

Civil Law (Wrongs) The Australian Computer Society Incorporated Professional Standards Scheme 2024

Disallowable instrument DI2024–322

made under the

Civil Law (Wrongs) Act 2002, Schedule 4, section 4.10 (Schemes are subject to disallowance)

1 Name of instrument

This instrument is the *Civil Law (Wrongs) The Australian Computer Society Incorporated Professional Standards Scheme 2024*.

2 Commencement

This instrument commences on 1 January 2025.

3 Notice

- 1) I give notice of the Professional Standards Council’s approval of the attached, The Australian Computer Society Incorporated Professional Standards Scheme.
- 2) The Scheme is in force until 31 December 2029.

Marisa Paterson MLA
Acting Attorney-General
19 December 2024

**THE AUSTRALIAN COMPUTER SOCIETY INCORPORATED
PROFESSIONAL STANDARDS SCHEME**

PREAMBLE

- A. The ACS is an incorporated association constituted under the *Incorporated Association Act 1991* (ACT) and is an occupational association for the purposes of the Act.
- B. The Scheme is prepared by the ACS for the purpose of limiting Occupational Liability to the extent to which such liability may be limited under the Act.
- C. The Scheme applies to all Participating Members of the ACS.
- D. The Scheme will have force in Australian Capital Territory, New South Wales, the Northern Territory, Queensland, South Australia, Tasmania, Victoria and Western Australia. To the extent that the Scheme applies to limit liability in jurisdictions other than New South Wales, it is subject to the applicable Professional Standards Legislation.
- E. The ACS has furnished the Council with a detailed list of the risk management strategies, currently in place and 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 details of its Insurance Standards and Insurance Arrangement claims monitoring process. The ACS will not amend the Insurance Standards while the Scheme is in force without prior approval of the Council.
- G. The ACS has advised its Participating Members that they must have the benefit of an Insurance Arrangement that complies with the ACS' Insurance Standards and that they remain liable for the amount of any difference between the amount payable to a plaintiff under the policy and the Monetary Ceiling.
- H. The ACS has furnished the Council with details of its complaints system and discipline system.
- I. The ACS and the Participating Members have undertaken to comply with all reporting obligations associated with the Scheme, in furtherance of the statutory objects of improvement of the occupational standards of its Members, and protection of the consumers of the Members' services.
- J. The ACS has undertaken to remit all fees payable under the *Professional Standards Regulation 2019* (NSW) to the Council as and when these become due.
- K. The Scheme is intended to commence on 1st January 2025 and 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.
- L. Sections 12GNA(2) of the *Australian Securities and Investments Commission Act 2001* (Cth), 137(2) of the *Competition and Consumer Act 2010* (Cth), and 1044B(2) of the *Corporations Act 2001* (Cth) provide for limited liability where a professional standards scheme is prescribed in the relevant regulation.

THE SCHEME

1 Occupational association

- 1.1 The Scheme is a scheme under the Act prepared by the ACS whose national office address is:

Tower One, International Towers
100 Barangaroo Ave
Sydney, NSW 2000

2 Persons to Whom the Scheme Applies

- 2.1 The Scheme applies to:

2.1.1 all Participating Members; and

2.1.2 persons to whom the Scheme applies pursuant to sections 18, 19, or 20 of the Act.

- 2.2 The Scheme also applies to all persons who were Participating Members at the time of any act or omission giving rise to Occupational Liability.

- 2.3 The ACS may, on application by a person to whom the Scheme would otherwise apply under clause 2.1, exempt that person from the Scheme with effect from the date specified by the ACS.

- 2.4 The ACS may, upon application by a person exempted from the Scheme under clause 2.3, revoke such exemption with effect from the date specified by the ACS. This clause does not apply to persons to whom the Scheme applies by virtue of sections 18, 19 or 20 of the Act.

3 Jurisdiction

- 3.1 The Scheme applies in New South Wales.

- 3.2 In addition to New South Wales, the Scheme is intended to operate in the Australian Capital Territory, the Northern Territory, Queensland, South Australia, Tasmania, Victoria and Western Australia in accordance with, and subject to the requirements of, the corresponding Professional Standards Legislation of those jurisdictions. The references to a provision of the Act, the application of the Scheme to a liability, the limit of a liability under the Act, or what constitutes Occupational Liability, shall be determined pursuant to the relevant provisions of the corresponding Professional Standards Legislation, applied mutatis mutandis, to the extent that is necessary for the application of the Scheme in any of those jurisdictions.

4 Limitation of liability

- 4.1 The Scheme only affects the liability for Damages arising from a single cause of action to the extent to which the liability results in Damages exceeding \$2,000,000.
- 4.2 If a person who is, or was, at the time of the act or omission giving rise to Occupational Liability, a Participating Member and against whom a proceeding relating to

Occupational Liability is brought, is able to satisfy the Court that such person has the benefit of an insurance policy:

- 4.2.1 of a kind which complies with the standards determined by the ACS,
- 4.2.2 insuring such person against the Occupational Liability to which the cause of action relates, and
- 4.2.3 under which the amount payable in respect of that Occupational Liability is not less than the Monetary Ceiling,

then that person is not liable in Damages in relation to that cause of action above the Monetary Ceiling.

- 4.3 The monetary ceiling for the purpose of limitation of liability under the Scheme is \$2,000,000.
- 4.4 Clause 4.2 does not limit the amount of Damages for which a Participating Member is liable if that amount is less than the Monetary Ceiling.
- 4.5 The Scheme limits the Occupational Liability of a person in respect of a cause of action founded on an act or omission occurring during the period when the Scheme was in force, provided that such person was a Participating Member at the time of the act or omission.
- 4.6 Notwithstanding anything to the contrary contained in the Scheme if, in particular circumstances giving rise to Occupational Liability, the liability of a Participating Member is capped both by the Scheme and also by any other scheme under Professional Standards Legislation (whether of this jurisdiction or under the law of any other Australian state or territory) and, if the amount of such caps should differ, then the cap on the liability of such person arising from such circumstances which is higher shall be the applicable cap.

5 Conferral of discretionary authority

- 5.1 The Scheme confers on the ACS a discretionary authority, on application by a Participating Member, to specify in relation to that person a higher maximum amount of liability than would otherwise apply under the Scheme, in all cases or in any specified case or class of case.

6 Commencement and Duration

- 6.1 The Scheme is intended to commence on the following day:
 - 6.1.1 in New South Wales, the Northern Territory, Tasmania, Western Australia, Victoria, and Queensland, on 1 January 2025; and
 - 6.1.2 in the Australian Capital Territory and South Australia, on 1 January 2025, or such other late date, provided the date is specified in the relevant Minister's notice in relation to the Scheme; or
 - 6.1.3 in all other cases, subject to the statutory provisions of each applicable jurisdiction.
- 6.2 The Scheme will be in force for a period of five (5) years from the date of its

commencement in New South Wales.

- 6.3 Clause 6.2 is subject to the provisions of the Professional Standards Legislation in each jurisdiction in relation to the revocation, extension, or cessation of a scheme.

7 Definitions

- 7.1 Relevant definitions for the purpose of the Scheme are as follows:

“ACS” means the Australian Computer Society Incorporated.

“Act” means the *Professional Standards Act 1994* (NSW).

“Council” means the Professional Standards Council established under the Act.

“Court” has the same meaning given in section 4 of the Act.

“Damages” has the same meaning given in section 4 of the Act.

“Insurance Arrangement” means each of the following:

- (a) professional indemnity policy; and
- (b) if applicable, any other insurance necessary for a Participating Member to cover their Occupational Liability (e.g. cyber liability insurance).

“Insurance Standards” means the document issued by ACS pursuant to Section 34 of the Act and entitled ‘ACS Insurance Standards’.

“Member” means a Member, Senior Member or Fellow of the ACS.

“Monetary Ceiling” means the monetary ceiling specified in clause 4.3 of the Scheme.

“Occupation” means the occupational vocation carried out by Participating Members by application of the qualifications, training, skills, practices, disciplines, specialisations, standards, guidelines and experience of an ordinary person who holds the ACS designation of Certified Professional.

“Occupational Liability” means civil liability arising (in tort, contract or otherwise) directly or vicariously from anything done or omitted by a Participating Member acting in the performance of their Occupation.

“Participating Member” means a Member who:

- (a) holds the ACS designation of Certified Professional; and
- (b) has not been exempted from participation in the Scheme pursuant to clause 2.3 of the Scheme.

“Professional Standards Legislation” means:

- (a) the Act;
- (b) *Professional Standards Act 1994* (NSW);

- (c) *Professional Standards Act 2004* (Qld);
- (d) *Professional Standards Act 2004* (SA);
- (e) *Professional Standards Act 2005* (Tas);
- (f) *Professional Standards Act 1997* (WA);
- (g) *Professional Standards Act 2004* (NT); and
- (h) *Civil Law (Wrongs) Act 2002* (ACT).

“Scheme” means the ACS Professional Standards Scheme set out in this document.