

# PROFESSIONAL STANDARDS LEGISLATION AND RISK MANAGEMENT

## PROFESSIONAL STANDARDS SCHEME FACT SHEET

### Introduction

The fact sheet includes information to help you understand the principles of:

- professional standards legislation (**PSL**) and its professional indemnity insurance (**PII**) requirements
- practice risk management from an insurance perspective.

### Understanding PSL and its PII requirements

#### What is PSL?

PSL is Australian state-based legislation 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.

#### What is a PSL liability limited scheme?

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 only.

The schemes do not limit liability for death, personal injury, a breach of trust, fraud or dishonesty.

## What are the benefits of PSL?

You benefit by having your 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.

## CPA Australia PSC Schemes

### PSL across Australia

Professional standards legislation is in place in all states and territories and Professional Standards Councils exist for each state and territory.

There are also 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.

### CPA Australia PSC Schemes

A CPA Australia PSC scheme was first introduced in 1997 for New South Wales. Different Schemes have been continually in operation since this date. In 2007, the Scheme received Federal recognition. A new NSW Scheme commenced on 8 October 2013, replacing the previous scheme. This Scheme has been mutually recognised and replaces the existing schemes throughout the rest of mainland Australia from the following commencement dates:

- New South Wales – 8 October 2013
- Australian Capital Territory – 1 February 2014
- Queensland – 1 February 2014
- Western Australia – 1 February 2014
- South Australia – 13 February 2014
- Victoria – 21 April 2014
- Northern Territory – 1 February 2014

There is currently no scheme in Tasmania.

The alignment of the Tasmanian legislation (*Tasmanian Professional Standards Act*) with the rest of Australia is in progress and, once complete, will enable the application for a scheme in Tasmania to be finalised.

## Who do the CPA Australia PSC schemes cover?

The CPA Australia scheme applies to individual members in mainland Australia who hold a current CPA Australia Public Practice Certificate<sup>1</sup> ("PPC") and includes services provided by that member pursuant to a Limited Australian Financial Services Licence .

The scheme only covers Approved Practice Entities owned, managed or controlled by member/s 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 scheme also applies to all other persons to whom the scheme applies, by virtue of the NSW (or other) Professional Standards Act.

## Who is not covered by the CPA Australia PSC schemes?

The CPA Australia schemes do not cover:

- services provided by members who are authorised representatives of, or directly hold an Australian Financial Services Licence (AFSL)
- credit activity services provided by members
- services provided by members who do not hold a PPC or LPC
- services provided by CPA Australia PPC or LPC holders who are based in Tasmania.

## How does PSL affect me?

The following obligations apply to all members of applicable schemes.

### 1. Scheme Membership

It is compulsory for CPA Australia PPC holders in mainland Australia to become members of a LLS scheme and members are automatically registered upon PPC approval and invoiced annually as part of the subscription renewal process.

CPA Australia certificate holders who are 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 PSC 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 Professional Standards legislation 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 in lieu of you joining a scheme and if you hold a CPA PPC you must be a member of the CPA Australia Scheme.

### 2. Registration fee

You pay \$55 (including GST) to be a member of a CPA Australia LLS scheme. The fee is included on members' subscription renewal notices, yearly. This fee is paid to the schemes' government regulator, being the relevant state or territory PSC. This fee does not constitute any form of professional indemnity insurance premium. The \$55 is a compulsory payment to the regulator in order for you to be a member of CPA Australia's liability limited scheme. Your PI insurance premium is a separate payment that you are responsible for managing to maintain your required level of PI insurance cover.

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<sup>1</sup> A PPC holder refers to members holding either a CPA Australia Public Practice Certificate or a Limited Public Practice Certificate.

### 3. Business stationery

You must notify clients (and potential clients) of your limited liability 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.

CPA Australia recommends the addition of the following words where business stationery is shared with an AFS licensee:

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

\*Other than for the acts or omissions of financial services licensees.

Business stationery includes:

- company letterhead and letters signed by the practice – including letters of engagement and 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 disclosure statement is not required on business cards, in 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.

Certificate 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.

It is important for certificate holders in the NT, Queensland and Victoria to realise that 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 cover

As a member of a scheme you have the benefit of capped liability on claims but, in return, you are required to:

#### **Assess the level of PII cover you should hold**

CPA Australia advises you 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 ensure that you are entitled to the benefit of the 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, from the commencement date of each applicable state or territory scheme, if the member is in a practice of less than 20 principals and their practice fee income for the prior year is less than \$10 million.

For members in larger firms or with higher practice incomes the minimum PII requirements and monetary ceilings are dependent on the services provided. See the tables on the following page:

| <b>Category 1 services (Audit &amp; Assurance) means:</b>   |                                  |
|---|----------------------------------|
| (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).            |                                  |
| Practice Profile  | Monetary ceiling and minimum PII |
| 1. Less than 20 principals AND Less than \$10 million in total annual fee for the prior financial year.                               | \$2 million                      |
| 2. Participants other than those in Groups 1 and 3 below.   | \$10 million                     |
| 3. Greater than 60 principals OR which generated total annual fee income for the prior financial year greater than \$20 million.      | \$75 million                     |

| <b>Category 2 services (Insolvency) means:</b>   |                                  |
|--|----------------------------------|
| (a) services to which Chapter 5 or Chapter 5A of the <i>Corporations Act 2001</i> (Cth) applies                                  |                                  |
| (b) services provided pursuant to section 233(2) of the <i>Corporations Act 2001</i> (Cth)                                       |                                  |
| (c) services to which the <i>Bankruptcy Act 1966</i> (Cth) applies or  |                                  |
| (d) services arising out of any court appointed liquidation or receivership.   |                                  |
| Practice Profile   | Monetary ceiling and minimum PII |
| 1. Less than 20 principals AND Less than \$10 million in total annual fee for the prior financial year.                          | \$2 million                      |
| 2. Participants other than those in Groups 1 and 3 below.  | \$10 million                     |
| 3. Greater than 60 principals OR which generated total annual fee income for the prior financial year greater than \$20 million. | \$20 million                     |

| <b>"Category 3 services"</b> means any services provided by a participant in the performance of his, her or its occupation, which are not Category 1, Category 2 or financial planning services, other than such financial planning services provided pursuant to a Limited Australian Financial Services Licence or pursuant to regulation 7.1.29A of the <i>Corporations Regulations</i> . |                                  |
|--|----------------------------------|
| Practice Profile   | Monetary ceiling and minimum PII |
| 1. Less than 20 principals AND<br>Less than \$10 million in total annual fee for the prior financial year.   | \$2 million                      |
| 2. Participants other than those in Groups 1 and 3 below.  | \$10 million                     |
| 3. Greater than 60 principals OR which generated total annual fee income for the prior financial year greater than \$20 million.   | \$20 million                     |

Members should read the CPA Australia Professional Standards Schemes for full details and ensure they take out the appropriate insurance.

### Why is a PII policy required?

A professional holds themselves out as having a 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.

PII is a form of liability insurance. It indemnifies accountants and other professionals for legal liability to their clients and others who rely on their professional advice.

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.

### What protection is provided by a PII policy?

A PII policy aims to 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 or your 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.

## 5. Risk Management, Quality Review and CPD

There was no change to members' risk management, quality review (QR) or continuing professional development (CPD) obligations under PSL. These obligations formed the basis of the rigour of CPA Australia's liability limited schemes.

CPA Australia's By-Laws specify that you undertake at least 120 hours of CPD per triennium, completing a minimum of 20 hours each year.

### **What is the limit of our liability under PSL?**

Safety 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 practice size, services provided and total fees generated by the practice.

### **Why are the CPA and Chartered Accountants ANZ schemes different?**

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.

### **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 PI 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 PI 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?**

Prior to legislative changes, co-defendants were held jointly and severally liable for their actions, which was considered inequitable, particularly in circumstances where co-defendants were impecunious.

Proportionate liability legislation between co-defendants provides the following benefits:

- the certainty of an outcome for overseas underwriters to move into the Australian market and consequently allow for competitive insurance rates

- does away with the “deep pocket syndrome” which has plagued professionals under the joint and several liability regime
- allows a “level playing field” for service providers in the industry
- contains liability exposure in the event of a claim.

## 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.

The CPA Australia Quality Review Program offers public practitioners a constructive and educational opportunity to ensure highest standards and processes are consistently maintained.

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

- [Guide for members on APES 325 risk management for firms](#)
- [APES 320 Quality control for firms](#)
- [APES 110 Code of ethics for professional accountants](#)
- [APES 310 Dealing with client monies](#)
- [Other quality review resources](#)
- [CPA Australia PII scheme](#)
- [Members’ handbook](#)
- [Competition and Consumer Act](#)
- [Public practice brand guidelines](#)

## Useful websites

- [Professional Standards Council](#)
- [Fenton Green & Co](#)
- [Accounting Professional & Ethical Standards Board \(APESB\)](#)



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#### **Acknowledgement**

CPA Australia is committed to partnering practitioners in managing their risk. As part of this partnership the Insurance Advisory Working Group, in conjunction with our insurance underwriter, QBE Insurance (Australia) Limited, and preferred broker, Fenton Green & Co, to develop and deliver a series of exclusive policies to provide quality cover at competitive prices. This partnership includes a commitment to the ongoing education of our members in the area of risk management. This fact sheet has been produced in association with Fenton Green & co. as part of this commitment.

#### **Support & Guidance**

CPA Australia has a range of services specially tailored to support public practitioners. Should you require any further guidance please visit [cpaaustralia.com.au/publicpractice](http://cpaaustralia.com.au/publicpractice) or contact your local office on 1300 73 73 73.

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BE RECOGNISED.

