

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Assistant Treasurer**

*Australian Securities and Investments Commission Act 2001*  
*Competition and Consumer Act 2010*  
*Corporations Act 2001*

*Treasury Laws Amendment (Professional Standards Schemes No. 2) Regulations 2019*

Section 251 of the *Australian Securities and Investments Commission Act 2001* (the ASIC Act), section 172 of the *Competition and Consumer Act 2010* (the CCA) and section 1364 of the *Corporations Act 2001* (the Corporations Act) each provide that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The intergovernmental *Professional Standards Agreement 2011* provides for a national framework of professional standards legislation that provides professionals and members of occupational associations with capped civil liability. As part of this national framework, all states and territories have adopted legislation to establish a Professional Standards Council that can approve professional standards schemes in their respective jurisdictions. Members of professional groups that are part of these schemes are entitled to capped civil liability in return for raising industry service standards and having professional indemnity insurance up to the level of the prescribed liability cap.

As part of the national framework of professional standards legislation, the Commonwealth provides members of professional groups that are part of an approved professional standards scheme with capped civil liability in relation to misleading and deceptive conduct under the ASIC Act, the CCA and the Corporations Act to ensure that actions cannot be brought under these Acts to circumvent the cap on civil liability. This provides consistency across Commonwealth and state and territory laws.

All approved professional standards schemes are prescribed under the CCA. In addition, those schemes relating to financial services are also prescribed under the ASIC Act and Corporations Act.

Subsections 12GNA(2) of the ASIC Act, 137(2) of the CCA and 1044B(2) of the Corporations Act provide for capped civil liability for misleading and deceptive conduct for professional standards schemes that are prescribed in relevant regulations. Accordingly, regulation 3A of the *Australian Securities and Investments Commission Regulations 2001*, regulation 8A of the *Competition and Consumer Regulations 2010* and regulation 7.10.02 of the *Corporations Regulations 2001* prescribe a list of professional standards schemes that have capped civil liability for misleading and deceptive conduct under their respective principal acts.

The *Treasury Laws Amendment (Professional Standards Schemes No. 2) Regulations 2019* (the Regulations) gives effect to the decisions of the Professional Standards Councils to approve or amend professional standards schemes in their respective jurisdictions, as published in the relevant state Government gazette or on the relevant state Government legislation website. This includes prescribing replacement schemes (new schemes which replace currently-prescribed schemes), as well as extensions to currently-prescribed schemes.

The Regulations also update the list of prescribed schemes by removing those which have expired.

Details of the currently approved schemes, as well as the expired schemes, are publicly available on the Professional Standards Councils website: [www.psc.gov.au](http://www.psc.gov.au).

As the Regulations prescribe or extend a number of schemes, the Regulations have incorporated by reference the relevant state Government gazette notices or legislative instruments. Gazette notice references include the state, gazette number and date the gazette was published; legislative instrument references include the title and date of making the instrument. Government gazette notices and legislative instruments can be accessed for free from the state government websites below, by searching the relevant gazette date/number or legislative instrument title.

**NSW** <https://legislation.nsw.gov.au/#/gazettes>

**WA** <https://www.slp.wa.gov.au/gazette/gazette.nsf>

**VIC** <http://www.gazette.vic.gov.au/>

The Professional Standards Councils seek the opinion of independent actuarial consultants and call for public comment on professional standards schemes via public notification in major newspapers circulating throughout the relevant jurisdictions prior to approving schemes. Further consultation by the Commonwealth Government was not considered necessary.

Details of the Regulations are set out in Attachment A.

The Acts do not specify any conditions that need to be met before the power to make the Regulations are exercised.

The Office of Best Practice Regulation has advised that the amendments do not require a Regulatory Impact Statement.

A Statement of Compatibility with Human Rights is at Attachment B

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on the day after this instrument is registered on the Federal Register of Legislation.

**Details of the *Treasury Laws Amendment (Professional Standards Schemes No. 2) Regulations 2019***

**Clause 1 – Name of Regulations**

This section provides that the title of the Regulations is the *Treasury Laws Amendment (Professional Standards Schemes No. 2) Regulations 2019*.

**Clause 2 – Commencement**

This section provides that the Regulations commence the day after registration.

**Clause 3 – Authority**

This section provides that the Regulations are made under the *Australian Securities and Investments Commission Act 2001* (the ASIC Act), the *Competition and Consumer Act 2010* (the CCA), and the *Corporations Act 2001* (the Corporations Act).

**Clause 4 – Schedules**

This section provides that each instrument that is specified in a Schedule to the Regulations is amended or repealed as set out in the applicable items in the Schedule concerned, and any other items in a Schedule to this instrument has effect according to its terms.

**Schedule 1 – Amendments**

**Items 1, 14, and 26 – replacement scheme: *The CPA Australia Ltd Professional Standards (Accountants) Scheme***

These items prescribe *The CPA Australia Ltd Professional Standards (Accountants) Scheme* as a professional standards scheme that has capped civil liability for misleading or deceptive conduct under the ASIC Act, the CCA and the Corporations Act, as published in the New South Wales Government Gazette on 30 August 2019. This scheme replaces the currently-prescribed *The CPA Australia Ltd Professional Standards (Accountants) Scheme*.

**Items 2, 15, and 27 – replacement scheme: *Chartered Accountants Australia and New Zealand Professional Standards Scheme***

These items prescribe the *Chartered Accountants Australia and New Zealand Professional Standards Scheme* as a professional standards scheme that has capped civil liability for misleading or deceptive conduct under the ASIC Act, the CCA and the Corporations Act, as published in the New South Wales Government Gazette on 12 July 2019. This single scheme replaces the currently-prescribed *Chartered Accountants Australia and New Zealand Professional Standards Scheme* of New South Wales, Victoria, Queensland, Western Australia, South Australia, Australian Capital Territory and the Northern Territory.

Items 3, 6, 9, 11, 12, 16, 17, 20, 23, 25, 28, 31, 34, 36– consequential amendments

These items replace references to ‘the day the *Treasury Laws Amendment (Professional Standards Schemes) Regulations 2019* commences’ with ‘26 March 2019’ which is the date that instrument commenced.

Items 4, 7, 10, 18, 21, 24, 29, 32 and 35 – removing replaced schemes:

These items remove the following State and Territory schemes which have been replaced by a single Federal scheme at Item 2, 15, and 27:

- *Chartered Accountants Australia and New Zealand Professional Standards Scheme* (Victoria)
- *Chartered Accountants Australia and New Zealand Professional Standards Scheme* (Queensland)
- *Chartered Accountants Australia and New Zealand Professional Standards Scheme* (Western Australia)
- *Chartered Accountants Australia and New Zealand Professional Standards Scheme* (South Australia)
- *Chartered Accountants Australia and New Zealand Professional Standards Scheme* (ACT)
- *Chartered Accountants Australia and New Zealand Professional Standards Scheme* (NT)

Items 5, 19 and 30 – replacement scheme: *The Victorian Bar Professional Standards Scheme*

These items prescribe *The Victorian Bar Professional Standards Scheme* as a professional standards scheme that has capped civil liability for misleading or deceptive conduct under the ASIC Act, the CCA and the Corporations Act, as published in the Victoria Government Gazette on 18 April 2019. This scheme replaces the currently-prescribed *The Victorian Bar Professional Standards Scheme*.

Items 8, 22 and 33 – replacement scheme: *The Law Society of Western Australia Professional Standards Scheme*

This item prescribes *The Law Society of Western Australia Professional Standards Scheme* as a professional standards scheme that has capped civil liability for misleading or deceptive conduct under the CCA, as published in the Western Australian Government Gazette on 7 May 2019. This scheme replaces the currently-prescribed *The Law Society of Western Australia Scheme*.

Item 13 – replacement scheme: *The Australian Property Institute Valuers Limited Professional Standards Scheme*

This item prescribes *The Australian Property Institute Valuers Limited Professional Standards Scheme* as a professional standards scheme that has capped civil liability

for misleading or deceptive conduct under the CCA, as published in the New South Wales Government Gazette on 12 June 2019. This scheme replaces the currently-prescribed *The Australian Property Institute Valuers Limited Scheme*.

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Human Rights Act)*

***Treasury Laws Amendment (Professional Standards Schemes No. 2) Regulations 2019***

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights Act.

**Overview of the Legislative Instrument**

The Regulations update the list of prescribed professional schemes that have capped civil liability for misleading and deceptive conduct under the *Australian Securities and Investments Commission Act 2001* (the ASIC Act), the *Competition and Consumer Act 2010* (the CCA) and the *Corporations Act 2001* (the Corporations Act).

The intergovernmental *Professional Standards Agreement 2011* provides for a national framework of professional standards legislation that provides professionals and members of occupational associations with capped civil liability. As part of this national framework, all states and territories have adopted legislation to establish a Professional Standards Council that can approve professional standards schemes in their respective jurisdictions. Members of professional groups that are part of these schemes are entitled to capped civil liability in return for raising industry service standards and having professional indemnity insurance up to the level of the prescribed liability cap.

As part of the national framework of professional standards legislation, the Commonwealth provides members of professional groups that are part of an approved professional standards scheme with capped civil liability in relation to misleading and deceptive conduct under the ASIC Act, the CCA and the Corporations Act to ensure that actions cannot be brought under these Acts to circumvent the cap on civil liability. This provides consistency across Commonwealth and state and territory laws.

**Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms. Consideration has been given to the international conventions as set out in section 3 of the Human Rights Act.

This Legislative Instrument does not impose or amend penalty provisions, nor does it apply retrospectively or concern privacy rights of individuals or groups of people.

**Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.