

This scheme commenced on 8 October 2001 and ceases on 7 October 2006. (Extended to 7 October 2007)

THE ACCOUNTANTS SCHEME
Professional Standards Act 1994 (NSW)

PREAMBLE

OCCUPATIONAL ASSOCIATIONS

The Accountants Scheme (the scheme) is a scheme under the Professional Standards Act 1994 (NSW) (the Act) in respect of CPA Australia (CPAA) and the Institute of Chartered Accountants in Australia (ICAA).

CPA Australia

CPAA is a national professional association whose details are as follows: CPA Australia Level 28, 385 Bourke Street, Melbourne Victoria 3000

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 to CPA Australia in April 2000. 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.

The CPAA has in excess of 22,000 members in New South Wales.

The CPAA 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 the CPAA 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 with the ability to be re-appointed.

State Branches are governed by their respective State Divisional Councils, elected by and from the respective State members of the CPAA. Appointments to State Divisional Councils are for three years with the ability to be re-appointed.

The Constitution of the CPAA 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.

Institute of Chartered Accountants in Australia

The ICAA is a national professional association whose details are as follows: The Institute of Chartered Accountants in Australia (ICAA), Level 14, 37 York Street, Sydney NSW 2000.

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 2000.

The ICAA has in excess of 13,000 members in New South Wales.

The ICAA is governed by a Board of Directors, consisting of 11 Directors, ten being directly elected by members in each respective region and one by members on the overseas register. The President and Deputy President are elected annually by the Board. Regional Councils are elected by members and provide advice to the Board on strategic policy and member issues, act as a link between the Board and members in their region, assist in public profiling and liaison with State and Territory governments, and carry out such functions as may be delegated to them by the Board.

The Principal Objects of the ICAA, as recorded within the 2000 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) 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.

NATURE OF THE SCHEME

A scheme operates for the purpose of improving the occupational standards of professionals and others and to protect the consumers of their services. It also limits the civil liability of persons to whom the scheme applies.

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 a member of the CPAA or ICAA or to 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 or personal injury to a person, a breach of trust, fraud or dishonesty.

The scheme does not affect damages, which are below \$500,000. Where damages are above \$500,000, the scheme limits liability for those damages to an amount that is between \$500,000 and \$20 million. The amount of the limited liability is calculated by multiplying the reasonable charge for the service by 10. This is called the *limitation amount*. However, the *limitation amount* cannot be less than \$500,000. The limitation amount cannot be higher than \$20 million.

Participating members are required to obtain insurance to cover their occupational liability. The insurance policy can include a deductible amount, which the person can cover from other assets. However, the scheme provides that a person can also have a combination of insurance

and business assets to cover their liability.

STANDARDS OF INSURANCE

Participating members, as defined in clause 2.2 and 2.3 of the scheme, are required to maintain a current professional indemnity insurance policy that meets the standards specified from time-to-time by the CPAA or ICAA, whichever is applicable. Participating members are required to take measures to ensure that the levels of PI insurance they maintain meet the required standards. The amount payable under the insurance policy in respect of occupational liability, and the value of the person's business assets, when combined, are to be not less than the amount of the person's limitation of liability. In addition, participating members are to maintain sufficient assets to cover any deductible amount applicable under the insurance policy.

RISK MANAGEMENT

Members of the CPAA and ICAA 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 CPAA and ICAA 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 and Investments Commission (and satisfy the Commission's registration requirements, which includes membership of either the CPAA or ICAA 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 and Investments Commission (ASIC) 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 ASIC.

Both the CPAA and ICAA 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 CPAA and ICAA are the entry requirements set for membership of both bodies. Applicants for membership of the CPAA and ICAA must satisfy stringent educational and experience pre-requisites.

Members must possess a recognised degree from an accredited tertiary institution and have completed the respective post-graduate educational requirements set by the CPAA and ICAA.

Other elements of the risk management strategies of the CPAA and ICAA are:

- adherence to codes of ethical conduct
- compliance with continuing professional development /continuing professional education

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

Both the CPAA and ICAA have developed complaints and discipline procedures in respect of members who have acted contrary to the general or specific requirements of the respective 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 CPAA or ICAA.

SCHEME ADMINISTRATION

Administration of the Accountants' Scheme will be undertaken by Scheme Management Committees (SMCs) established by the ICAA and CPAA reporting to the Joint Standing Committee of the ICAA and CPAA. The ICAA and CPAA will maintain registers of their members participating in the Scheme, including records of limitation amounts higher than \$20 million selected by member firms.

The respective associations may require a Participating Member to pay any fees in connection with the Scheme set by the respective professional association to which the member belongs or the relevant SMC. The relevant SMC may determine that a Participating Member is deemed to have paid fees in connection with the Scheme.

SCHEME COMPLIANCE

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).

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.

Participating Members must comply with the requirements of the respective professional association to which the member belongs in respect of PI insurance and business assets, continuing professional education/continuing professional development, quality review/quality

assurance, and the maintenance and audit of trust accounts.

COMPLAINTS AND DISCIPLINE

Participating Members to whom the Scheme applies are subject to the complaints and discipline system of the ICAA and CPAA under 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 CPAA dealing with the Discipline of Members. All members of the ICAA and CPAA must comply with the Joint Code of Professional Conduct and other regulations of the respective associations to which the member belongs.

MONITORING OF CLAIMS

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 members covered by the scheme.

CONTINUATION OF SCHEME COVERAGE

Where the scheme ceases to apply to a Participating Member or Other Person, they will still be protected under the scheme for civil liability arising from their acts, errors or omissions occurring during the period in which the scheme applied provided they meet the requirements of the scheme in respect of maintaining sufficient PI insurance and business assets to the amount of the limitation of liability applicable to the Participating Member or Other Person at the relevant time.

COMMENCEMENT OF SCHEME

The scheme commences on 8 October 2001.

SCHEME DURATION

The scheme remains in force for a period of 5 years from its commencement unless it is revoked, extended or ceases in accordance with section 32 of the Act.

THE ACCOUNTANTS SCHEME

1. Occupational Association

1.1 The Accountants Scheme (the scheme) is a scheme under the Professional Standards Act 1994 (NSW) (the Act) of CPA Australia (CPAA), Level 28 Bourke

Street, Melbourne Victoria 3000, and the Institute of Chartered Accountants in Australia (ICAA), Level 14, 37 York Street, Sydney NSW 2000.

2. Persons to Whom the Scheme Applies

- 2.1 The scheme applies to participating members and other persons as defined in clauses 2.2, 2.3 and 2.4, respectively, of the scheme.
- 2.2 All members of the CPAA ordinarily resident in NSW who hold a current Public Practice Certificate issued by the CPAA and who have not been exempted by the CPAA under clause 2.5 of the scheme.
- 2.3 All members of the ICAA ordinarily resident in NSW who hold a current Certificate of Public Practice issued by the ICAA and who have not been exempted by the ICAA under clause 2.5 of the scheme.
- 2.4 A person to whom the scheme applies by virtue of sections 18, 19 and 20 of the Act.
- 2.5 A person may, on application by the person, be exempted from the scheme by the CPAA or ICAA, whichever is applicable. This clause does not apply to other persons as defined in clause 2.4 of the scheme.

3. Limitation of Liability

- 3.1 Liability is limited in accordance with the provisions of this scheme for damages in respect of a cause of action in relation to occupational liability in excess of \$500,000.
- 3.2 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 in relation to that cause of action above the *monetary ceiling* referred to in clause 3.3 or the *limitation amount* referred to in clause 3.4 where the participating member or other person is able to satisfy the court that
 - (a) the participating member or other person has the benefit of an insurance policy insuring the participating member or other person against that occupational liability, and the amount payable under the insurance policy in respect of the occupational liability relating to that cause of action is not less than the monetary ceiling or limitation amount specified in the scheme in relation to the participating member or other person at the time at which the act or omission giving rise to the cause of action occurred;OR
 - (b) the participating member or other person has business assets and the benefit of an insurance policy insuring the participating member or other 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, is not less

than the monetary ceiling or limitation amount specified in the scheme in relation to the participating member or other person at the time at which the act or omission giving rise to the cause of action occurred.

3.3 The monetary ceiling is \$20 million

3.4 The *limitation amount* is a reasonable charge for the services provided by the participating member or other person or which the participating member or other person failed to provide and to which the cause of action relates, multiplied by the multiple specified in the scheme in relation to the participating member or other person at the time at which the act or omission giving rise to the cause of action occurred.

3.4.1 In determining the amount of a reasonable charge a court is to have regard to any amount actually charged and to:

- (a) the amount that would ordinarily be charged in accordance with a scale of charges accepted by the CPAA or ICAA, whichever is applicable; or
- (b) if there is no such scale, the amount that a competent person of the same qualifications and experience as the participating member or other person would be likely to charge in the same circumstances.

3.4.2 The multiple is 10.

3.4.3 This clause does not limit the amount of damages to which the participating member or other person is liable if the amount is less than the amount specified for the purpose in the scheme in relation to the participating member or other person.

3.5 The damages which may be awarded against the participating member or other person are to be determined in accordance with clause 3.2 and 3.4 but must not exceed the amount of the monetary ceiling specified in clause 3.3 in relation to the participating member or other person.

4. Commencement of Scheme

The scheme commences on 8 October 2001.