

Joint Committee on Corporations and Financial Services  
Parliament of Australia  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

*By online submission:* corporations.joint@aph.gov.au  
Public submission

Dear Chair

### **Submission to the inquiry into the regulation of auditing in Australia**

The Professional Standards Councils welcomes the opportunity to make a submission to the Parliamentary Joint Committee on Corporations and Financial Services inquiry into the regulation of auditing in Australia.

The Councils consider that formal regulation in the public interest is more effective in raising professional standards when it is reinforced by robust self-regulation to provide the community with trustworthy, efficient and ethical audit services. While formal regulation sets minimum standards, self-regulation plays a developmental role in a profession with a focus on continuous improvement of standards, lifting minimum standards over time. From this perspective, the Councils' submission is focussed on assisting the Committee's consideration of the following terms of reference:

- 8. the effectiveness and appropriateness of legislation, regulation and licensing, and*  
*10. the adequacy and performance of regulatory, standards, disciplinary and other bodies*

The national system of professional standards regulation, administered by the Councils as a meta-regulator, plays an important part in strengthening the self-regulatory efforts of professional associations in a range of professional services occupations, including across the accounting and auditing professions. As The Treasury notes in submission 15 to the inquiry, while the role of professional bodies was outside the scope of the submission, "*...[p]rofessional accounting associations also represent auditors, and play a role in upholding standards in the industry. These bodies do not have a role that is referenced in legislation, although the Accounting Professional & Ethical Standards Board (a joint venture of the three professional accounting bodies) maintains a code of ethics that is referenced in AUASB standards.*"<sup>1</sup>

A summary of the professional standards regulatory regime is enclosed at Annexure A.

### *Professional standards schemes in accounting*

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<sup>1</sup> The Treasury, Submission No 15 to Parliamentary Joint Committee on Corporations and Financial Services, *Inquiry into the regulation of auditing in Australia* (11 October 2019) 5.

The major accounting professional associations operate professional standards schemes approved and supervised by the Councils and authorised by responsible state and territory ministers (generally Attorneys General). These schemes are national in scope, through authorisation in one jurisdiction, and mutual recognition in other jurisdictions. Professional standards schemes also operate at the Commonwealth jurisdiction through a limited prescription mechanism.

Chartered Accountants Australia and New Zealand has operated a professional standards scheme since 1997 and had 29,628 members participating in the scheme as at 30 June 2019.

CPA Australia has operated a professional standards scheme since 1997 and had 4,917 members participating in the scheme as at 30 June 2019.

The Institute of Public Accountants has operated a professional standards scheme since 2013 and had 4,414 members participating in the scheme as at 30 June 2019.

The total number of accounting professionals participating in professional standards schemes as at 30 June 2019 was 38,859.

The professional standards legislation provides for a scheme to specify the same maximum amount of liability in relation to all cases to which the scheme applies. The Councils consider the claims made against members of the occupational association to make a determination as to the limit of liability to be specified in the scheme. The Councils request claims data for the last ten years to allow a reasonable number and type of claims to be reported. Analysis also considers industry consumers' exposure to risk throughout the lifespan of the scheme (1-6 years) to mitigate any potential future risks.

There can be different classes for the cap on liability under a scheme, where it is common for a scheme instrument to contain a table to differentiate the maximum amounts of liability for types of work, or classes of members. The limitations of liability are designed to be high enough to cover most claims, and to provide confidence that insurance or assets will be available if damages need to be paid.

An example of a current Chartered Accountants Australia and New Zealand Professional Standards Scheme is enclosed at Annexure B. The liability capping arrangements for auditing services are shown in Category 1, and specifically in Clause 3.3 of the scheme document.

#### *Operation of professional standards schemes*

Associations that operate a professional standards scheme are required to submit a Professional Standards Improvement Program report annually to the Councils. The report requires the association to specify the actions taken in: scheme administration, scheme compliance, member entry standards and controls, client centred risk management, complaints and discipline outcomes, continuing occupational education, professional indemnity insurance claims data, improved occupational standards, and governance.

The associations' annual Professional Standards Improvement Program reporting to Councils is a vital element of effective self-regulatory practice, driven by commitments made by each association to improve professional standards in its community. Each association's report is analysed to identify areas for improvement, and the association is provided with feedback.

In the most recent reporting period, being the 2018 calendar year, noticeable improvements were observed across the accounting profession. These improvements reflected actions taken by accounting associations in several areas, including:

- reformed strategic and business plans, organisational structure and compliance plans recognising *ISO 19600:2014 Compliance Management Systems*
- review and implementation of risk management strategies
- gap analysis to improve risk management and consistency with *ISO 21000:2018 Educational Organisations—Management Systems*
- enhanced reporting on professional standards scheme risk management, as well as organisation-wide risk management to audit and risk committees

#### *Consumer protection and improving standards*

Professional standards schemes are direct consumer protection mechanisms. In 1994, when the original legislation was introduced in the NSW Parliament, the Minister stated:

*“ There will be considerable benefits to consumers from choosing to deal with a professional who is part of a scheme under the legislation. First, the consumer will be certain that the professional holds appropriate indemnity insurance and, in the event, that a claim arises, the consumer will know that there are funds available to meet the claim. Second, the consumer will be sure that the professional is a participant in ongoing risk management strategies. Third, the consumer benefits by having recourse to a complaints system in the event of being dissatisfied with the professional’s service ”.*<sup>2</sup>

Professional standards schemes aim to sustain and embed improvements in professional standards so that members of professional accounting associations are held accountable to a threshold higher than statutory regulation may require, and higher than members of associations that are not regulated by schemes. It requires and encourages accounting associations and their members to implement a range of measures to improve professional standards and practices – from effective risk management strategies, to codes of ethics and complaints handling systems.

Consumers of audit services can be assured that a professional accountant who is part of a scheme under the legislation will hold professional indemnity insurance. The consumer will also be assured that the accounting professional is a participant in ongoing risk management strategies of the professional accounting association and subject to the professional accounting association’s code of ethics, code of practice and requirements for continuing professional development.

Recourse is also available to consumers by way of the professional accounting association’s complaints and disciplinary system under the model *Occupational Associations (Complaints and Discipline) Code* in the event of being dissatisfied with the professional’s service.

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<sup>2</sup> New South Wales, *Parliamentary Debates*, Legislative Council, 14 September 1994, (J P Hannaford, Attorney General, Minister for Justice, and Vice President of the Executive Council).

Additional benefits to consumers and the community are through professional accounting associations enforcing high standards of practice to their members, overt recognition of the duty to put the consumers' interests ahead of their own or their employer's interests, by their risk management strategies and through continuing professional development.

Finally, the professional standards framework enables the collection and analysis of data on issues such as complaints and professional standards to better protect consumers. Indeed, it is the only area in which such comprehensive data is collected, retained and analysed in Australia.

#### *Mutually reinforcing effect in a co-regulatory environment*

The Councils identify eight (8) standard-setting bodies, seven (7) compliance and supervision bodies, and six (6) decision-making bodies (excluding the Professional Standards Councils) involved in the regulation of the accounting profession. Within these figures, there are some bodies who have overlapping functions with over 150 standards, codes of ethics, codes of professional conduct, and guidance materials that accountants, auditors and liquidators must observe. This suggests there is an established system of regulatory bodies overseeing the accounting profession on a technical and professional level.

Councils' meta-regulation (i.e. enforced self-regulation) of accounting associations is complementary to the many established statutory command regulation elements. Councils can rely, and be reassured by, these command regulatory elements and meta-regulate associations in the residual regulatory space that plays a critical role in the profession building and sustaining trustworthiness and long-term standing that can keep pace with community expectations.

#### *Research on the regulatory role of professional associations*

The Councils have invested over many years in the development of practical and academic contributions to encourage and assist the development of self-regulatory capacity in professional associations. Most recently Councils collaborated in a 3-year project with the UNSW Centre for Law, Markets and Regulation with funding from the Australian Research Council (ARC) Linkage Project scheme, to promote and advance research on professional obligation and regulation in the 21st century. The project has produced a research library comprised of more than 40 articles as well as links to other resources written and produced by leading academics from the UNSW CLMR, Corrs Chambers Westgarth, University of Technology Sydney (UTS), Griffith University, Allens, and the University of Melbourne.

In a report on 'The value of contemporary professional associations'<sup>3</sup>, the researchers uncovered valuable dimensions to their regulatory roles including:

*"...associations can be experts in setting and enforcing professional standards; peer-regulation can be particularly sought-after and effective; public values can underpin the functions and activities of associations and remain a driving concern in their operations; and associations' interests in the reputation of their profession aligns with the stringent regulation of their members. Further benefits include associations'*

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<sup>3</sup> Dr Justine Rogers and Deborah Hartstein, 'The Value of Contemporary Professional Associations' (Research Paper, The Australian Research Council, 2018) 9.

*volunteer resourced regulatory and representative functions, saving significant amounts of time and money for government (and by extension the public). Associations' strong professional value focus makes their regulatory activity preferable to a market-driven regulatory scheme, and associations are able to maintain their integrity and efficiency as actors in a coregulatory regime with government."*

In another report on 'Mapping Professional Regimes Internationally'<sup>4</sup>, the accountancy professions' regulatory environment is mapped in Australia, United Kingdom, United States of America and Canada. By assessing the combination of institutions and models of regulation the report assists an understanding of the balance between responsibility of the individual professional and the role of professional associations in a broader regulatory environment of command regulation.

### *Conclusion*

We commend the professional standards regulatory system that can be encouraged to professional associations in the auditing sphere as an established and proactive way to improve the regulation of the conduct of their members and establish robust consumer protection mechanisms.

Further information about the Councils' role and the national system of professional standards regulation is available at [www.psc.gov.au](http://www.psc.gov.au).

We look forward to engaging with the Committee as the inquiry progresses.

The Councils' regulatory agency, the Professional Standards Authority, is available to discuss this submission and how we may be able to be of further assistance. Please contact the Professional Standards Councils CEO, Ms Roxane Marcelle-Shaw.

Yours sincerely

**John Vines OAM**

Chair

Professional Standards Councils

28 October 2019

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<sup>4</sup> Melea Lewis, 'ARC Professionalism Project Mapping Professional Regimes Internationally' (Research Paper, The Australian Research Council, 2018).

## Professional standards regulatory regime

The national system of professional standards regulation was developed in the 1990s, against a backdrop of escalating professional indemnity claims that led to professional service providers either leaving their profession, reducing their insurance or forgoing insurance. This threatened to leave aggrieved clients with the prospect of being unable to recover damages even if successful in their claim.

Governments agreed it was preferable to provide some guarantee of payment for most claimants than to have a system of unlimited liability with no certainty of any. Beginning in 1994, each state and territory government has established arrangements to set a statutory cap on damages tied to safeguards to protect the interests of consumers.

The vision was to **strengthen consumer protection** and **raise standards** of service delivery by professionals and others while ensuring better access to professional indemnity insurance.<sup>5</sup>

The system consists of:

- Occupational associations,<sup>6</sup> operating
- Professional Standards Schemes enabled by
- Professional Standards Legislation, and
- Professional Standards Councils.

A **Professional Standards Scheme** is a disallowable instrument underpinned by an occupational association's commitments to monitor, enforce and improve the professional standards of its members. Schemes operate to drive associations to regulate the conduct of their members and establish robust consumer protection mechanisms.

In return, a scheme provides eligible members with a mechanism to cap the civil liability for damages that professionals and others who take part in an association's scheme may be required to pay if a court upholds a claim against them. The liability caps will vary across and within occupational groups depending on risk factors such as the nature or volume of the work and are usually propounded by the relevant occupational association, often supported by professional actuarial analysis.

There are currently 17 Australian occupational associations that operate 23 schemes. These associations collectively cover more than 77,000 professionals in diverse fields who provide services to millions of Australian individuals and businesses.

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<sup>5</sup> *Review of the Law of Negligence* (Final Report, September 2002).

<sup>6</sup> An "occupational association" is defined in professional standards legislation as a body corporate "which represents the interests of persons who are members of the same occupation group" and "the membership of which is limited principally to members of that occupation group". An occupation groups is also defined to include a "professional group" and a "trade group". The legislation provides that a scheme may also apply to other persons including officers of body corporates, to which, as well as partners, employees or prescribed associates of persons to whom, a scheme applies.

Generally, schemes are established following an application by an occupational association to the Professional Standards Councils.

Schemes are established under **Professional Standards Legislation** in each state or territory which share common objects:

- a) *to enable the creation of schemes to limit the civil liability of professionals and others,*
- b) *to facilitate the improvement of occupational standards of professionals and others,*
- c) *to protect the consumers of the services provided by professionals and others,*
- d) *to constitute the Professional Standards Council to supervise the preparation and application of schemes and to assist in the improvement of occupational standards and protection of consumers.*<sup>7</sup>

Each state and territory has its own **Professional Standards Council (Councils)**. State and territory governments have agreed that Councils will be constituted by the same 11 members to ensure coordinated and streamlined decision-making. The functions of the Councils are to:

- advise the relevant Minister concerning the approval, amendment or revocation of schemes
- advise, encourage and assist associations in the improvement of occupational standards and self-regulation such as through; codes of ethics, codes of practice, quality management, risk management, complaint resolution, voluntary mediation services, membership requirements, discipline of members and continuing occupational education
- monitoring the occupational standards of persons covered by schemes
- monitoring the compliance by associations with their detailed risk management strategies

Further functions include conducting forums and publishing advice and information. In effect, Councils supervise self-regulating associations (as a meta-regulator) to monitor and assist them in developing effective consumer protection and improving their professional standards by implementing detailed risk management strategies and professional integrity systems. In August 2018, Councils published a statement of their three-year strategic intent and goals which focus on responding to contemporary community expectations and regulatory challenges in achieving the objects of the professional standards legislation – *Strategy 2021*.

The national professional standards regulatory system is funded from statutory fees paid by associations.

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<sup>7</sup> *Professional Standards Act 1994* (NSW) s 3; *Professional Standards Act 2004* (Qld) s 4; *Professional Standards Act 2004* (NT) s 3; *Professional Standards Act 1997* (WA) s 3; *Professional Standards Act 2004* (SA) s 3; *Professional Standards Act 2003* (Vic) s 3.

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**CHARTERED ACCOUNTANTS AUSTRALIA AND NEW ZEALAND  
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**PREAMBLE**

A.	Chartered Accountants Australia and New Zealand (" <b>CA ANZ</b> ") is a national Occupational Association.
B.	CA ANZ has applied to the Professional Standards Council, appointed under the <i>Professional Standards Act 1994</i> (NSW) (" <b>the Act</b> "), for approval of a scheme under the Act, as set out in this document (" <b>the Scheme</b> ").
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.
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 R2A of CA ANZ's regulations.
G.	The Scheme is to commence on 8 October 2019 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).
H.	Occupational liability limited by this Scheme may also be subject to the provisions of Commonwealth legislation, which may provide for a different limitation of liability, or unlimited liability, in a particular case, and thereby alter the effect of the Scheme.

<b>1.</b>	<b>OCCUPATIONAL ASSOCIATION</b>
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.

<b>2.</b>	<b>PERSONS TO WHOM THE SCHEME APPLIES</b>
2.1	The Scheme applies to:

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	(a) all CA ANZ members who: (i) hold a current Australian 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 " <b>Participants</b> " and each a " <b>Participant</b> ").
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 meeting the business asset and/or professional indemnity insurance requirement to the levels set out in clause 3 below.
2.3	All participating members referred to in clause 2.1 are subject to disciplinary measures under the By-Laws of CA ANZ, and are also subject to the professional indemnity insurance requirements of Regulation CR2A of CA ANZ's regulations.
<b>3.</b>	<b>LIMITATION OF LIABILITY</b>
3.1	The Scheme only limits the Occupational Liability of a Participant for Damages arising from a claim to the extent to which the liability results in Damages exceeding \$2 million.
	<b>LIMITATION OF LIABILITY FOR CATEGORY 1 SERVICES</b>
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 the claim above the 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 Insurance 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 that 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

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	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 Insurance 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 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.
	<b><u>LIMITATION OF LIABILITY FOR CATEGORY 2 SERVICES</u></b>
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 Insurance 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 Insurance 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 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

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	<p>(d) \$20 million where the claim arises from services in respect of which the Fee is \$500,000 or more.</p> <p>For the purposes of this sub-clause 3.5 only, the "Fee" means:</p> <p>(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:</p> <p>(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</p> <p>(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</p> <p>(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</p> <p>(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.</p>
	<p><b>LIMITATION OF LIABILITY FOR CATEGORY 3 SERVICES</b></p>
3.6	<p>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:</p> <p>(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 Insurance Policy) is not less than the amount of the Category 3 monetary ceiling specified in clause 3.7; OR</p> <p>(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</p> <p>(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 Insurance 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.</p>

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3.7	<p>The Category 3 monetary ceiling applicable to Participants is:</p> <p>(a) \$2 million, where the claim arises from services in respect of which the Fee is less than \$100,000; OR</p> <p>(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</p> <p>(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</p> <p>(d) \$20 million where the claim arises from services in respect of which the Fee is \$500,000 or more.</p>
	<p align="center"><b><u>GENERAL</u></b></p>
3.8	<p>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 Occupational 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 Occupational Liability will apply if CA ANZ exercises its discretion and approves the higher maximum amount of Occupational Liability prior to the Participant beginning to provide the relevant services.</p>
3.9	<p>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:</p> <p>(a) Category 2 services;</p> <p>(b) Category 3 services;</p> <p>(c) Category 2 services and Category 3 services,</p> <p>the Participant's Occupational Liability under this Scheme for Damages in excess of the 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.</p>
3.10	<p>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 Occupational Liability under this Scheme for Damages in excess of the amount specified in clause 3.1 will be determined in accordance with those provisions of the Scheme relating to Category 2 services only, namely clauses 3.4 and 3.5.</p>
3.11	<p>Nothing in this Scheme is intended to increase, or has the effect of increasing, a Participant's Occupational Liability for Damages to a person beyond the amount that, but for the existence of this Scheme, the Participant would be liable in law.</p>
3.12	<p>This Scheme only limits the amount of Damages for which a Participant is liable if and to the extent that the Damages exceed the amount specified in clause 3.1. Where the amount of Damages for which a Participant otherwise would be liable on a claim entailing Occupational Liability exceeds the amount specified in clause 3.1 liability for Damages will be limited to the amount</p>

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	specified in the applicable other provisions of this clause 3, as provided for by section 28 of the Act.
3.13	Notwithstanding anything to the contrary contained in this Scheme, if in the circumstances giving rise to Occupational Liability, the liability of any Participant should be capped both by this Scheme and also by any other Scheme or Schemes under Professional Standards Legislation, be it the Act or the law of any other Australian state or territory, then should the amounts of such caps differ, the highest of them shall apply.

<b>4.</b>	<b>DEFINITIONS</b>
4.1	In this Scheme, the following words and phrases have the following meanings:
	" <b>Act</b> " means the <i>Professional Standards Act 1994 (NSW)</i>
	" <b>Acts</b> " mean state and territory legislation other than the Act, including: (a) <i>Professional Standards Act 2003 (Vic)</i> ; (b) <i>Professional Standards Act 2004 (Qld)</i> ; (c) <i>Professional Standards Act 2004 (SA)</i> ; (d) <i>Professional Standards Act 1997 (WA)</i> ; (e) <i>Professional Standards Act 2005 (Tas)</i> ; (f) <i>Professional Standards Act (NT)</i> ; and (g) <i>Civil Law (Wrongs) Act 2002 (ACT)</i> .
	" <b>Affiliate Member</b> " as defined by the CA ANZ By Laws
	" <b>By Laws</b> " means the By Laws of CA ANZ
	" <b>CA ANZ Charter</b> " means the CA ANZ Supplemental Royal Charter dated 26 November 2014.
	" <b>Certificate of Public Practice</b> " means a certificate issued to a CA ANZ member under paragraph 34 of the By Laws in accordance with CA ANZ Regulation CR2 Certificates of Public Practice
	" <b>Category 1 services</b> " 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 <i>Superannuation Industry (Supervision) Act 1993</i> ; (iv) all other audits of financial statements which are filed with a regulator, and audit procedures performed on financial

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	information which forms part of a financial statement filed with a regulator
	<p><b>"Category 2 services"</b> means the following services provided in Australia:</p> <ul style="list-style-type: none"> <li>(i) services to which Chapter 5 or Chapter 5A of the <i>Corporations Act 2001</i> applies;</li> <li>(ii) services provided pursuant to s.233(2) of the <i>Corporations Act 2001</i>;</li> <li>(iii) services to which the <i>Bankruptcy Act 1966</i> applies;</li> <li>(iv) services arising out of any court appointed liquidation or receivership</li> </ul>
	<p><b>"Category 3 services"</b> 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</p>
	<p><b>"Damages"</b> as defined in section 4 of the Act means</p> <ul style="list-style-type: none"> <li>(a) damages awarded on a claim entailing Occupational Liability whether in satisfaction of claim, counter-claim or by way of set- off, and</li> <li>(b) costs in or in relation to proceedings with respect to (a) above ordered to be paid in connection with such an award (other than costs incurred in enforcing a judgment or incurred on an appeal made by a defendant), and</li> <li>(c) any interest payable on the amount of those damages or costs.</li> </ul>
	<p><b>"Fee"</b> means a payment made to a Participant in exchange for services but excludes disbursements and goods and services taxes. For the purposes of sub-clause 3.5, Fee is as calculated in accordance with that sub-clause.</p>
	<p><b>"Insurance Policy"</b> means an insurance policy that complies with By- Law CA ANZ Regulation CR 2A and section 27 of the Act.</p>
	<p><b>"Occupational Liability"</b> has the meaning given in section 4 of the Act.</p>
	<p><b>"Practice Entity Member"</b> as defined in the CA ANZ By Laws</p>
	<p><b>"Practice Entity"</b> as defined in the CA ANZ By Laws</p>
	<p><b>"Professional Standards Legislation"</b> means state and territory legislation, including:</p> <ul style="list-style-type: none"> <li>(a) <i>Professional Standards Act 1994</i> (NSW)</li> <li>(b) <i>Professional Standards Act 2003</i> (Vic);</li> <li>(c) <i>Professional Standards Act 2004</i> (Qld);</li> <li>(d) <i>Professional Standards Act 2004</i> (SA);</li> <li>(e) <i>Professional Standards Act 1997</i> (WA);</li> <li>(f) <i>Professional Standards Act 2005</i> (Tas);</li> <li>(g) <i>Professional Standards Act</i> (NT); and</li> <li>(h) <i>Civil Law (Wrongs) Act 2002</i> (ACT).</li> </ul>

**Professional Standards Act 1994 (NSW)**

**CHARTERED ACCOUNTANTS AUSTRALIA AND NEW ZEALAND  
PROFESSIONAL STANDARDS SCHEME**

<b>5.</b>	<b>JURISDICTION</b>
5.1	This Scheme is intended to operate in New South Wales. This Scheme is also intended to operate in the 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.
<b>6.</b>	<b>COMMENCEMENT DATE AND DURATION</b>
6.1	This Scheme will commence on the following day: (a) In New South Wales, the Northern Territory, Queensland, Western Australia and Tasmania, on the day after the date on which the instrument is published in the Gazette; (b) In Victoria, on the day that is two (2) months after the date on which the instrument is published in the Gazette; and (c) In the Australian Capital Territory and in South Australia; (i) On the date provided for in the Minister's notice in relation to the amendments, if a date is provided; or (ii) On the first day two months after the day on which notice was given, in any other case.
6.2	The Scheme will operate for and is intended to remain in force for a period of five (5) years from the date of commencement in each jurisdiction for which it is in force unless it is revoked, extended or ceases in accordance with section 32 of the Act.