

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) Regulations 2025

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* (intergovernmental agreement) 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.

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 the 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) Regulations 2025* (the Regulations) give effect to the decisions of the Professional Standards Councils to remake professional standards schemes in their respective jurisdictions, as published in the relevant state Government gazette. The schemes being remade are the New South Wales Bar Association Professional Standards Scheme, Victorian Bar Professional Standards Scheme, Western Australian Bar Association Professional Standards Scheme and the Chartered Accountants Australia and New Zealand Professional Standards Scheme. There are no significant differences between these remade schemes and the earlier iteration of each scheme that was previously prescribed. The Regulations also update the Association of Consulting Surveyors National Professional Standards Scheme which is being extended with reference to the extension period.

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 schemes, as well as the expired schemes, are publicly available on the Professional Standards Councils website: www.psc.gov.au.

All the schemes approved by the relevant Council underwent public notification in accordance with the requirements of the relevant legislation. The Professional Standards Authority commissioned an independent actuarial report in relation to each scheme which was considered by the relevant Council as part of the approval or amendment decision. Further consultation by the Commonwealth Government was not considered necessary.

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

The Regulations are subject to disallowance.

The Regulations commenced on the day after this instrument was registered.

The Regulations are exempt from sunseting as they seek to amend regulations that are already exempt themselves. These exempt regulations are the *Australian Securities and Investments Commission Regulations 2001*, the *Competition and Consumer Regulations 2010* and the *Corporations Regulations 2001* which are exempt from sunseting under item 9B, item 16 and item 18, respectively, of section 12 of *Legislation (Exemptions and Other Matters) Regulation 2015*. As an amending instrument, the Regulations are also subject to automatic repeal pursuant to section 48A of the *Legislation Act 2003*. Lastly, as the Regulations give effect to the intergovernmental agreement between the Commonwealth and States and Territories, an exemption from sunseting ensures that the Regulations would not be unilaterally altered by the Commonwealth contrary to the terms of the intergovernmental agreement.

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

Details of the *Treasury Laws Amendment (Professional Standards Schemes) Regulations 2025*

Section 1 – Name

This section provides that the name of the regulations is the *Treasury Laws Amendment (Professional Standards Schemes) Regulations 2025* (the Regulations).

Section 2 – Commencement

This section provides that Sections 1 to 4 of the Regulations commence the day after the instrument was registered on the Federal Register of Legislation, Schedule 1 to the Regulations commences on 1 July 2025 and Schedule 2 to the Regulations commences on 13 July 2025.

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 the Schedules to the Regulations is amended or repealed as set out in the applicable items in the Schedules, and any other item in the Schedules to the Regulations has effect according to its terms.

Schedule 1 – Amendments commencing 1 July 2025

Items [1], [5] and [9] – Prescription of the *New South Wales Bar Association Professional Standards Scheme*

These items amend regulation 3A (table item 4) of the *Australian Securities and Investments Commission Regulations 2001* (ASIC Regulations), regulation 8A (table item 9) of the *Competition and Consumer Regulations 2010* (CC Regulations), and regulation 7.10.02 (table item 4) of the *Corporations Regulations 2001* (Corporations Regulations) to provide for the prescription of the *New South Wales Bar Association 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 28 March 2025 in the *New South Wales Government Gazette No. 121*.

Items [2], [6] and [10] – Prescription of the *Victorian Bar Professional Standards Scheme*

These items amend regulation 3A (table item 7) of the ASIC Regulations, regulation 8A (table item 15) of the CC Regulations, and regulation 7.10.02 (table item 7) of the Corporations Regulations to provide for the prescription of the *Victorian Bar 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 29 April 2025 in the *Victoria Government Gazette No. S207*.

Items [3], [7] and [11] – Prescription of the *Western Australian Bar Association Professional Standards Scheme*

These items amend regulation 3A (table item 13) of the ASIC Regulations, regulation 8A (table item 23) of the CC Regulations, and regulation 7.10.02 (table item 13) of the Corporations Regulations to provide for the prescription of the *Western Australian Bar Association 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 2 May 2025 in the *Western Australian Government Gazette No. 51*.

Items [4], [8] and [12] – Extension to the *Association of Consulting Surveyors National Professional Standards Scheme*

These items amend regulation 3A (table item 20) of the ASIC Regulations, regulation 8A (table item 35) of the CC Regulations, and regulation 7.10.02 (table item 20) of the Corporations Regulations to provide for the extension of the existing *Association of Consulting Surveyors National 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 period in which the *Association of Consulting Surveyors National Professional Standards Scheme* will be in force is extended to 30 June 2026 as published on 14 March 2025 in the *New South Wales Government Gazette No. 100*.

The existing *Association of Consulting Surveyors National Professional Standards Scheme* continues unchanged for an additional year beyond the date it was previously due to expire. This provides continuity in coverage for scheme participants beyond when the existing scheme was previously due to expire. The scheme continues to cap the amount payable by members of the Association of Consulting Surveyors National who take part in the scheme if a court were to uphold a civil liability claim against them.

The fundamentals of the scheme, including persons to whom the scheme applies (membership classes), and the limitation of liability remain the same for the period of the extension. As the relevant State Minister may only provide a single 12-month extension, the Association of Consulting Surveyors National will be required to develop a replacement professional standards scheme in order to retain capped liability beyond this 12-month extension.

Items [13] to [18] – Technical Amendments

Items 13 to 18 make editorial changes to regulation 3A of the ASIC Regulations, regulation 8A of the CC Regulations, and regulation 7.10.02 of the Corporations Regulations to ensure that the dates on which they each prescribed relevant professional standards schemes as well as any extensions to the schemes are interpreted as needed.

The changes to the ASIC Regulations, CC Regulations and Corporations Regulations under Items 13, 15 and 17 make clear that the extension to the CPA Australia Ltd Professional Standards (Accountants) Scheme was prescribed on 22 June 2024.

The changes to the ASIC Regulations, CC Regulations and Corporations Regulations under Items 14, 16 and 18 make clear that the Bar Association of Queensland Professional Standards Scheme was prescribed on 21 August 2024.

The amendments make the ASIC Regulations, CC Regulations and Corporations Regulations more readable and bring them in line with current drafting practice.

Schedule 2 – Amendments commencing 13 July 2025

Items [1], [2] and [3] – Prescription of the *Chartered Accountants Australia and New Zealand Professional Standards Scheme*

These items amend regulation 3A (table item 2) of the ASIC Regulations, regulation 8A (table item 7) of the CC Regulations and regulation 7.10.02 (table item 2) of the Corporations Regulations to provide for the prescription of the *Chartered Accountants Australia and New Zealand 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 28 March 2025 in the *New South Wales Government Gazette No. 121*.

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) Regulations 2025

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.