

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 2024

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 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.

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) Regulations 2024* (the Regulations) update professional standards schemes that are being extended with references to the extension period. The schemes being extended are the *Victorian Bar*

Professional Standards Scheme, CPA Australia Ltd Professional Standards (Accountants) Scheme and the Chartered Accountants Australia and New Zealand Professional Standards Scheme. The Regulations also include a remade professional standards scheme titled the *Law Society of Western Australia Professional Standards Scheme*. There are no significant differences between this remade scheme and the earlier iteration of the scheme which was previously prescribed.

The ASIC Act, the CCA and the Corporations Act do not specify any conditions that need to be satisfied before the power to make the Regulations may be exercised.

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 to 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 websites below, by searching the relevant gazette date/number.

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

VIC <https://www.gazette.vic.gov.au/>

WA <https://www.legislation.wa.gov.au/legislation/statutes.nsf/gazettes.html>

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

The Regulations commenced 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.

Details of the consultation process are outlined in Attachment C.

The Office of Impact Analysis has been (OIA) has been consulted (OIA ref: OIA23-06158) 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 2024*

Section 1 – Name

This section provides that the name of the regulations is the *Treasury Laws Amendment (Professional Standards Schemes) Regulations 2024* (the Regulations).

Section 2 – Commencement

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

Section 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).

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 any other item in a Schedule to the Regulations has effect according to its terms.

Schedule 1 – Amendments

Items 1, 4 and 7 – Extension to the *CPA Australia Ltd Professional Standards (Accountants) Scheme*

These items amend Regulation 3A (table item 1) of the *Australian Securities and Investments Commission Regulations 2001* (ASIC Regulations), regulation 8A (table item 5) of the *Competition and Consumer Regulations 2010* (CC Regulations), and regulation 7.10.02 (table item 1) of the *Corporation Regulations 2001* (Corporation Regulations) to provide for the extension of the existing *CPA Australia Ltd Professional Standards (Accountants) 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 *CPA Australia Ltd Professional Standards (Accountants) Scheme* will be in force is extended to 20 August 2025 as published in the New South Wales Government Gazette No. 71 of 1 March 2024.

The existing *CPA Australia Ltd Professional Standards (Accountants) Scheme* continues unchanged for the extension period. This provides continuity in coverage for scheme participants beyond when the existing scheme was previously due to expire. The extended scheme requires CPA Australia 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 CPA Australia 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. CPA Australia will be required to develop a replacement professional standards scheme in order to retain capped liability beyond this extension.

Items 1, 4 and 7 – Extension to the *Chartered Accountants Australia and New Zealand Professional Standards Scheme*

These items amend Regulation 3A (table item 2) of the ASIC Regulations, regulation 8A (table item 7) of the CC Regulations, and regulation 7.10.02 (table item 2) of the Corporation Regulations to provide for the extension of the existing 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 CCA, the ASIC Act and the Corporations Act. The period in which the *Chartered Accountants Australia and New Zealand Professional Standards Scheme* will be in force is extended to 12 July 2025 as published in the New South Wales Government Gazette No. 71 of 1 March 2024.

The existing *Chartered Accountants Australia and New Zealand Professional Standards Scheme* continues unchanged for the extension period 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 Chartered Accountants Australia and New Zealand 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 Chartered Accountants Australia and New Zealand 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. Chartered Accountants Australia and New Zealand will be required to develop a replacement professional standards scheme in order to retain capped liability beyond this extension.

Items 2, 5 and 8 – Extension to the *Victorian Bar Professional Standards Scheme*

These items amend Regulation 3A (table item 7) of the ASIC Regulations, regulation 8A (table item 15) of the CC Regulations, and regulation 7.10.02 (table item 7) of the Corporation Regulations to provide for the extension of the existing *Victorian Bar 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 *Victorian Bar Professional Standards Scheme* will be in force is extended to 30 June 2025 as published in the Victoria Government Gazette No. G 45 of 9 November 2023.

The existing *Victorian Bar 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 Victorian Bar 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

Victorian Bar 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 Victorian Bar will be required to develop a replacement professional standards scheme in order to retain capped liability beyond this 12-month extension.

Items 3, 6 and 9 – Prescription of the *Law Society of Western Australia Professional Standards Scheme*

These items amend Regulation 3A (table item 12) of the ASIC Regulations, regulation 8A (table item 22) of the CC Regulations, and regulation 7.10.02 (table item 12) of the Corporation Regulations to provide for the prescription of 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, the ASIC Act and the Corporations Act. The period in which *the Law Society of Western Australia Professional Standards Scheme* will be in force is from 1 July 2024 to 30 June 2029 as published in the Western Australia Government Gazette No. 23 of 8 March 2024.

Though the scheme has been approved anew, the fundamentals of the scheme, including persons to whom the scheme applies (membership classes), and the limitation of liability remain the same as was the case in the 2019 version of the scheme. The new scheme continues to require Law Society of Western Australia 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 Law Society of Western Australia who take part in an association's scheme if a court were to uphold a civil liability claim against them.

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 2024

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.

Overview of consultation process for *Treasury Laws Amendment (Professional Standards Schemes) Regulations 2024*

Prior to prescribing the extension of the *Victorian Bar Professional Standards Scheme*, *CPA Australia Ltd Professional Standards (Accountants) Scheme* and the *Chartered Accountants Australia and New Zealand Professional Standards Scheme*. The relevant Minister consulted with the Minister responsible for professional standards schemes in each of the other jurisdictions, including the Commonwealth Assistant Treasurer. In each instance, no concerns were raised with the extensions. This consultation is a requirement in the Professional Standards Agreement. The Ministers consulted were:

- Hon Jaclyn Symes MP, Attorney-General, VIC
- Hon Shane Rattenbury MLA, Attorney-General, ACT
- Hon Anoulack Chanthivong MP, Minister for Better Regulation and Fair Trading, NSW
- Hon Chanston Paech MLA, Attorney-General, NT
- Yvette D'Ath MP, Attorney-General, QLD
- Hon Kyam Maher, Attorney-General, SA
- Hon Elise Archer MP, Attorney-General, TAS Hon John Quigley MLA, Attorney General
- Hon Stephen Jones MP, Assistant Treasurer

Prior to prescribing the remade *Law Society of Western Australia Professional Standards Scheme*, 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. This public consultation was undertaken in accordance with the requirement of the applicable professional standards legislation. More specifically, it included publication of:

- the scheme and an explanatory document on the NSW Government's have your say website
- the scheme and explanatory document on the Professional Standards Councils' website
- the scheme and explanatory document on the relevant association's website
- notices in *The Australian*, *The Mercury*, *The Advocate* and the *Examiner* newspapers

Only limited feedback was received in relation to either scheme, mostly in the form of responses to the accompanying survey. However, most feedback received was in support of the schemes, with no significant concerns raised.