

## **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 No. 2) 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. Professional groups that have obtained approval for schemes include, but are not limited to, professional groups in the accounting, legal, and property industry. 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 2024* (the Regulations) prescribes a professional standards scheme titled the *Bar Association of Queensland Professional Standards Scheme*. The earlier iteration of the scheme was only able to remain in force for 5 years pursuant to section 33(1) of the *Professional Standards Act 2004* (QLD). The relevant Minister needs to approve the remaking of a new scheme to allow members of a professional group to retain a cap on civil liability in relation to misleading and deceptive conduct. 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 and expired schemes are publicly available on the Professional Standards Councils website: [www.psc.gov.au](http://www.psc.gov.au).

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](#).

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 No. 2) Regulations 2024***

**Section 1 – Name**

This section provides that the name of the regulations is the *Treasury Laws Amendment (Professional Standards Schemes No. 2) 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, 2 and 3 – Prescription of the *Bar Association of Queensland Professional Standards Scheme***

These items amend Regulation 3A (table item 8) of the *Australian Securities and Investments Commission Regulations 2001* (ASIC Regulations), regulation 8A (table item 16) of the *Competition and Consumer Regulations 2010* (CC Regulations), and regulation 7.10.02 (table item 8) of the *Corporation Regulations 2001* (Corporation Regulations) to provide for the prescription of the *Bar Association of Queensland 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 scheme was notified on 21 June 2024 in the *Bar Association of Queensland Professional Standards Scheme) Notice 2024* (Qld).

## **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 No. 2) 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.