

Professional Liability Schemes.

	Queensland Law Society Limitation of Liability Scheme	Chartered Accountants Australia & New Zealand (CA ANZ) Professional Standards (Limitation of Liability) Scheme	CPA Australia (CPA) Professional Standards Scheme	Institute of Public Accountants (IPA) Professional Standards Scheme
Commencement Date	1 July 2010 (for 5 years), new scheme commenced 1 July 2016	8 October 2014 (for 5 years)	1 January 2018 (for 2 years)	1 January 2013 (extended beyond its original 5 year term)
Who Does it Cover?	<p>Full members of QLS i.e. individuals not practices.</p> <p>Individuals may elect to participate if the following requirements are met:</p> <ul style="list-style-type: none"> a. be a full member of QLS; b. hold a current Australian practising certificate; c. have the benefit of the applicable professional indemnity insurance (through QLS/Lexon Insurance professional indemnity insurance scheme). <p>NB to gain the full benefit of the cap, all solicitors within a firm would have to be members of both the QLS and the Scheme.</p>	<p>All members that meet the following requirements:</p> <ul style="list-style-type: none"> a. hold a <u>current Australia Public Practice Certificate issued by CA ANZ; and/or</u> b. hold a <u>Limited Australian Financial Services licence (Limited AFSL) and Representatives (including Authorised Representatives) of the Limited AFSL;</u> c. all practice entity members of CA ANZ other than holders of a (full) AFSL and their authorised representatives and employees not being a limited licensee; their authorised representatives or employees; and d. all affiliate members of CA ANZ. 	<p>All members that meet the following requirements:</p> <ul style="list-style-type: none"> a. hold a <u>current Australia Public Practice Certificate issued by CPA Australia¹; and/or</u> b. hold a <u>Limited Australian Financial Services licence (Limited AFSL) and Representatives (including Authorised Representatives) of the Limited AFSL;</u> 	<p>All members that meet the following requirements:</p> <ul style="list-style-type: none"> a. hold a <u>current Australia Public Practice Certificate issued by IPA (unless otherwise excluded)²; and/or</u> b. The scheme does <u>not</u> apply to financial services licensees (both full and limited holders).

1 A PPC holder refers to members holding either a CPA Australia Public Practice Certificate or a Limited Public Practice Certificate. 3 ("PPC").

2 IPA scheme (2013-2018) instrument, clause 2.1.

3 Ibid, Clause 2.4

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PI Insurance	<p>QLS has entered into a Master Policy of professional indemnity insurance cover for Queensland members. This policy is insured by Lexon (in accordance with <i>Queensland Law Society Indemnity Rule 2005 (Qld)</i>).</p> <p>Generally if you are an employee of a law practice you will have the benefit of this PII.</p>	<p>Members should ensure their professional indemnity insurance (PII) policy covers all aspects of their services and work.</p> <p>The minimum PII required will depend on the type of work a member and/or their practice perform, fees charged and their billing cycle⁴.</p> <p>Other factors such as your industry, number of practitioners and staff, and claims history can also impact a member’s cover⁵.</p>	<p>Members and their approved practice entities must have a valid and in-force PII Policy under which the Member is the insured pursuant to at least the minimum requirements set out in clause 9.8(c) of the CPA By-laws (see ‘Liability cap’ section below)⁶.</p> <p>NB The Group Member’s Professional Indemnity Excess Insurance Policy (Master Policy) issued to CPA Australia provides the benefit of insurance coverage to members holding a CPA Australia Public Practice Certificate who are not already covered by an alternative Professional Standards Scheme and their approved practice entities (current policy expires 8 October 2018).</p>	<p>All members that hold an IPA PPC are required to hold Professional Indemnity (“PI”) insurance with a minimum of \$1 million cover for each reinstatement as stipulated in IPA By-Law 9.1.11, IPA Membership Policy BMC2051 and the Scheme instrument⁷.</p>

4 CA ANZ scheme instrument clauses 3.2, 3.4 & 3.6.

5 See - <https://www.charteredaccountantsanz.com/member-services/being-in-public-practice/insurance-and-liability/professional-indemnity-insurance>

6 See - https://www.cpaustralia.com.au/~/_media/corporate/allfiles/document/about/by-laws-effective-23-july.pdf?la=en

7 See - <https://www.publicaccountants.org.au/media/1280510/New-Professional-Standards-Schemes-Frequently-asked-questions-JULY17.pdf>

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Liability Cap	<p>Generally \$1.5M (exclusive of defence costs)</p> <p>iii. Class 1: Participating member in law practice <u>consisting of up to 20 principals</u> and generates total annual fee income of up to \$10 million. - \$1.5 million.</p> <p>iv. Class 2: Participating member in law practice consisting of more than 20 principals and generates total annual fee income of more than \$10 million. -\$10 million</p>	<p>Category 1 - Audit Services:</p> <p>i. \$2 million, where the claim arises from a service in respect of which the fee is less than \$100,000;</p> <p>ii. \$5 million, where the claim arises from a service in respect of which the fee is \$100,000 or more, but less than \$300,000;</p> <p>iii. \$10 million, where the claim arises from a service in respect of which the fee is \$300,000 or more, but less than \$500,000;</p> <p>iv. \$20 million, where the claim arises from a service in respect of which the fee is \$500,000 or more, but less than \$1,000,000;</p> <p>v. \$50 million, where the claim arises from a service in respect of which the fee is \$1,000,000 or more but less than \$2,500,000; and</p> <p>vi. \$75 million, where the claim arises from a service in respect of which the fee is \$2,500,000 or more.</p>	<p>Category 1 - Audit Services:</p> <p>Monetary ceiling and minimum PII:</p> <p>i. If the member is in an Approved Practice Entity with practice fee income for the prior year of less than \$10 million. - \$2 million.</p> <p>ii. If the member is in an Approved Practice Entity with practice fee income for the prior year of between \$10 million - \$20 million. - \$20 million</p> <p>iii. If the member is in an Approved Practice with practice fee income for the prior year of more than \$20 million - \$75 million. - \$75 million</p>	<p>\$1 million - <i>“This scheme only affects the liability for damages arising from a single cause of action to the extent to which the liability results in damages exceeding \$1,000,000.”⁸</i></p>

⁸ IPA scheme instrument, Clause 3.1.

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Liability Cap Cont.		<p>Category 2 – Insolvency Services</p> <ul style="list-style-type: none"> i. \$2 million, where the relevant fee is less than \$100,000; ii. \$5 million, where the relevant fee is \$100,000 or more, but less than \$300,000; iii. \$10 million, where the relevant fee is \$300,000 or more, but less than \$500,000; iv. \$20 million where the relevant fee is \$500,000 or more. v. NB The relevant fee is the highest fee billed by a Participant (or by all Participants who are members of a practice entity) in a single financial year for a Category 2 engagement/ appointment over the 3 financial years prior to the year in which the Participant commenced to provide the services the subject of the claim. If the Participant only has 2 years’ fee history, then the relevant fee is the highest such fee billed in either of those years. If the Participant only has 1 year’s fee history, then the relevant fee is the highest such fee billed in that year. If the Participant has less than 1 full financial year’s fee history, then the relevant fee is \$2 million. 	<p>Category 2 - Insolvency Services:</p> <p>Monetary ceiling and minimum PII:</p> <ul style="list-style-type: none"> i. If the member is in an Approved Practice Entity with practice fee income for the prior year of less than \$10 million - \$2 million. ii. If the member is in an Approved Practice Entity with practice fee income for the prior year of between \$10m-\$20m - \$10 million. iii. If the member is in an Approved Practice with practice fee income for the prior year of more than \$20million - \$20 million. 	

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Liability Cap Cont.		<p>Category 3 – Other Services:</p> <ul style="list-style-type: none"> i. \$2 million, where the claim arises from a service in respect of which the fee is less than \$100,000; ii. \$5 million where the claim arises from a service in respect of which the fee is \$100,000 or more, but less than \$300,000; iii. \$10 million where the claim arises from a service in respect of which the fee is \$300,000 or more, but less than \$500,000; iv. \$20 million where the claim arises from a service in respect of which the fee is \$500,000 or more. 	<p>Category 3 - Services:</p> <p>(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)</p> <p>Monetary ceiling and minimum PII:</p> <ul style="list-style-type: none"> i. If the member is in an Approved Practice Entity with practice fee income for the prior year of less than \$10 million - \$2 million. ii. If the member is in an Approved Practice Entity with practice fee income for the prior year of between \$10m to \$20m - \$10 million. iii. If the member is in an Approved Practice with practice fee income for the prior year of more than \$20m - \$20 million. 	
Exemptions / Exclusions	<p>The Acts do not apply to any liability for damages arising from:</p> <ul style="list-style-type: none"> i. the death of or personal injury to a person; ii. a breach of trust; iii. fraud or dishonesty; iv. Part 9, division 2, subdivision C of the Land Title Act 1994 (claims under the Qld State Government Fidelity Fund for title fraud); v. ILP's as corporate entities. 	<p>The Acts do not apply to any liability for damages arising from:</p> <ul style="list-style-type: none"> i. the death of or personal injury to a person; ii. a breach of trust; or iii. fraud or dishonesty. 		

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Opt out?	Yes.	No. A person to whom the Scheme applies cannot choose not to be subject to the Scheme, unless they have been exempted by CA ANZ. NB - “CA ANZ may, on application by a person, exempt the person from the Scheme if CA ANZ is satisfied that he or she would suffer financial hardship in obtaining professional indemnity insurance to the levels set out in [the Scheme].” ⁹	No. 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. ¹⁰	No. No person to whom the scheme applies may be exempted from the scheme other than a person who, on application to the IPA Board of Directors, is able to satisfy the Board that he/she is also a participating member of another occupational association that is covered by a scheme limiting liability and has not opted out of that scheme. ¹¹

⁹ CA ANZ scheme instrument, clause 2.2.

¹⁰ CPA scheme instrument, clause 2.2.

¹¹ IPA scheme instrument, clause 2.2.

Contact us.

If you need any further information or advice please contact:



MYLTON BURNS

Principal

t 07 3231 0625

e mburns@mcw.com.au



EMILY BURNS

Solicitor

t 07 3231 0680

e eburns@mcw.com.au