

EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer and Minister for Financial Services

Australian Securities and Investments Commission Act 2001

Competition and Consumer Act 2010

Corporations Act 2001

Treasury Laws Amendment (Professional Standards Schemes) Regulations 2023

Section 251 of the *Australian Securities and Investments Commission Act 2001* (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 Acts to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Acts.

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.

The ASIC Act, the CCA and 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) Regulations 2023* (the Regulations) update references to the expiry date of professional standards schemes that are being extended with references to their new expiry date as approved by the Professional Standards Council and published in the New South Wales Government

Gazette. The schemes being extended are *The Law Society of New South Wales Professional Standards Scheme* and *The Australian Computer Society Professional Standards Scheme*.

The Regulations also make consequential amendments to relevant schemes to reflect their revised expiry dates.

The Act does not specify any conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations extend the date by which current prescribed schemes would expire. Prior to prescribing these schemes the Professional Standards Councils sought the opinion of independent actuarial consultants and called 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 on extending the expiry date of these schemes was not considered necessary as by operation of the relevant state law, the prescribed schemes can only be extended by one year.

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.

As the Regulations extend a number of schemes, the Regulations have incorporated by reference the relevant state Government gazette notices. Gazette notice references include the state, gazette number and date the gazette was published. Government gazette notices can be accessed for free from the state government website below, by searching the relevant gazette date/number.

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

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

The Regulations commence on the day after it is registered.

Details of the Regulations are set out in Attachment A.

A statement of Compatibility with Human Rights is at Attachment B.

The Office of Impact Analysis has been (OIA) has been consulted (OIA ref: 25848) and agreed that an Impact Analysis is not required. The measure has no impact on compliance costs.

Details of the *Treasury Laws Amendment (Professional Standards Schemes) Regulations 2023*

Section 1 – Name

This section provides that the title of the Regulations is the *Treasury Laws Amendment (Professional Standards Schemes) Regulations 2023*.

Section 2 – Commencement

This section provides for the Regulations to commence on the day after the instrument is registered.

Section 3 – Authority

This section provides that the *Treasury Laws Amendment (Professional Standards Schemes) Regulations 2023* (the proposed Regulations) are made under the *Australian Securities and Investments Commission Act 2001*, the *Competition and Consumer Act 2010* (CCA), and the *Corporations Act 2001*.

Section 4 – Schedule

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 that any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Items 1, 3 and 4 – Extension to *The Law Society of New South Wales Professional Standards Scheme*

These items amend Regulation 3A (table item 3) of the *Australian Securities and Investments Commission Regulations 2001* (ASIC Regulations), regulation 8A (table item 8) of the *Competition and Consumer Regulations 2010* (CC Regulations), and regulation 7.10.02 (table item 3) of the *Corporation Regulations 2001* to provide for the extension of the existing *Law Society of New South Wales Professional Standards Scheme* as a professional standards scheme that has capped civil liability for misleading or deceptive conduct under the CCA, the ASIC Act and the Corporations Act. The period in which the *Law Society of New South Wales Professional Standards Scheme* will be in force is extended to 21 November 2024 as published in the New South Wales Government Gazette No. 311 of 14 July 2023.

The existing *Law Society of New South Wales Professional Standards Scheme* continues unchanged for an additional year beyond the date it was previously due to expire. This provides continuity in coverage for scheme participants beyond when the existing scheme was previously due to expire. The extended scheme requires The Law Society of New South Wales to monitor, enforce and improve the professional standards of their members, and protect consumers of their professional services. The scheme also continues to cap the amount payable by members of The Law Society of New South Wales who

take part in an association's scheme if a court were to uphold a civil liability claim against them.

The fundamentals of the scheme, including persons to whom the scheme applies (membership classes), and the limitation of liability remain the same for the period of the extension. As the relevant State Minister may only provide a single 12-month extension, The Law Society of New South Wales will be required to develop a replacement professional standards scheme in order to retain capped liability beyond this 12-month extension.

Item 2 – Extension to *The Australian Computer Society Professional Standards Scheme*

These items amend regulation 8A (table item 1) of the CC Regulations, to provide for the extension of the existing *Australian Computer Society Professional Standards Scheme* as a professional standards scheme that has capped civil liability for misleading or deceptive conduct under the CCA. The period in which the *Australian Computer Society Professional Standards Scheme* is in force is extended to 31 December 2024 as published in the New South Wales Government Gazette No. 311 of 14 July 2023.

The existing *Australian Computer Society Professional Standards Scheme* continues unchanged for an additional year beyond the date it was previously due to expire. This provides continuity in coverage for scheme participants beyond when the existing scheme was previously due to expire. The extended scheme requires The Australian Computer Society to monitor, enforce and improve the professional standards of their members, and protect consumers of their professional services. The scheme also continues to cap the amount payable by members of The Australian Computer Society who take part in an association's scheme if a court were to uphold a civil liability claim against them.

The fundamentals of the scheme, including persons to whom the scheme applies (membership classes), and the limitation of liability remain the same for the period of the extension. As the relevant State Minister may only provide a single 12-month extension, The Australian Computer Society will be required to develop a replacement professional standards scheme in order to retain capped liability beyond this 12-month extension.

Statement of Compatibility with Human Rights

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

Treasury Laws Amendment (Professional Standards Schemes) Regulations 2023

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 (Parliamentary Scrutiny) Act 2011*.

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.

Conclusion

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