EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer and Minister for Financial Services

Australian Securities and Investments Commission Act 2001

Competition and Consumer Act 2010

Corporations Act 2001

Treasury Laws Amendment (Professional Standards Schemes No. 3) Regulations 2024

Section 251 of the *Australian Securities and Investments Commission Act 2001* (the ASIC Act), section 172 of the *Competition and Consumer Act 2010* (the CCA) and section 1364 of the *Corporations Act 2001* (the Corporations Act) each provide 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.

The intergovernmental *Professional Standards Agreement 2011* provides for a national framework of professional standards legislation that provides professionals and members of occupational associations with capped civil liability. As part of this national framework, all states and territories have adopted legislation to establish a Professional Standards Council that can approve professional standards schemes in their respective jurisdictions. Professional groups that have obtained approval for schemes include, but are not limited to, professional groups in the accounting, legal, and property industry. Members of professional groups that are part of these schemes are entitled to capped civil liability in return for raising industry service standards and having professional indemnity insurance up to the level of the prescribed liability cap.

Civil liability refers to the occupational liability of an eligible member of the professional standards scheme, for damages arising from a cause of action or omission. The point at which civil liability is capped depends on the nature of the scheme. For the purposes of the *Law Society of New South Wales Professional Standards Scheme* outlined below, the cap is dependent on the size of the firm an eligible member is a part of at the time damages are incurred. For instance, an eligible legal practitioner who works in a law practice consisting of no more than 20 Principals generating a total annual fee income of up to $10 million, would be entitled to having their civil liability capped at $1.5 million (see clause 4.3 of the *New South Wales Government Gazette No. 383,* 27 September 2024).

As part of the national framework of professional standards legislation, the Commonwealth provides members of professional groups that are part of an approved professional standards scheme with capped civil liability in relation to misleading and deceptive conduct under the ASIC Act, the CCA and the Corporations Act to ensure that actions cannot be brought under these Acts to circumvent the cap on civil liability. This provides consistency across Commonwealth and State and Territory laws.

All approved professional standards schemes are prescribed under the CCA. In addition, those schemes relating to financial services are also prescribed under the ASIC Act and Corporations Act.

Subsections 12GNA(2) of the ASIC Act, 137(2) of the CCA and 1044B(2) of the Corporations Act provide for capped civil liability for misleading and deceptive conduct for professional standards schemes that are prescribed in relevant regulations. Accordingly, regulation 3A of the *Australian Securities and Investments Commission Regulations 2001*, regulation 8A of the *Competition and Consumer Regulations 2010* and regulation 7.10.02 of the *Corporations Regulations 2001* prescribe a list of professional standards schemes that have capped civil liability for misleading and deceptive conduct under their respective principal Acts.

The *Treasury Laws Amendment (Professional Standards Schemes No. 3) Regulations 2024* (the Regulations) prescribes a professional standards scheme to remake the scheme. The earlier iteration of the scheme was only able to remain in force for 6 years pursuant to section 32 of the *Professional Standards Act 1994* (NSW). Minister Anoulack Chanthivong has approved the remaking of a new scheme to allow members of the Law Society of New South Wales to continue to retain a cap on civil liability in relation to misleading and deceptive conduct. There are no significant differences between this remade scheme and the earlier iteration of the scheme which was previously prescribed.

The ASIC Act, the CCA and the Corporations Act do not specify any conditions that need to be satisfied before the power to make the Regulations may be exercised.

Details of the currently approved and expired schemes are publicly available on the Professional Standards Councils website: www.psc.gov.au.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations are subject to disallowance.

The Regulations are exempt from sunsetting pursuant to section 48A of the *Legislation Act 2003.*

The Regulations commenced on the day after it is registered.

Details of the Regulations are set out in Attachment A.

A statement of Compatibility with Human Rights is at Attachment B.

The Office of Impact Analysis has been (OIA) has been consulted (OIA ref: OIA23-06158) and agreed that an Impact Analysis is not required. The measure has no impact on compliance costs.

Public consultation was not undertaken for the Regulations as the amendments in the Regulations are mechanical in nature and consultation on the *Law Society of New South Wales Professional Standards Scheme* (the new scheme), had already been undertaken at the state level pursuant to section 8 of the *Professional Standards Act 1994* (NSW). The details of this consultation on the proposed scheme are outlined below.

- Prior to prescribing the new scheme, the Professional Standards Councils sought the opinion of independent actuarial consultants and called for public comment on professional standards schemes via public notification in major newspapers. This public consultation was undertaken in accordance with the requirements in Division 1 of the *Professional Standards Act 1994*. It included publication of:
  - the new scheme and explanatory document on the Professional Standards Councils' website;
  - the new scheme and explanatory document on the relevant association's website;
  - notices in The Australian, The Mercury, The Advocate and the Examiner newspapers.

No targeted consultation was undertaken as there are no significant differences between the new scheme and the earlier iteration of the scheme. Only limited feedback was received in relation to the scheme, mostly in the form of responses to the accompanying survey. However, most feedback received was in support of the scheme, with no significant concerns raised.

Details of the *Treasury Laws Amendment (Professional Standards Schemes No. 3) Regulations 2024*

Section 1 – Name

This section provides that the name of the regulations is the *Treasury Laws Amendment (Professional Standards Schemes No. 3) Regulations 2024* (the Regulations).

Section 2 – Commencement

This section provides that the Regulations commence on the 22 November 2024.

Section 3 – Authority

This section provides that the Regulations are made under the *Australian Securities and Investments Commission Act 2001* (the ASIC Act), the *Competition and Consumer Act 2010* (the CCA), and the *Corporations Act 2001* (the Corporations Act).

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the Regulations is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Regulations has effect according to its terms.

Section 1 – Amendments

Items 1, 2 and 3 – Prescription of the *Law Society of New South Wales Professional Standards Scheme*

These items amend regulation 3A (table item 3) of the *Australian Securities and Investments Commission Regulations 2001* (ASIC Regulations), regulation 8A (table item 8) of the *Competition and Consumer Regulations 2010* (CC Regulations), and regulation 7.10.02 (table item 3) of the *Corporation Regulations 2001* (Corporation Regulations) to provide for the prescription of the *Law Society of New South Wales Professional Standards Scheme* as a professional standards scheme that has capped civil liability for misleading or deceptive conduct under the CCA, the ASIC Act and the Corporations Act. The scheme was notified on 27 September 2024 in the *New South Wales Government Gazette No. 383*.

ATTACHMENT B

Statement of Compatibility with Human Rights

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

Treasury Laws Amendment (Professional Standards Schemes No. 3) Regulations 2024

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

The Regulations update the list of prescribed professional schemes that have capped civil liability for misleading and deceptive conduct under the *Australian Securities and Investments Commission Act 2001* (the ASIC Act), the *Competition and Consumer Act 2010* (the CCA) and the *Corporations Act 2001* (the Corporations Act).

The intergovernmental *Professional Standards Agreement 2011* provides for a national framework of professional standards legislation that provides professionals and members of occupational associations with capped civil liability. As part of this national framework, all states and territories have adopted legislation to establish a Professional Standards Council that can approve professional standards schemes in their respective jurisdictions. Members of professional groups that are part of these schemes are entitled to capped civil liability in return for raising industry service standards and having professional indemnity insurance up to the level of the prescribed liability cap.

As part of the national framework of professional standards legislation, the Commonwealth provides members of professional groups that are part of an approved professional standards scheme with capped civil liability in relation to misleading and deceptive conduct under the ASIC Act, the CCA and the Corporations Act to ensure that actions cannot be brought under these Acts to circumvent the cap on civil liability. This provides consistency across Commonwealth and state and territory laws.

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.