

Australian Capital Territory

Civil Law (Wrongs) RICS Valuers Limited Scheme Amendment 2017

Disallowable instrument DI2017–12

made under the

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

EXPLANATORY STATEMENT

Professional Standards Legislation (PSL) was developed on a national basis following the insurance crisis of 2002.

PSL which has been passed by all States and Territories involves a trade-off whereby professionals have their negligence liability for economic loss capped in return for a commitment to higher standards of service delivery, monitored by a professional standards council operating on a national basis.

In 2004, the ACT passed its own PSL, which was incorporated as schedule 4 of the *Civil Law (Wrongs) Act 2002* (the Act). Section 4.10, schedule 4 of the Act provides that if an interstate scheme has been approved by the appropriate professional standards council for the jurisdiction, the Minister must give notice of the approval.

The Royal Institute of Chartered Surveyors Valuers Limited (RICS Valuers Limited) is a voluntary occupational association for valuers. The RICSV Limited Scheme (the Scheme) commenced on 1 January 2016 and is in force under Professional Standards Legislation. The scheme operates in NSW under the *Professional Standards Act 1994* (NSW) (the NSW Act) and in the ACT, Victoria, South Australia, Western Australia, the Northern Territory and Queensland under mutual recognition provisions.

The Scheme was notified by the ACT Minister and is the subject of the following disallowable instrument:

- Civil Law (Wrongs) RICS Valuers Ltd Scheme 2015 (No 1) DI2015-329, notified on 21 December 2015.

Amendments to the Scheme were approved by the NSW Professional Standards Council (the NSW Council) on 12 August 2016. The amendments to the Scheme have been submitted by the NSW Council to the ACT Minister in accordance with the requirements of the NSW and ACT Acts.

In summary, the amendments provide for exemption from the Scheme and make a number of technical and editorial to clarify the operation of the Scheme, including a new definition of 'valuation' to the Scheme.

The amendments insert new clause 2.3 into the Scheme, provides that a member may apply to RICS Limited for exemption from the scheme, provided that the Scheme does not apply to the person by operation of sections 18, 19 or 20 of the NSW Act.

The amendments insert a new definition of "valuation" into clause 6.1 of the Scheme. "Valuation" is defined as "an opinion or estimate of value made in writing by an individual member of RICS Limited, or countersigned by an individual member of RICS Limited pursuant to a client's written instructions". The NSW Professional Standards Council has advised that the new definition reduces the risk that the scheme might extend inappropriately to non-RICS members in the employee of RICS member firms.

The amendments do not make any changes to the limitation of liability of members to whom the Scheme applies, or to the association's insurance standards.

The amendments to the Scheme apply in the ACT from 23 February 2017.

The Scheme will continue to remain in force until 31 December 2020 unless it is revoked, extended or its operation ceases under section 32 of the NSW Act.