

Australian Capital Territory

Civil Law (Wrongs) The Law Society of New South Wales Professional Standards Scheme 2024

Disallowable instrument DI2024–292

made under the

Civil Law (Wrongs) Act 2002, Schedule 4, section 4.10 (Schemes 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' occupational liability for negligence is limited in return for commitments to higher standards of service delivery and insurance. These standards are monitored by the ACT Professional Standards Council, which operates on a national basis as a part of the Professional Standards Councils.

In 2004, the ACT passed its own PSL, which was incorporated as schedule 4 of the *Civil Law (Wrongs) Act 2002* (the Act). Where an interstate scheme is intended to operate in the ACT, schedule 4, section 4.10 of the Act requires the Attorney-General to give notice that the scheme has been approved by the professional standards council for the jurisdiction in which the scheme was prepared. Notice of an interstate scheme is a pre-requisite to its operation by mutual recognition in the ACT and renders the scheme subject to disallowance in the ACT Legislative Assembly.

This instrument gives notice of the Professional Standards Council of New South Wales's approval of *The Law Society of New South Wales Professional Standards Scheme* (the Scheme). The Scheme commences in the ACT on 22 November 2024 and will remain in force until 21 November 2029, unless the Scheme is revoked, extended or its operation ceases.

The Law Society of New South Wales is an occupational association. The Scheme applies to members of the Law Society who are Solicitor Members (including Solicitor members admitted as Life Members), and Incorporated Legal Practice Members. Despite this, the Scheme would not apply to members in these categories who are a corporate legal practitioner, government legal practitioner or community legal service practitioner.

The Scheme limits a member's occupational liability for damages from a single cause of action to the extent to which the liability results in damage, with the maximum amount of liability outlined in clause 4.3. The Scheme provides a discretionary authority for the association to approve, on application of a participating member, a higher limit of liability.

The Scheme is intended to operate by mutual recognition in the Australian Capital Territory, the Northern Territory, Queensland, South Australia, Tasmania, Victoria and Western Australia.

All required processes under the *Professional Standards Act 1994* (NSW) and the Act, including the prescribed period of public notification and submission by the ACT Professional Standards Council, were observed in the development of the Scheme.

Human rights implications

As noted above, when an interstate professional standards scheme has been approved by the appropriate council for the jurisdiction in which the scheme was prepared, the Attorney-General is required under schedule 4, section 4.10 of the *Civil Law (Wrongs) Act 2002* to give notice of the scheme.

The instrument engages the right to work (section 27B, *Human Rights Act 2004*).

The scheme is intended to promote high standards of service delivery and insurance for professionals and limit the occupational liability of a person to whom it applies.