

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2012 No. 247**

Issued by the Parliamentary Secretary to the Treasurer

*Australian Securities and Investments Commission Act 2001*

*Corporations Act 2001*

*Competition and Consumer Act 2010*

*Professional Standards Scheme Legislation Amendment Regulation 2012 (No. 1)*

Section 251 of the *Australian Securities and Investments Commission Act 2001* (the ASIC Act), section 1364 of the *Corporations Act 2001* (the Corps Act) and section 172 of the *Competition and Consumer Act 2010* (the CCA) provide, in part, that the Governor-General may make regulations prescribing matters required or permitted by the Acts to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Acts.

Professional Standards legislation in each state and territory operates, where applicable, to limit the civil liability of professionals and others while still maintaining appropriate protection for consumers of professional services through such measures as compulsory insurance cover and complaints procedures.

Provision is made in the ASIC Act, the Corps Act, and the CCA for the prescription of state and territory schemes. The effect of prescription is to limit occupational liability under certain federal legislation in the same way it is limited under relevant state legislation.

The Regulation amends the *Australian Securities and Investments Commission Regulations 2001* and *Corporations Regulations 2001* to prescribe the following professional standards schemes:

- The Victorian Bar Professional Standards Scheme; and
- The Law Institute of Victoria Limited Scheme.

This Regulation will also amend the Competition and Consumer Regulations 2010, under which both schemes are already prescribed. However, the regulations which originally prescribed the schemes did not name them correctly (Law Institute of Victoria Limited Scheme and Victorian Bar Professional Standards Scheme). The Regulation corrects this by amending the title for each scheme in the Regulations.

The prescription of the above schemes will commence on 1 November, 2012.

The prescription of the schemes has the effect of limiting the occupational liability of members of the schemes relating to an action for contravention of section 12DA of the ASIC Act, or section 1041H of the Corps Act in the same way as occupational liability arising under the *Professional Standards Act 2003* (VIC) is limited.

- Section 12DA of the ASIC Act deals with misleading or deceptive conduct in relation to financial services; and

- Part 7.10 of the Corps Act deals with market misconduct and other misconduct relating to financial products and financial services.

The Regulations commence on 1 November 2012

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### ***Professional Standards Scheme Legislation Amendment Regulation 2012 (No. 1)***

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**

Prescribes the Victorian Bar Professional Standards Scheme and Law Institute of Victoria Limited Scheme under the *Australian Securities and Investments Commission Regulations 2001* and *Corporations Regulations 2001* and corrects both schemes titles under the *Competition and Consumer Regulations 2010*, under which both schemes are already prescribed.

#### **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.