This Guidance Note includes information to help you understand the principles of:

- who will participate in the Scheme
- professional standards legislation (PSL) and its professional indemnity insurance (PII) requirements
- CPA Australia’s insurance standards for public practitioners under By-Law 9.8
- practice risk management from an insurance perspective.

In this Guidance Note, we have also included Annexure 2 - Frequently Asked Questions. Where we have referenced CPA Australia member resources, these are to be read in conjunction with this guidance note. This ensures you can determine whether you are covered under the CPA Australia Professional Standards Scheme.

INTRODUCTION

The Professional Standards Council (PSC) has approved CPA Australia’s application for a new Professional Standards Scheme for recommendation to the relevant Ministers in each State and Territory for gazettal.

The commencement date for each Scheme is detailed below.

The Scheme will apply for a two-year period in each state and territory commencing the day after gazettal of the scheme in each of the states and territories respectively except for Victoria and Tasmania where the Scheme will commence two months after the gazettal date in each of those states.

Not all Public Practice Certificate (PPC) holders will be eligible to participate in the Scheme. Therefore, after reviewing this Guidance Note, you are required to complete a self-assessment to determine if you are eligible to participate in the Scheme. Once you have completed your self-assessment, you must advise CPA Australia of your outcome, irrespective of whether you determine if you are covered or not.

Please email your self-assessment outcome to publicpractice@cpaaustralia.com.au ensuring your
member number and the outcome are clearly provided.

CPA AUSTRALIA PROFESSIONAL STANDARDS SCHEME

CPA Australia lodged an application for a new Professional Standards Scheme in January 2017 to cover all States and Territories. The previous CPA Australia Scheme expired on 7 October 2017. CPA Australia arranged a group Member’s Professional Indemnity Excess Insurance Policy to support members in public practice during the lapse in the Scheme. The policy continues to be in place.

The PSC of New South Wales, acting in co-operation with the PSCs of the ACT, Victoria, South Australia, Western Australia, the Northern Territory, Tasmania and Queensland, resolved to approve the CPA Australia Ltd Professional Standards (Accountants) Scheme (the Scheme) effective from the various dates in each jurisdiction following gazettal.

The approval of this scheme will impact members who hold CPA Australia’s Public Practice and Limited Public Practice Certificates.

The NSW Scheme commenced on 23 December 2017. There are mutual recognition provisions in place in all mainland states and territories to provide automatic recognition of schemes approved in other locations i.e. a process whereby a scheme in one state or territory is recognised in another state or territory.

The table below outlines the commencement of the scheme in all states and territories.

<table>
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<tr>
<th>State or territory</th>
<th>Scheme commencement date</th>
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<tbody>
<tr>
<td>NSW</td>
<td>23 December 2017</td>
<td>NT</td>
<td>18 January 2018</td>
</tr>
<tr>
<td>WA</td>
<td>30 December 2017</td>
<td>SA</td>
<td>24 January 2018</td>
</tr>
<tr>
<td>QLD</td>
<td>1 January 2018</td>
<td>TAS</td>
<td>21 February 2018</td>
</tr>
<tr>
<td>ACT</td>
<td>1 January 2018</td>
<td>VIC</td>
<td>19 March 2018</td>
</tr>
</tbody>
</table>

You can also refer to www.psc.gov.au for details of the commencement of the scheme in other states and territories.

A copy of the Scheme Instrument can be accessed on the PSC website after gazettal.

If you are currently renewing your PII policy, please ensure you review this Guidance Note thoroughly and speak to your insurer or broker to discuss appropriate cover for your circumstances.
Coverage and availability of the CPA Australia Professional Standards Schemes

Subject to the below, the CPA Australia Professional Standards Scheme applies to individual members in Australia who hold a current CPA Australia Public Practice Certificate1 ("PPC"). The coverage includes services provided by that member pursuant to a Limited Australian Financial Services Licence.

The Scheme only covers Members who hold a current PPC issued by CPA Australia to the extent the act or omission giving rise to the occupational liability arises from the act or omission of a member holding a current PPC.

The CPA Australia Professional Standards scheme does not cover:

• services provided by members who do not hold a Public Practice Certificate (PPC) or Limited Public Practice Certificate (LPC)
• services provided by members who are authorised representatives of, or directly hold an (unlimited) Australian Financial Services Licence (AFSL)
• credit activity services provided by members
• Representatives of licensees under section 913B of the Corporations Act 2001 (Cth), not being a Limited Licence.

In practical terms, the Scheme will not apply to members who either themselves hold an unlimited Australian financial services licence (this was also the case with the previous Scheme) or are “Representatives” of a person or company which does.

All PPC Holders will continue to be covered by the group Member’s Professional Indemnity Excess Insurance Policy CPA Australia previously arranged to support members in public practice for those services covered by the Policy.

If you are not covered as a Scheme participant then you must review your risk management arrangements and the adequacy of your current PII policy. See the Guidance Note: Group Member's Professional Indemnity Excess Insurance Policy and Group Member's Professional Indemnity Excess Insurance Policy wording.

Does the Scheme apply to you?

Not all Public Practice Certificate (PPC) holders will be eligible to participate in the Scheme.

To confirm that you are a participant in the CPA Australia Professional Standards Scheme, you will need to assess whether the scheme applies to you by undertaking a self-assessment. You will need to keep your assessment under review e.g. if you cease to hold a full Australian Financial Services Licence you may then be eligible to participate in the scheme.

To assist you ascertain whether you will be covered under the new Scheme please refer to Annexure 1 of this Guidance Note.

Once you have completed your self-assessment and determined your outcome, you will need to:

1. Notify CPA Australia of your self-assessment outcome

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1 A PPC holder refers to members holding either a CPA Australia Public Practice Certificate or a Limited Public Practice Certificate.
a. email your outcome result to publicpractice@cpaaustralia.com.au (ensuring your member number is included)

2. Review your PI insurance policy arrangements
   a. A detailed explanation to assist you can be found by reviewing the Managing your risks with insurance member guide
   b. Other member resources designed to assist you to understand your PI insurance requirements can be found at www.cpaaustralia.com.au/insurance

3. Review your risk management arrangements
   a. Member resources and tools to assist you understand your risk management requirements can be found at www.cpaaustralia.com.au/riskmanagement

4. Review your position and whether you are covered if your situation changes and advise us of any changes
   a. email your outcome result to publicpractice@cpaaustralia.com.au (ensuring your member number is included).

This Scheme will not apply to all PPC/LPC Holders. To ascertain whether a PPC/LPC holder will be covered under the new Scheme, please refer to Annexure 1 of this Guidance Note.

It is the responsibility of every PPC/LPC Holder to make this self-assessment, ensure your risk management framework is up to date and that your insurance coverage is based on this framework. You must continually assess whether the scheme applies to you and if your circumstances change, notify us.

UNDERSTANDING PSL AND ITS PII REQUIREMENTS

Professional Standards Legislation (PSL) allows the registration of professional standard schemes by professional associations, which are known as liability limited schemes (LLS). These schemes are approved and monitored by the Professional Standards Councils (PSC), in consultation with the relevant professional association.

The schemes limit the occupational liability of scheme members, to damages arising from civil liability by establishing monetary ceilings (caps) for specific accounting services where a member holds minimum levels of prescribed insurance. These caps are determined following extensive assessment of past claims and independent actuarial assessment.

Only a member holding a CPA Australia Public Practice Certificate can be a member of an approved scheme (subject to meeting the eligibility criteria of the current scheme).

It is important to note the Professional Standards schemes do not replace or reduce the obligation of professionals to have established risk management frameworks and hold appropriate levels of PII.

Professional standards schemes provide an additional layer of security in a practice’s risk management framework. Professional standards legislation was introduced as a measure to improve professional standards and allows for predictability and improvement in the affordability and availability of professional indemnity insurance.
Schemes were first introduced at a time when such insurance was not readily available to professionals with premiums out of reach. They provide a liability cap on civil liabilities arising from the delivery of professional services by members of an occupational association.

CPA Australia By-Law 9.8 sets out the minimum insurance requirements (insurance standards) for a member providing public accounting services (as defined in CPA Australia By-Laws).

**Professional Standards Legislation (PSL) scheme**

PSL is Australian state-based legislation and allows the registration of professional standard schemes by professional associations, which are known as liability limited schemes (LLS).

PSL is designed to:

- improve standards of professionalism
- provide greater protection for consumers
- enable the creation of schemes to limit the civil liability of professionals to whom the schemes apply for occupational liability
- ensure that PII coverage held by professionals meets required standards.

These schemes are approved and monitored by the Professional Standards Councils (PSC), in consultation with the relevant professional association.

The schemes limit the occupational liability of scheme members, to damages arising from civil liability only. The schemes do not limit liability for death, personal injury, a breach of trust, fraud or dishonesty.

The scheme does not affect liability for damages which are below $2 million where the act or omission giving rise to the cause of action occurred on or after the date of commencement of the Scheme.

**Professional standards scheme and professional indemnity insurance**

Professional standards schemes are not the same as professional indemnity insurance. A professional standards scheme provides capped liability for public accounting services. A member must hold and maintain minimum levels of professional indemnity insurance under a scheme which complies with CPA Australia Professional Indemnity Insurance Standards (By-Law 9.8). Participating members, as defined in clause 2.1 of the scheme, are required to maintain a current professional indemnity (PI) insurance policy that meets the standards specified by CPA Australia.

**Benefits of a professional standards scheme: For members**

Members have the benefit of having occupational liability capped under relevant State and Commonwealth legislation.

CPA Australia believes that the implementation of PSL and capped liability on claims has led to the lowering of PII premiums in the long term through a reduction in the number of, and amount paid, to settle claims.

In addition, risk management practices have been designed to minimise the risk of claims arising in the first place.
Benefits of a professional standards scheme: For consumers

Professional standards schemes are designed to:

• improve standards of professionalism
• provide greater protection for consumers
• enable the creation of schemes to limit the civil liability of professionals to whom the schemes apply for occupational liability
• ensure that PII coverage held by professionals meets required standards and are appropriate to the services they provide
• ensure appropriate levels of Professional Indemnity Insurance appropriate to the risk profile of the services they provide are maintained.

Consumers are protected by the insurance and risk management standards, which are compulsory by CPA Australia and recognised under PSL.

Consumers also benefit because the public practitioner is a member of a professional body which is committed to continuously improving public accounting standards.

OBLIGATIONS OF PSL ON MEMBERS

The following obligations apply to members of applicable schemes.

1) Scheme Membership
2) Scheme Registration fee
3) Limited Liability disclosure statement on business stationery
4) Professional Indemnity Insurance (PII) cover
5) Risk Management, Quality Review and Continuing Professional Development (CPD).

1. Scheme membership

Where the Scheme applies, it is compulsory for CPA Australia PPC/LPC holders in Australia to become members of the CPA Australia Professional Standards Scheme.

Further, CPA Australia PPC/LPC holders who are also an existing member of a Chartered Accountants ANZ scheme or Institute of Public Accountants (IPA) PSC scheme, are still required to join the CPA Australia Scheme.

Notwithstanding anything to the contrary contained in the CPA Australia Professional Standards Scheme, if in particular circumstances giving rise to occupational liability, the liability of any person who is subject to this scheme should be capped both by this scheme and also by any other scheme under PSL and the amount of such caps should differ, then the higher cap will always apply.

The three professional accounting bodies do not recognise each other’s scheme membership. Where you hold a CPA PPC/LPC, you must also be a member of the CPA Australia Scheme (where you are eligible to participate).
2. Scheme Registration fee

To be a member of a professional standards scheme, a scheme registration fee is payable.

The fee is set by and payable to the Regulator and collected by CPA Australia from scheme members on their behalf.

For 2018, CPA Australia will pay this fee on your behalf to the schemes’ government regulator, being the relevant state or territory PSC.

3. Limited liability disclosure statement on business stationery

From the commencement date of the Scheme in your state/territory, you must notify your clients (and potential clients) of your limited liability. This must be clearly disclosed on your business stationery and website.

This notification is in the form of a disclosure statement, which is:

*Liability limited by a scheme approved under Professional Standards Legislation.*

To ensure consumers receive appropriate disclosure business stationery includes:

- company letterhead and letters signed by the practice — including letters of engagement and (tax) invoices
- receipts
- fax cover sheets
- documents such as written advice and with compliments slips
- newsletters and other publications
- emails
- brochures and other promotional material (but excluding advertisements)
- websites.

The limited liability disclosure statement is not required on business cards, advertisements or on social media networks.

The minimum size requirement for the display of the disclosure statement is that it must be printed in the equivalent of 8 point, Times New Roman typeface.

PPC/LPC holders may use their discretion as to the colour used to print the disclosure statement on their business stationery, as long as the disclosure statement is legible. The disclosure statement does not have to be printed in black.

**Important:** All PPC/LPC holders must comply with the disclosure requirements. It is particularly important in the NT, Queensland, Tasmania and Victoria to note that strict compliance is necessary as limited liability is dependent on disclosure requirements being met and your liability will not be capped until you disclose your limited liability to your clients.

This is due to differences in the wording of professional standards legislation in those states and territories. Failure to disclose PSC scheme membership on business stationery may result in a fine.
4. Professional indemnity insurance (PII) cover

Eligible members have the benefit of capped liability on claims but, you are still required to:

- assess the level of PII cover you should hold
- maintain the minimum prescribed levels of cover under PSL.

Assess the level of PII cover you should hold

You need to conduct a proper risk assessment on the level of PII cover needed, irrespective of the minimum requirement of the schemes. You should consider:

- your potential risks based on the type of work you perform and the kind of cover required
- the structure of your practice entity
- what you envisage will be the highest fee for a service provided for a client in any one year
- if you have sufficient PII to cover past work which is not limited by PSL
- whether you need additional cover for any work not limited by PSL.

For instance, limited liability only applies from the operational date of a scheme. This means that you will need to maintain at least the same level of PI insurance cover held prior to the schemes becoming operational to ensure that you can cover retroactive claims.

It is up to you to assess whether you can be a participant in the CPA Australia Professional Standards Scheme.

Maintain the minimum prescribed levels of cover under PSL.

The minimum professional indemnity insurance (PII) to be held by a member is $2 million (if the member is in a practice where the fee income for the prior year is less than $10 million).

For members with higher practice incomes, the minimum PII requirements and monetary ceilings are dependent on the services provided. These are set out in the Practice Profile tables on pages 9 and 10 of this Guidance Note.

Members should note that it is a requirement of CPA Australia’s By-Law 9.8 to meet the minimum PII requirements which includes holding PI insurance that is of at least an amount within the monetary ceilings whether or not the Member is a participant in a scheme.
5. Risk management, quality review, and continuing professional development (CPD)

Members must continue to manage their risk, meet quality review (QR), continuing professional development (CPD) obligations both as members and as participants under PSL.

Practice risk management

In addition to considering your insurance risk profile you should also consider your practice risk management in light of professional and ethical standard requirements for members of CPA Australia. The Scheme may not cover all occupational liability claims that arise in your practice, for example if you are a director in an approved practice, your approved practice may only be covered to the extent of a claim arising from your act or omission or as otherwise set out in the Act.

Quality Review

The CPA Australia Quality Review Program monitors that the work performed meets the relevant mandatory requirements of the standards issued by the Accounting Professional and Ethical Standards Board (APESB), and the Auditing and Assurance Standards Board (AUASB).

The nature of the policies and procedures developed by a member to comply with the standards will vary and therefore the extent of review work required by a member will differ. The methodology of the review process remains consistent across all reviews.

Compliance with Continuing Professional Development (CPD)

CPA Australia members are required to keep up-to-date on the many aspects of accounting and business today. The Continuing Professional Development Program (CPD) helps to ensure that the professional knowledge of all CPA Australia members is current. All members must undertake at least 120 hours CPD per triennium, with a minimum of 20 hours of CPD per year. A minimum of 90 hours must be structured with defined learning outcomes. A maximum of 30 hours per triennium can be claimed for unstructured professional development (relevant reading, video or audio) with a maximum of 10 claimable hours per year.

MONETARY CAPS UNDER THE CPA AUSTRALIA PROFESSIONAL STANDARDS SCHEME

The scheme is constituted by prescribing minimum levels of insurance (which are set by reference to Approved Practice Entity’s fees earned in the prior year) that must be held for different categories of public accounting services.

Limits of liability under PSL

Monetary ceilings (caps) on claims under PSL are set to a level that should be high enough to cover most consumer claims and most corporate claims for economic loss. Members need to assess their own circumstances and take their own advice on this matter before finalising their insurance requirements.

The minimum cap is set at $2 million for damages from a claim. This means that the Scheme does not limit economic losses below $2 million.
Where damages are above $2 million, the Scheme limits liability for those damages to between $2 million and $75 million, depending on services provided and total fees generated by the practice.

Recognising that the Scheme will not apply to members who either themselves hold an unlimited Australian financial services licence or are “Representatives” of a person or company which does, with this restriction, the relevant caps that apply are for the following categories of services:

**Category 1** services relate to Audit Services where:

a) all services required by Australian law to be provided only by a registered company auditor;

b) all other services provided by a registered company auditor in his or her capacity as auditor;

c) all services the deliverables from which:
   i. will be used in determining the nature, timing and extent of audit procedures in the context of an audit of a financial report; or
   ii. will be incorporated into the financial report of an entity; or
   iii. are required by law or regulation to be filed with a regulator (excluding returns signed by a registered tax agent).

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<thead>
<tr>
<th>Practice Profile</th>
<th>Monetary ceiling and minimum PII</th>
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<tbody>
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<td>$2 million</td>
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<tr>
<td>2. If the member is in an Approved Practice Entity with practice fee income for the prior year of between $10m- $20m</td>
<td>$10 million</td>
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<tr>
<td>3. If the member is in an Approved Practice with practice fee income for the prior year of more than $20m</td>
<td>$75 million</td>
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**Category 2 services** relate to Insolvency services where:

a) services to which Chapter 5 or Chapter 5A of the Corporations Act 2001 (Cth) applies;

b) services provided pursuant to section 233(2) of the Corporations Act;

c) services to which the Bankruptcy Act 1966 (Cth) applies; or

d) services arising out of any court appointed liquidation or receivership.

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<th>Monetary ceiling and minimum PII</th>
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<tr>
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<td>$20 million</td>
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**Category 3 services** means any services provided by a participant in the performance of his, her or its occupation, which are not Category 1 or Category 2 services.

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<td>$20 million</td>
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</table>

Members should read the CPA Australia Professional Standards Scheme Instrument and [CPA Australia By-Law 9.8](https://www.cpaaustralia.com.au) for full details of the minimum insurance requirements and ensure they take out the appropriate insurance that meets the minimum requirements.

**CPA AUSTRALIA MEMBER RESOURCES**

CPA Australia provides a number of guides on accounting, professional and ethical standards, in addition to its Quality Review Program resources. These include:

- [APES 320: Quality Control for Firms](https://www.cpaaustralia.com.au)
- [APES 310: Dealing with Client Monies](https://www.cpaaustralia.com.au)
- [Other quality review resources](https://www.cpaaustralia.com.au)
- [CPA Australia PII scheme](https://www.cpaaustralia.com.au)
- [Members’ handbook](https://www.cpaaustralia.com.au)
- [Competition and Consumer Act](https://www.cpaaustralia.com.au)

**Useful websites**

- [Fenton Green & Co](https://www.cpaaustralia.com.au)
- [Accounting Professional & Ethical Standards Board (APESB)](https://www.cpaaustralia.com.au)

**Contact:** publicpractice@cpaaustralia.com.au
ANNEXURE 1

CPA Australia Ltd (CPA Australia) Professional Standards (Accountants) Scheme

1. Members may, in addition to their public practice activities, have a connection to the provision of financial products or services.

2. Financial products and services cannot be the subject of effective liability limitation under professional standards schemes, since they are governed mainly by Commonwealth law, which overrides the State legislation upon which such Schemes are based. That constraint cannot be avoided. The PSC has required a restriction which curtails the Scheme’s application.

3. You need to look closely, therefore, at Clause 2.1 of the Scheme, which says that the Scheme applies to:

   (a) all CPA Australia members who hold a current Public Practice Certificate issued by CPA Australia other than:

      (i) such members who also hold an Australian Financial Services Licence granted in accordance with section 913B of the Corporations Act 2001 (Cth) not being a Limited Licence; and

      (ii) Representatives of licensees under section 913B of the Corporations Act 2001 (Cth), not being a Limited Licence;

   And

   (b) all persons to whom the Scheme applies, by virtue of the Act and the corresponding provisions of the Acts of other jurisdictions in which the Scheme applies.

4. What this means in practical terms is that the Scheme will not apply at all, including with respect to unrelated practice liabilities, to Members who either themselves hold an unlimited Australian financial services licence or are "representatives" of a person or company which does. Section 910A of the Corporations Act 2001 (Cth) defines "representative" as follows: "representative of a person means:

   (a) if the person is a financial services licensee:

      (i) an authorised representative of the licensee; or

      (ii) an employee or director of the licensee; or

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2 Sections 18 and 19 of the Act provide that if the Scheme applies to a body corporate, the Scheme also applies to each officer of the body corporate and if the Scheme applies to a person, the Scheme also applies to each partner of a person, and if the Scheme applies to a person, the Scheme also applies to each employee of that person, provided that if such officer of the corporation or partner of the person or employee of the person is entitled to be a member of the same occupational association, such officer, partner or employee is a member of the occupational association. Section 20 provides that the Scheme may also apply to other persons as specified in that section. Section 20A extends the limitation of liability of persons to whom the scheme applies by virtue of sections 18 to 20.

3 Professional Standards Act 2003 (Vic); Professional Standards Act 2004 (Qld); Professional Standards Act 2004 (SA); Professional Standards Act 1997 (WA); Professional Standards Act 2005 (Tas); Professional Standards Act 2004 (NT); Civil Law (Wrongs) Act 2002 (ACT)
(iii) an employee or director of a related body corporate of the licensee; or
(iv) any other person acting on behalf of the licensee; or
(b) in any other case:
   (i) an employee or director of the person; or
   (ii) an employee or director of a related body corporate of the person; or
   (iii) any other person acting on behalf of the person”.

5. As you can see, in addition to not applying for an Australian financial services licensees themselves, their authorised representatives, officers and employees, if a Member is an employee or a director of a company which is "related" to a licensee then the Scheme will not apply to them either, even for work which has nothing to do with the affairs or activities of the Licensee. Companies are "related", for relevant purposes, if one is either a parent or a subsidiary of the other or if they share a common parent.

6. Accordingly, to determine whether you may be excluded from the Scheme’s protection, you need to consider whether your practice structure is set up so that you are employed by, or a director of, any corporate entity which bears such a relationship to a company which holds an Australian financial services licence. If you yourself act on behalf of an AFSL-holder in any capacity, that also will exclude you from the Scheme.

7. For CPA Australia Members who may be excluded from the Scheme, the good news is that CPA Australia has arranged for them to have the benefit of an Excess Professional Indemnity Insurance Policy (the **Excess Policy**), insuring them against liabilities arising from certain activities in professional public practice. The Excess Policy commenced on 8 October 2017 and acts as a secondary layer of insurance, over and above a member’s primary layer of insurance as described in By-Law 9.8. CPA Australia pays the premium for the Excess Policy. No premiums are payable by CPA Australia Members for the Excess Policy. For more information on the Excess Policy and professional indemnity insurance please visit the following link: [cpaustralia.com.au/insurance](http://cpaustralia.com.au/insurance)
Frequently asked questions

What is the difference between PI Insurance and CPA Australia’s professional standards limited liability scheme?

PI insurance is about providing indemnity to the member and firm in relation to your liability including civil liability action. The professional standards scheme caps your civil liability, for example, in contract and tort but not for death, personal injury or fraud. Your PI insurance can provide comprehensive cover.

When will the Scheme apply?

The scheme will apply for a two-year period commencing the day after gazettal of the scheme in all states and territories except for Victoria and Tasmania where it will apply two months after the gazettal date.

Please refer to the Scheme Commencement Table on page 2 of this Guidance Note.

How long does the Scheme operate?

The Scheme will operate for two years from the commencement date in each of the jurisdictions.

What does ‘capped civil liability’ mean?

Capped liability means that damages made pursuant to a claim is limited to a prescribed amount. The caps are determined on the services provided and the turnover of the practice. For the current monetary caps, refer to pages 10 and 11 of this guidance note.

Can an eligible member opt-out of a Scheme?

No person to whom the Scheme applies may choose not to be subject to the Scheme. CPA Australia may, on application by a person, exempt that person from the Scheme if CPA Australia is satisfied that he or she would suffer financial hardship in obtaining professional indemnity insurance to the levels set out in the Scheme.

Why was the proposed Scheme amended after public notification?

Following the public notification process in September and October, the PSC Board advised it required an amendment that would restrict the Scheme’s application in order to recommend its approval. This amendment is in relation to provision of financial services. For further notes on the amendment, please see Annexure 1 of this Guidance Note.

We respect that the PSC is reflecting on changes in the regulatory environment. CPA Australia is the first professional accounting body to apply for a new Scheme since the removal of the accountants’ exemption on the provision of financial advice from 1 July 2016.

Will you seek to broaden the Scheme?

We will consult further with the PSC to see if we can broaden coverage of the Scheme. All PPC Holders will continue to be covered by the group Member’s Professional Indemnity Excess Insurance Policy CPA Australia previously arranged to support members in public practice for those services covered by the Policy.
How will consumers know if a CPA member is covered by a scheme?

A member is required to notify clients (and potential clients) of their limited liability through their client engagement process. This includes disclosure on a member’s business stationery and website.

This notification is in the form of a disclosure statement, which is: ‘Liability limited by a scheme approved under Professional Standards Legislation.’

Why is a PII policy required?

A professional holds themselves out as having special skill, which can be relied upon by another. Consequently, the law requires that the professional exercises the required skill to an appropriate level expected by the client.

Failure to provide the appropriate advice may result in financial loss or damage arising from a mistake or omission by the professional.

Liability can arise out of a breach of contract, negligence or under legislation. Professional indemnity claims for accountants are usually made on the basis of economic loss as a result of advice provided.

By-Law 9.8 of CPA Australia’s By-Laws sets out the minimum requirements for PI Insurance for PPC holders.

What protection is provided by a PII policy?

A PII policy is part of risk management and aims to help shield the professional’s assets in the event of a claim.

CPA Australia, with assistance from the Public Practice Advisory Committee, underwriter QBE Insurance (Australia) Limited and preferred broker, Fenton Green & Co., regularly review and monitor liability claims to identify areas for improvement in order to reduce claims against scheme members.

Do all PII policies meet PSL requirements?

A number of PII products currently available to you may not satisfy the PSL, By-Law 9.8 or your own practice requirements.

Every policy on the market is different. You need to compare each policy and ensure that you are purchasing the right cover for your specific requirements. We recommend that you clarify all coverage and indemnity limit issues with your broker.

Should I assess the terms and limits of my PII policy?

Yes – CPA Australia advises members to review their current requirements, and any other guidance, irrespective of the minimum requirement of the schemes.

You should consider:

- your potential risks based on the type of work you perform and the kind of cover required
- the structure of your practice entity
- what you envisage will be the highest fee for a service provided for a client in any one year
- what you realistically envisage might be the largest loss that a client might foreseeably sustain, due to an error in the provision of your professional services.
• if you have sufficient PII to cover past or future work which is not limited by PSL. For instance, limited liability only applies from the operational date of a scheme. This means that you will need to assess your own risks and at minimum maintain at least the same level of PII cover held prior to the replacement schemes becoming operational, to ensure that you are covered for claims arising from services provided before their inception.

I am no longer a scheme member based on the scheme participant exclusions set out in Clause 2.1 of the new Scheme and as a result, my civil liability is not capped in the event of a claim. How will CPA Australia support its members who provide accounting services in addition to financial services?

The previous Scheme excluded members who held an (unlimited) AFSL granted in accordance with section 913B of the Corporations Act 2001 (Cth) not being a limited licence. This exclusion continues to apply in the new Scheme. What is now different is for the PPC holders who are also providing accounting services (in addition to financial services) now fall within the Clause 2.1 exclusions of the Scheme (see Annexure 1 of this guidance note). This subsequently results in all services offered by affected PPC holders being excluded from the new Scheme.

For those impacted, CPA Australia arranged a group Member’s Professional Indemnity Excess Insurance Policy for you as a Public Practice Certificate holder effective 8 October 2017. This is at no additional cost to you.

The Member’s Professional Indemnity Excess Insurance Policy provides PPC holders with an additional layer of protection over and above the existing levels of professional indemnity insurance (PII) you are already required to hold as part of the requirements of having a public practice certificate. A copy of the policy can be accessed via cpaustralia.com.au/insurance.

Members will be advised if there are any changes to this policy.

What about retroactive claims?

Limited liability only applies from the operational date of a scheme. This means that you will need to undertake a risk assessment of claims that may arise prior to being covered by the scheme and maintain at least the same level of PII insurance cover to ensure that you can cover retroactive claims. It would be a substantial risk, for instance, for you to consider reducing your cover if your current PII policy levels are higher than the minimum set under PSL.

What is my liability concerning overseas clients?

Your liability is limited for work conducted for overseas clients, as long as that work is undertaken within Australia from a business based in Australia.

In the event of a claim made against you by an overseas client you are covered for liability under State and Commonwealth legislation, as long as the client lodges the legal action in Australia under Australian law.

How does proportionate liability affect me?

Proportionate liability legislation is applicable in every Australian State and Territory and was introduced as a result of the insurance crisis in 2001.

Proportionate liability refers to an arrangement whereby the Courts apportion the responsibility for a damages claim amongst each member or party named in the suit, according to the extent to which each member or party’s actions contributed to the loss or damage.
Prior to that each co-defendant had joint and several liability, where a claimant could pursue an obligation against one of the defendants to claim 100 per cent of their loss or damage as if they were wholly liable. It then became the responsibility of that defendant to seek contributions from the other co-defendants who had some responsibility and for all of those parties to sort out their respective proportions of liability and payment.

Joint and several liability was considered inequitable, the objective of proportionate liability is to ensure that liability rests with all defendants in proportion to their contribution to the plaintiff’s loss.

Proportionate liability provides a level playing field and contains the liability exposure in the event of a claim.

**Claim scenario:** If a plaintiff purchased a business and within a short period of time the company failed, in the statement of claim the business could seek compensation from the business broker, the accountant of the seller and a marketing consultant. Both the business broker and marketing consultant had little or no money.

**Joint and several liability:** Under the old legislation, because the business broker and marketing consultant are unable to contribute to the compensation sought, the accountant would be liable for 100 per cent of the claim.

**Proportionate liability:** The Courts would take into account the degree (if any) of culpability of each of the three defendants. If two of the defendants have no money it does not increase the exposure of the accountant. The accountant would only be liable for the proportion of the total loss assigned to them. If the Courts decided that the accountant was responsible for 10 per cent of the loss or damage, the accountant would only be liable to pay 10 per cent of the compensation sought.

**When should I update my business stationery to include the Limited Liability disclosure statement?**

It is important that you first assess whether the Scheme applies to you (see Annexure 1 of this Guidance Note to assess whether you are excluded by the Scheme). Then, check the Scheme Commencement Table on page 2 of this Guidance Note. If the Scheme has commenced in your state or territory, then you must include the disclosure statements upon the commencement of the scheme. Updated resources which contain the disclosure statements can be accessed via: cpaaustralia.com.au/clientengagement. It is important that you do not include disclosure statements until the date that the scheme commences in your state or territory.

**Are the changes to the Scheme because of CPA Australia Advice?**

No. CPA Australia is the first professional body to apply for a new Scheme since the removal of the accountants’ exemption in 1 July 2016.

The PSC is also reflecting on changes in the regulatory environment in relation to the provision of financial services. Members may, in addition to their public practice activities, have a connection to the provision of financial products or services.

Financial products and services cannot be the subject of effective liability limitation under professional standards schemes, since they are governed mainly by Commonwealth law, which overrides the State legislation upon which such Schemes are based. That constraint cannot be avoided.

Following the public notification process in September and October, the PSC Board advised it required an amendment that would restrict the Scheme’s application in order to recommend its approval. This amendment is in relation to provision of financial services. For further notes on the amendment, please see Annexure 1 of this Guidance Note.
Why are the CPA and Chartered Accountants ANZ schemes different?

The CPA Australia scheme is the first scheme for professional accountants that has been approved by the PSC since the removal of the accountants’ exemption on the provision of financial advice from 1 July 2016. The services covered by each professional associations’ schemes may differ.

Additionally, while there are similarities in the profile of member practices there are also substantial differences in the size and risk profile of member practices of the two bodies. The capping arrangements for each scheme are based on the risk profiles and practices of the members and associated risk management strategies. As a result, there may be differences in the capping arrangements approved by the PSC for each association.