

Australian Capital Territory

Civil Law (Wrongs) Australian Computer Society (NSW) Scheme 2009 (No 1)*

Disallowable instrument DI2009–268

made under the

Civil Law (Wrongs) Act 2002, section 4.10, schedule 4 (Approval of schemes by Minister)

1 Name of instrument

This instrument is the *Civil Law (Wrongs) Australian Computer Society (NSW) Scheme 2009 (No 1)*.

2 Commencement

This instrument commences on 1 January 2010.

3 Approved scheme

Pursuant to section 4.10, schedule 4 of the *Civil Law (Wrongs) Act 2002* I approve the attached Australian Computer Society (NSW) Scheme.

Simon Corbell MLA
Attorney General
22 December 2009

*Name amended under Legislation Act, s 60



Professional Standards Act 1994 (NSW)

THE ACS LIMITED LIABILITY (NSW) SCHEME

PREAMBLE

- A. The Australian Computer Society (ACS) is an occupational association.
- B. The ACS has made an application to the Professional Standards Council, appointed under the *Professional Standards Act 1994* (NSW) (the Act), for a scheme under the Act.
- C. The scheme is prepared by the ACS for the purposes of limiting occupational liability to the extent to which such liability may be limited under the Act.
- D. The scheme propounded by the ACS is to apply to ACS members who qualify as Certified Computer Professionals.
- E. The ACS has furnished the Council with a detailed list of the risk management strategies intended to be implemented in respect of its members and the means by which those strategies are intended to be implemented.
- F. The ACS has furnished the Council with insurance standards determined by ACS with which members must comply for purposes of this scheme.
- G. The scheme is intended to remain in force for five (5) years from its commencement unless, prior to that time, it is revoked, its operation ceases, or it is extended pursuant to s32 of the Act.
- H. The scheme is intended to operate as a scheme of New South Wales, the Australian Capital Territory, the Northern Territory, Queensland and Victoria.

THE ACS LIMITED LIABILITY (NSW) SCHEME

1. Occupational association

- 1.1 The ACS scheme (the scheme) is a scheme under the *Professional Standards Act 1994* (NSW) (the Act) prepared by the Australian Computer Society (ACS) whose business address is: Level 3, 160 Clarence Street, Sydney, NSW, 2000.

2. Persons to Whom the Scheme Applies¹

- 2.1 The scheme applies to all individual practitioner members of the ACS who qualify as Certified Computer Professionals, unless exempted by ACS.
- 2.2 This scheme also applies to all persons to whom the scheme applied under clause 2.1 at the time of any act or omission giving rise to occupational liability.²
- 2.3 The ACS may, on written application by a member to whom this scheme applies, exempt the member from the scheme³, provided that the scheme does not apply to the person by virtue of that person being a partner or employee of a person to whom the scheme applies, or the person being prescribed by regulation as a person to whom the scheme applies.

3 Limitation of liability

- 3.1 This scheme only affects the liability for damages⁴ arising from a single cause of action to the extent to which the liability results in damages exceeding \$1.5 million.
- 3.2 If a person, who was at the time of the act or omission giving rise to occupational liability, a person to whom the scheme applied, against whom a proceeding relating to occupational liability is brought, is able to satisfy the court⁵ that such person has the benefit of an insurance policy:

¹ Sections 18 and 19 of the Act provide that if the scheme applies to a body corporate, the scheme also applies to each officer of the body corporate and if the scheme applies to a person, the scheme also applies to each partner of the person, and if the scheme applies to a person the scheme also applies to each employee of the person, provided that if such officer of the corporation or partner of the person or employee of the person is entitled to be a member of the same occupational association, such officer, partner or employee is a member of the occupational association. Section 20 provides that the scheme may also apply to other persons as specified in that section. Section 20A extends the limitation of liability of persons to whom the scheme applies by virtue of sections 18 to 20. [Equivalent sections of legislation in other jurisdictions in which the scheme is intended to apply under mutual recognition are: *Civil Law (Wrongs) Act 2002* (ACT) Schedule 4 Professional Standards s4.15; *Professional Standards Act 2004* (NT) s18; *Professional Standards Act 2004* (Qld) s19, s21A; *Professional Standards Act 2003* (Vic) s19]

² Occupational liability is defined in s4(1) of the Act to mean 'civil liability arising (in tort, contract or otherwise) directly or vicariously from anything done or omitted by a member of an occupational association acting in the performance of his or her occupation. However, s5(1) of the Act provides that the Act does not apply to liability for damages arising from the death or personal injury to a person, a breach of trust or fraud or dishonesty. [Note: All jurisdictions other than NSW exclude a lawyer acting in a personal injury matter.] Section 5(2) of the Act also provides that the Act does not apply to liability which may be the subject of proceedings under Part 13 or 14 of the *Real Property Act 1900* (NSW). [Equivalent sections of legislation in other jurisdictions in which the scheme is intended to apply under mutual recognition are: *Civil Law (Wrongs) Act 2002* (ACT) Schedule 4 Professional Standards s4.2, s4.3(2); *Professional Standards Act 2004* (NT) s4, s5(2); *Professional Standards Act 2004* (Qld) s7 sch2 Dictionary, s6(2); *Professional Standards Act 2003* (Vic) s4, s5(2)]

³ Section 17 of the Act provides that a scheme ceases to apply to a person exempted from the scheme on and from the date on which the exemption is granted or on and from a later date specified in the exemption. [Equivalent sections of legislation in other jurisdictions in which the scheme is intended to apply under mutual recognition are: *Civil Law (Wrongs) Act 2002* (ACT) Schedule 4 Professional Standards s4.15; *Professional Standards Act 2004* (NT) s18; *Professional Standards Act 2004* (Qld) s19; *Professional Standards Act 2003* (Vic) s19]

⁴ Damages as defined in s4 of the Act means (a) damages awarded in respect of a claim or counter-claim or by way of set-off and (b) costs in or in relation to the proceedings ordered to be paid in connection with such an award (other than costs incurred in enforcing a judgment or incurred on an appeal made by a defendant), and (c) any interest payable on the amount of those damages or costs. [Equivalent sections of legislation in other jurisdictions in which the scheme is intended to apply under mutual recognition are: *Civil Law (Wrongs) Act 2002* (ACT) Schedule 4 Professional Standards s4.15; *Professional Standards Act 2004* (NT) s18; *Professional Standards Act 2004* (Qld) s19; *Professional Standards Act 2003* (Vic) s19]

⁵ Court as defined in s4 of the Act includes an arbitrator. [Equivalent sections of legislation in other jurisdictions in which the scheme is intended to apply under mutual recognition are: *Civil Law (Wrongs) Act 2002* (ACT) Schedule 4 Professional Standards s4.2; *Professional Standards Act 2004* (NT) s4; *Professional Standards Act 2004* (Qld) s7; *Professional Standards Act 2003* (Vic) s4]

- (a) of a kind which complies with the standards determined by the ACS,
- (b) insuring such person against that occupational liability, and
- (c) under which the amount payable in respect of that occupational liability is not less than the monetary ceiling specified in this scheme,

that person is not liable in damages in relation to that cause of action above the monetary ceiling specified in this scheme.

- 3.3 The monetary ceiling is \$1.5 million.
- 3.4 Clause 3.2 does not limit the amount of damages to which a person to whom the scheme applies is liable if the amount is less than the amount specified for the purpose in this scheme in relation to a person to whom the scheme applies.
- 3.5 This scheme limits the occupational liability in respect of a cause of action founded on an act or omission occurring during the period when the scheme was in force in respect of any person to whom the scheme applied at the time the act or omission occurred.

4 Conferral of discretionary amount

- 4.1 Pursuant to s24 of the *Act* this scheme confers on the ACS a discretionary authority to specify, on application by a person to whom the scheme applies, in relation to that person, a monetary ceiling (maximum amount of liability) not exceeding \$10 million in relation to the person either in all cases or in any specified case or class of case.

5 Duration

- 5.1 This scheme will commence on 1 January 2010 and will be in force for a period of 5 years from the date of commencement.