

EXPLANATORY STATEMENT

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

Competition and Consumer Act 2010

Treasury Laws Amendment (Professional Standards Schemes No. 4) Regulations 2024

Subsection 172(1) of the *Competition and Consumer Act 2010* (the Act) provides 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. 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.

Civil liability refers to the occupational liability of an eligible member of the professional standards scheme, for damages arising from a cause of action or omission. The point at which civil liability is capped depends on the nature of the scheme. For the purposes of the *Australian Computer Society Incorporated Professional Standards Scheme* outlined below, civil liability capped at \$2 million (see clause 4.1 of the *New South Wales Government Gazette No. 404*, 11 October 2024).

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 Act, the *Australian Securities and Investments Commission Act 2001* (ASIC Act), and the *Corporations Act 2001* (Corporations Act) to ensure that actions cannot be brought under these Acts to circumvent the cap on civil liability. This provides consistency across Commonwealth, State and Territory laws.

All approved professional standards schemes are prescribed under the Act and schemes relating to financial services are also prescribed under the ASIC Act and Corporations Act.

Subsection 137(2) of the Act provides for capped civil liability for misleading and deceptive conduct for professional standards schemes that are prescribed in relevant regulations. Accordingly, regulation 8A of the *Competition and Consumer Regulations 2010* prescribes a list of professional standards schemes that have capped civil liability for misleading and deceptive conduct under the Act.

The *Treasury Laws Amendment (Professional Standards Schemes No. 4) Regulations 2024* (the Regulations) prescribes the *Australian Computer Society Incorporated Professional*

Standards Scheme in the *Competition and Consumer Regulations 2010*. The earlier iteration of the scheme was only able to remain in force for 6 years pursuant to section 32 of the *Professional Standards Act 1994* (NSW). The New South Wales Minister for Industry and Trade, Minister Anoulack Chanthivong has approved the remaking of a new scheme to allow members of the Australian Computer Society to continue 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 Act does 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

Prior to prescribing the *Australian Computer Society Incorporated 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. Only limited feedback was received in relation to the scheme, mostly in the form of responses to the accompanying survey. However, most feedback received was in support of the scheme, with no significant concerns raised.

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

The Regulations are subject to disallowance.

The Regulations are exempt from sunseting under table item 16 of section 12 of the *Legislation (Exemptions and Other Matters) Regulations 2015*, which provides an exemption to the *Competition and Consumer Regulations 2010* as they give effect to intergovernmental agreements between the Commonwealth and States and Territories. In addition, the Regulations are subject to automatic repeal in accordance with section 48A of the *Legislation Act 2003*.

The Regulations commenced on 1 January 2025.

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. 4) Regulations 2024*

Section 1 – Name

This section provides that the name of the Regulations is the *Treasury Laws Amendment (Professional Standards Schemes No. 4) Regulations 2024* (the Regulations).

Section 2 – Commencement

This section provides that the Regulations commence on 1 January 2025.

Section 3 – Authority

This section provides that the Regulations are made under the *Competition and Consumer Act 2010* (the Act).

Section 4 – Schedule

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

Section 1 – Amendments

Item 1 – prescription of the *Australian Computer Society Incorporated Professional Standards Scheme*

This item amends regulation 8A (table item 1) of the *Competition and Consumer Regulations 2010* to provide for the prescription of the *Australian Computer Society Incorporated Professional Standards Scheme* as a professional standards scheme that has capped civil liability for misleading and deceptive conduct under the Act. Notification for the scheme was provided on 11 October 2024 in *New South Wales Government Gazette No. 404*.

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. 4) 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 *Competition and Consumer Act 2010* (the Act) to prescribe the *Australian Computer Society Incorporated Professional Standards Scheme*.

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.

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.