain the observance of such standards by:
 - (i) its members;
 - (ii) non-members who participate with members in practice entities and have agreed to be bound by the standards of practice and professional conduct and by the discipline of the Institute;
 - (iii) practice entities which have agreed to be bound by the standards of practice and professional conduct and by the discipline of the Institute
 - (iv) registered graduates;
- (e) 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, by non-members referred to in Article 3(d)(ii), the practice entities referred to in Article 3(d)(iii) and by registered graduates;
- (f) to do all such things as may advance the profession of accountancy, whether in relation to the practices of public accountants (including the provision by such parties, in addition to public accountancy services, of other services by persons from other professions) or in relation to industry, commerce, education, the public service or otherwise.

CPA Australia

CPA Australia, a company limited by guarantee, was incorporated in 1952 and changed its name to the Australian Society of Certified Practising Accountants (ASCPA) in 1990, and CPA Australia in 1999. The 1952 incorporation was created by the merger of three major accountancy bodies: the Commonwealth Institute of Accountants; the Federal Institute of Accountants; and the Association of Accountants in Australia and two somewhat smaller bodies. Each of these bodies had existed for many years prior to 1952.

CPA Australia has in excess of 24,000 members in New South Wales.

CPA Australia is governed by a National Council comprising 15 representatives nominated by State Divisional Councils. NSW and Victoria each elect three members, South Australia, Queensland and Western Australia two members each, and Tasmania, the ACT and Asia region one member each. The principal office bearers of CPA Australia are the President, Deputy President, three Vice-Presidents (responsible for Membership Services, Intellectual

Capital and Professional Development respectively) and the Immediate Past President, who (with the exception of the latter) are elected annually.

The National Council meets four times each year. There is also an Executive Committee, a delegate of National Council, which meets six to eight times annually and deals with matters that may arise between National Council meetings, which are delegated to it by the National Council. Appointments to National Council are for three years.

State Branches are governed by their respective State Divisional Councils, elected by and from the respective State members of CPA Australia. Appointments to State Divisional Councils are for three years.

The Constitution of CPA Australia includes the following objects:

- (a) To support, protect and advance the character, status and interests of the accountancy profession generally and particularly of Accountants being members of the Society.
- (b) To promote honourable practice, to repress malpractice, to settle disputed points of practice and to decide all questions of professional usage, etiquette or courtesy and all disputes between or amongst Accountants.
- (c) To consider all questions affecting the interests of the accountancy profession and to initiate, promote, watch over and consider and if necessary to petition Parliament and organise deputations in relation to measures for the protection and the advancement of the accountancy profession and of Accountants and general measures whether legislative or otherwise affecting the profession and the practice of accountancy and to procure improvements and promote uniformity in the principles, methods and practices of accountancy.
- (d) To prescribe and adopt standards and classification of attainments and qualifications of Accountants for such purposes to conduct examinations and other tests in the theory and practice of accountancy and other subjects and to prescribe and receive fees for such examinations and tests and to grant diplomas and confer qualifications to designate the standard and status of Accountants and in particular of members of the Society.

Risk Management

Members of the Institute of Chartered Accountants Australia and CPA Australia are bound by the ethical rules of the relevant body and by all relevant statements of accounting/auditing practice issued or endorsed by the bodies.

Members of the ICAA and CPA Australia operate in a co-regulatory environment; that is, they are subject to the rules of their professional body and to the requirements of regulatory authorities where applicable. For example, company auditors and insolvency practitioners must be registered with the Australian Securities Commission (and satisfy the Commission's registration requirements, which includes membership of either the ICAA or CPA Australia or other approved body and minimum levels of qualifications and experience). Tax agents must be registered with the Tax Agents Board in the relevant state. Both the Australian Securities

Commission (ASC) and the Tax Agents Boards are independent statutory authorities. Registration in each case requires compliance with stringent educational, qualifications and experience standards. Other relevant registration or licensing regimes include the licensing of securities advisers and dealers by the ASC.

Both the ICAA and CPA Australia maintain comprehensive programs for members designed to minimise risk through adherence to high standards of professional conduct and maintenance of professional competencies.

At the forefront of the risk management strategies of both the ICAA and CPA Australia are the entry requirements set for membership of both bodies. Applicants for membership of both the ICAA and ASCPA must satisfy stringent educational and experience pre-requisites.

Members of both bodies must possess a recognised degree from an accredited tertiary institution and have completed the respective post-graduate educational requirements set by each body.

Other elements of the risk management strategies of the ICAA and CPA Australia are:

- adherence to codes of ethical conduct
- compliance with continuing professional education/continuing professional development requirements
- compliance with quality control programs
- mandatory professional indemnity insurance
- technical standards and guidance
- advisory and support services
- self-regulated disciplinary processes

Members of the ICAA holding Certificates of Public Practice and members of CPA Australia holding Public Practice Certificates are required to comply with requirements in respect of continuing professional education/continuing professional development, professional indemnity insurance and quality control. Members receiving and holding trust monies are also required to maintain and have their trust records audited annually.

Members who are not required to hold a Certificate of Public Practice/Public Practice Certificate, but who apply and are approved to join the Accountants' Scheme, will similarly be required to comply with ICAA/CPA Australia's requirements in respect of continuing professional education/continuing professional development, professional indemnity insurance, quality control and the maintenance and audit of trust accounts.

Both the ICAA and CPA Australia have developed complaints and discipline procedures in respect of members who have acted contrary to the general or specific requirements of the two accounting bodies. 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, a fellow member, or by the ICAA or ASCPA themselves.

Monitoring of Claims

Administration of the Accountants' Scheme will be undertaken by Scheme Management Committees (SMCS) established by the ICAA and CPA Australia reporting to the Joint Standing Committee of the ICAA and CPA Australia. One of the functions of the SMCs is to establish processes (with the co-operation of major professional indemnity insurance brokers) to monitor and review liability claims with the objective of identifying those areas where further attention is required to reduce the frequency and value of claims against Scheme members.

The Accountants' Scheme

1. Occupational Associations

The Accountant's Limitation of Liability Scheme (the Scheme) is a scheme of:
The Institute of Chartered Accountants in Australia (ICAA)
Level 14, 37 York Street, Sydney NSW 2000
And

CPA Australia
Level 28, 385 Bourke Street, Melbourne, VIC 3000

2. Scheme Administration

- 1.1** Administration of the Scheme will be undertaken by the ICAA and CPA Australia.
- 2.2** The ICAA and CPA Australia will maintain registers of their members participating in the Scheme.
- 3.3** The ICAA and CPA Australia will establish Scheme Management Committees (SMCS) to administer the Scheme as it relates to their respective participating members

3. Nature of Liability to be Limited

- 1.1** The liability limited by this 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 a member of the ICAA or ASCPA or any person to whom this Scheme applies in acting in the performance of his or her occupation.
- 2.2** This Scheme will not apply for any damages arising from any:
 - (a) death of or personal injury to a person
 - (b) negligence or other fault of a legal practitioner in acting for a client in a personal injury claim
 - (c) breach of trust
 - (d) fraud or dishonesty

(e) liability which is the subject of proceedings under Part 14 of the Real Property Act 1900

3.3 This Scheme does not exclude the operation of section 5 of the Corporations (New South Wales) Act 1990.

4. Persons to Whom the Scheme Applied (Participating Members and Other Persons)

4.1 The Scheme applies to all Participating Members and Other Persons as defined below.

4.2 For the purposes of this Scheme a "Participating Member" shall mean the persons referred to in paragraphs 4.4 to 4.8 inclusive.

4.3 For the purposes of this Scheme, "Other Persons" shall mean the persons referred to in paragraph 4.10.1 to 4.10.3 inclusive.

4.4 A member of the ICAA ordinarily resident in NSW who holds a current Certificate of Public Practice issued by the ICAA shall be a member of the Scheme, unless exempted under 4.9 below.

4.5 A member of CPA Australia ordinarily resident in NSW who holds a current Public Practice Certificate issued by CPA Australia shall be a member of the Scheme, unless exempted under 4.9 below.

4.6 A member of the ICAA ordinarily resident outside NSW who holds a current Certificate of Public Practice issued by the ICAA may elect to participate in the Scheme.

4.7 A member of CPA Australia ordinarily resident outside NSW who holds a current Public Practice Certificate issued by the ASCPA may elect to participate in the Scheme.

4.8 The following additional members of the ICAA and CPA Australia may apply to the relevant SMC to participate in the Scheme:

4.8.1 members of the ICAA who provide services to the public within their professional competencies of a type which does not require them to hold a Certificate of Public Practice and who undertake to meet the requirements of the Scheme in respect of professional indemnity insurance, quality control, continuing professional education, the maintenance and audit of trust accounts and any other requirements as may be specified by the ICAA;

4.8.2 members of CPA Australia who provide services to the public within their professional competencies of a type which does not require them to hold a Public Practice Certificate and who undertake to meet the requirements of the Scheme in respect of professional indemnity insurance, quality assurance, continuing professional development, the maintenance and audit of trust accounts and any other requirements as may be specified by the CPA Australia.

- 4.9** A member to whom the Scheme shall apply under 4.4 or 4.5 above may apply for, and, where the relevant SMC of the ICAA or CPA Australia is satisfied that circumstances warrant, be granted exemption from the Scheme.
- 4.10** Other persons covered by the Scheme include:
- 4.10.1** persons to whom the Scheme applies by virtue of Section 1 8 of the Professional Standards Act 1994.
 - 4.10.2** persons to whom the Scheme applies by virtue of Section 1 9 of the Professional Standards Act 1994.
 - 4.10.3** any person prescribed by the regulations for the purpose of Section 29(4) of the Professional Standards Act 1994.

5. Levels of Limitation

- 5.1** A Participating Member or Other Person to whom this Scheme applies and against whom a cause of action relating to occupational liability is brought is not liable in damages above the Limitation Amount (referred to in paragraph 5.2 below) if the person has business assets and an insurance policy insuring the person 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 cause of action, if combined, would total an amount that is not less than the Limitation Amount in relation to the person at the time at which the cause of action arose.
- 5.2** The maximum liability for damages arising out of a cause of action for occupational liability (the "Limitation Amount") which may be awarded against a Participating Member or Other Person (or member firm or company as the case may be) shall be:
- 5.2.1** Where the fee payable for the service to which the cause of action relates being a reasonable charge for the service provided or which was failed to be provided (the fee), is less than or equal to \$50,000, the Limitation Amount shall be \$500,000.
 - 5.2.2** Where the fee exceeds \$50,000, the Limitation Amount shall be a multiple of ten times the fee but must not exceed a monetary ceiling of \$50 million.

6. Standards Of Insurance

- 6.1** The respective associations have determined that Participating Members shall:
- 6.1.1** Maintain a current Professional Indemnity (Pi) insurance policy in accordance with the requirements specified in the ICAA's Appendix to Regulation 71 1 "Professional Indemnity Insurance" or the CPA Australia's PS1 "Professional Indemnity Insurance" and its Articles and By-Laws,

whichever is applicable; and

6.1.2 Where the PI insurance that a Participating Member is required to hold under 6.1.1 is less than the Limitation Amount, the Participating Member must maintain additional PI insurance and/or business assets having a net current market value which if combined total an amount not less than the Limitation Amount under paragraph 5.

6.2 Participating Members shall take measures to ensure that the levels of PI insurance and business assets they maintain meet the requirements set out in paragraph 6.1 above (including having business assets with a net current market value sufficient to cover the deductible under their policy of PI insurance).

7. Continuing Professional Education/Development

7.1 Participating Members holding a Certificate of Public Practice issued by the ICAA or Public Practice Certificate issued by CPA Australia (referred to in paragraphs 4.4 - 4.7 above) must comply with the continuing professional education/continuing professional development requirements of the respective professional association to which the member belongs.

7.2 Other Participating Members (referred to in paragraph 4.8 above) must comply with the continuing professional education/continuing professional development requirements of the respective professional association to which the member belongs, as if the persons were holders of Certificates of Public Practice issued by the ICAA or Public Practice Certificates issued by the ASCPA.

8. Quality Review

8.1 Participating Members holding a Certificate of Public Practice issued by the ICAA or Public Practice Certificate issued by the CPA Australia (referred to in paragraphs 4.4 - 4.7 above) must comply with the quality control/quality assurance programs of the respective professional association to which the member belongs.

8.2 Other Participating Members (referred to in paragraph 4.8 above) must comply with the quality control/quality assurance requirements applying to such members, as specified by the SMCs of the respective professional association to which the member belongs.

9. Trust accounts

9.1 Participating Members must comply with the requirements of the respective professional association to which the member belongs in respect of the maintenance and audit of trust accounts where client monies are held by the member.

10. Scheme Compliance

- 10.1** 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 SMC(s).

11. Revocation of Membership

- 11.1** Breach of the requirements of the Scheme by a Participating Member may be referred by the relevant SMC to the disciplinary committee of the respective professional association to which the member belongs.
- 11.2** Membership of the Scheme will be revoked if the member ceases to be a member of the CPA Australia or ICAA.
- 11.3** A Participating Member who has retired from practice or ceased to offer services to the public may apply to the relevant SMC to retire and be granted exemption from the Scheme.
- 11.4** Where a Participating Member has their membership revoked, retires from the Scheme or ceases to be a member of the ICAA or CPA Australia, they shall still be protected under the Scheme for civil liability arising from their acts, errors and omissions (defined in paragraph 3) performed during the period in which they were a Participating Member of the Scheme, provided they meet the requirements of the Scheme in respect of maintaining sufficient PI insurance and/or net business assets to the Limitation Amount , as set out in paragraph 6 above.

12. Complaints and Discipline

- 12.1** The Scheme adopts section 5 of the By-laws of the ICAA and Articles 26 to 33 inclusive and By-Laws 301 to 310.6 inclusive of the CPA Australia dealing with the Discipline of Members, which shall apply to Participating Members of the ICAA and CPA Australia respectively. All members of the ICAA and CPA Australia must comply with the Code of Ethics of the respective association.

13. Fee

- 13.1** A Participating Member must pay any fees in connection with the Scheme set by the respective professional association to which the member belongs or the relevant SMC. Where a Participating Member fails to pay a fee, membership of the Scheme may be revoked as determined by the SMC.
- 13.2** The relevant SMC may determine that a Participating Member is deemed to have paid fees in connection with the Scheme having regard to the individual circumstances of the Participating Members.