



Wednesday, 23 August 2023

Ms Abigail Boyd, MLC  
Committee Chair  
Public Accountability and Works Committee  
Parliament house  
Macquarie Street  
SYDNEY NSW 2000

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Dear Ms Boyd

### **Clarification of Points of Evidence - CA ANZ Professional Standards Scheme**

On 28 July 2023 we were pleased to provide the Public Accountability and Works Committee (the **Committee**) with evidence at the inquiry into the New South Wales government's use and management of consulting services (the **Inquiry**) to assist the Committee with its investigations. We are preparing our responses to the Committee's supplementary questions by this Friday 25 August 2023.

In the meantime, we note that, in following the Inquiry and a related Commonwealth inquiry, witnesses have made references to the Chartered Accountants Australia and New Zealand professional standards scheme (**CA Scheme**) in evidence. Some of this evidence was incorrect or, in our opinion, indicated a limited understanding of the operation of a professional standards scheme and in particular the CA Scheme. We have prepared the attached information sheet to assist the Committee's understanding of the operation of the CA Scheme.

We would welcome the opportunity to meet with you, or your colleagues, to answer any questions you may have in relation to the professional standards schemes. We believe that the executive team of the Professional Standards Authority would be happy to do the same.

Yours sincerely,

**Vanessa Chapman**

Group Executive – General Counsel & Corporate Assurance

## Information Sheet

### CA Scheme

#### Background information

- There are currently 18 schemes approved by the Professional Standards Councils (PSC), including the CA Scheme. The three accounting bodies, several associations for surveyors and valuers, state law societies and bar associations all have longstanding approved schemes. A full list of current Schemes is available on the PSC's website [here](#).
- CA ANZ has had schemes approved since 1997.
- As far as we are aware, Australia is the only country to have legislative caps on professional liability.
- As at 30 June CA ANZ has approximately 30,000 individual members in public practice who are eligible to participate in the CA Scheme.
- The PSC charges a levy of \$50 per annum per Scheme participant. The levy is the same for all professional associations.

#### What is a Professional Standards Scheme?

- A Professional Standards Scheme (**Scheme**) is a legal instrument approved under Professional Standards legislation (**PSL**) that creates a statutory cap on a professional's occupational liability.
- It is a condition of approval of a professional association's Scheme that the association has reasonable compliance activities / mechanisms in place to maintain or improve professional standards.
- Examples of compliance activities include setting regulations for professional indemnity insurance (**PII**), setting entry requirements, having a code of ethics, having a continuing professional development monitoring program, having quality review and having discipline programs.

#### Who benefits from a Scheme?

- A [report](#) released by the PSC in 2022 shows that professional standards schemes help improve risk management in the professions, which is to the benefit of Australian consumers, scheme participants and insurers.
- The PSC website states the following benefits to consumers and to associations and their members,
  - "To maximise the benefit of the professional standards schemes for consumers and ensure consumers have consistent, accurate and clear information available to them, occupational associations must have appropriate systems and records of which members are scheme participants and the applicable monetary ceiling on professional liability. Specifically, such systems and records should include reliable, transparent, and accessible policies, procedures, and registers for managing exemptions and discretionary caps. The basis, consideration, and reasons for the occupational association's governing body's approval of a discretionary cap or exemption should be contained within these documents."
  - "Occupational associations with professional standards schemes are required to continuously improve the standards of members by implementing robust regulatory systems and detailed risk management strategies designed to protect the consumer. The legislation requires those who are subject to a professional standards scheme to hold sufficient professional indemnity insurance cover and/or business assets to protect consumers in the event a successful claim is made."

### Who is covered by the Scheme and for how much?

- The approved scheme instrument sets out who is eligible to participate in the scheme and what the liability cap will be.
- Only a Court can determine if the cap will be upheld.
- 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 are eligible participants in the CA Scheme.
- The minimum liability cap permitted under legislation is \$500,000.
- The CA Scheme prescribes graduated liability caps depending on the type of service provided by the participant and the size of the engagement fee. This is summarised in the table below:

	Category 1 Audit	Category 2 Insolvency	Category 3 Other
Where highest fee is less than \$100k	\$2 million	\$2 million	\$2 million
Where highest fee is ≥\$100k but <\$300k	\$5 million	\$5 million	\$5 million
Where highest fee is ≥\$300k but <\$500k	\$10 million	\$10 million	\$10 million
Where highest fee is ≥\$500k but <\$1million	\$20 million	\$20 million	\$20 million
Where highest fee is ≥\$1million but <\$2.5million	\$50 million	\$20 million	\$20 million
Where highest fee is ≥\$2.5million	\$75 million	\$20 million	\$20 million

- The **cap applies on a per engagement basis** not to aggregate prospective liabilities. For example, if a successful claim is brought against a scheme participant who is an auditor in respect of a particular audit where the fee for that audit is \$350,000, the auditor's maximum liability in respect of that claim is \$10 million. If a participant completes a consulting engagement and the fee is \$3 million, in the event of a successful claim, the participant could be liable for damages up to \$20 million. Where the participant is a partner in a firm, the liability is borne by all the partners (that is, the firm) on the basis of partners' joint and several liability for debts incurred by any partner. Where the participant is a corporate entity, it bears liability.
- A participant who provides insolvency or other services with a fee exceeding \$2 million may seek CA ANZ's approval of an increased cap up to \$75 million. Our records indicate that CA ANZ has only exercised this discretion on three occasions.
- The Scheme only protects participants if they have sufficient professional indemnity insurance or business assets to the amount of the cap and if the claim relates to an occupational liability – i.e. civil liability arising from an act or omission of a member of a professional association in the performance of his or her occupation.
- Claims arising out of death, personal injury, a breach of trust or fraud or dishonesty are excluded from the Scheme and therefore are uncapped.

### Scheme application and annual reporting

- The PSC can approve a Scheme for a maximum period of five years. An extension of up to 12 months for an existing Scheme is possible on application by the association and approval by the PSC.

- If the association wishes to continue to operate a Scheme, approximately 8-12 months prior to the expiry of the current Scheme, the association must apply to the PSC for approval of a new scheme. This is referred to as a “re-make”.
- The application material is comprehensive and includes:
  - A draft Scheme instrument;
  - Details of the association’s governance, membership, resources and legal structure;
  - Details of the association’s:
    - constitutional documents including Charter, By-laws, Regulations and member contracts;
    - risk management plan and compliance program;
    - professional conduct and discipline program;
    - monitoring activities; and
    - insurance standard.
- The PSC may approve the association’s re-make, seek variations to the application, apply special reporting conditions on the association or decline the application. CA ANZ has not had a re-make application declined. In 2014 we did have delays in obtaining approval of our re-make. In 2019 we had our Scheme approved.
- Prior to 31 March each year each association must prepare an annual report to the PSC. From 2023 this is called the Annual Professional Standards report (**APSR**). The APSR template is designed by the PSC to:
  - show how the relevant association is promoting the objects of PSL and meeting statutory obligations;
  - outline the association’s work to improve occupational standards and enhance consumer protections by identifying and reducing consumer harms; and
  - show how the association is fulfilling its responsibilities by continuously improving professional standards and protecting consumers, implementing risk management strategies and reviewing their effects, monitoring members compliance with their obligations under PSL and measuring the effectiveness of systems policies and processes.
- Each year the PSC provide feedback to the association on their report. To date, our report has received positive feedback from the PSC.