

Australian Capital Territory

Civil Law (Wrongs) The Australian Computer Society Professional Standards Scheme 2018

Disallowable instrument DI2018–301

made under the

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

1 Name of instrument

This instrument is the *Civil Law (Wrongs) The Australian Computer Society Professional Standards Scheme 2018*.

2 Commencement

This instrument commences on 1 January 2019.

3 Notice

- (1) I give notice of the Professional Standards Council of New South Wales' approval of the attached The Australian Computer Society Professional Standards Scheme.
- (2) The scheme is in force for a period of five years, beginning on the commencement of this instrument.

Gordon Ramsay MLA
Attorney-General
19 December 2018

THE AUSTRALIAN COMPUTER SOCIETY PROFESSIONAL STANDARDS SCHEME

Professional Standards Act 1994 (NSW)

PREAMBLE

- A. The Australian Computer Society Inc (ACS) is an occupational association.
- B. The ACS has made an application to the Professional Standards Council, appointed under the *Professional Standards Act 1994* (NSW) (the Act), for the approval of a scheme under the Act as set out in this document.
- C. The scheme is prepared by the ACS for the purposes of limiting occupational liability to the extent to which such liability may be limited under the Act.
- D. The scheme propounded by the ACS is to apply to all Certified Professional Members of the ACS.
- E. The ACS has furnished the Council with a detailed list of the risk management strategies intended to be implemented in respect of its members and the means by which those strategies are intended to be implemented.
- F. The scheme is intended to commence in New South Wales on 1 January 2019 and remain in force for five (5) years from its commencement unless, prior to that time, it is revoked, its operation ceases, or it is extended pursuant to the applicable legislation of the relevant jurisdiction.
- G. Unless otherwise defined in this scheme, terms used in the scheme have the meaning given in the Act.
- H. The scheme is intended to apply in all states and territories of Australia.

THE AUSTRALIAN COMPUTER SOCIETY PROFESSIONAL STANDARDS SCHEME

1 Occupational association

- 1.1 The Australian Computer Society Professional Standards Scheme (the scheme) is a scheme under the Act prepared by the Australian Computer Society Inc (ACS) whose national office address is Tower One, International Towers, 100 Barangaroo Ave, Sydney, NSW, 2000.

2 Persons to Whom the Scheme Applies

- 2.1 The scheme will apply to ACS members who are Certified Professional Members. A Certified Professional Member is defined as a member of ACS with a current 'Certified Professional' certification from ACS. A list of Members participating in the ACS Professional Standards Scheme will be published on the ACS web site.

- 2.2 A person referred to in clause 2.1 may, on application, be exempted from participation in the scheme by the ACS with effect from the date specified by the ACS.

3 Jurisdiction

- 3.1 The scheme applies in New South Wales in accordance with the Act.
- 3.2 In addition to New South Wales, the scheme is intended to operate in the Australian Capital Territory, the Northern Territory, Queensland, South Australia, Tasmania, Victoria, and Western Australia, in accordance with the professional standards legislation of those states and territories.

4 Limitation of liability

- 4.1 This scheme only affects the liability for damages arising from a single cause of action to the extent to which the liability results in damages exceeding \$2,000,000.
- 4.2 This scheme limits the occupational liability in respect of a cause of action founded on an act or omission occurring during the period when the scheme was in force of any person to whom the scheme applied at the time the act or omission occurred.
- 4.3 If a person, who was at the time of the act or omission giving rise to occupational liability, a person to whom the scheme applied and against whom a proceeding relating to occupational liability is brought, is able to satisfy the court that such person has the benefit of an insurance policy:
- (a) of a kind which complies with the standards determined by the ACS;
 - (b) insuring such person against that occupational liability; and
 - (c) under which the amount payable in respect of that occupational liability is not
less than the monetary ceiling specified in this scheme,
- that person is not liable in damages in relation to that cause of action above the monetary ceiling specified in this scheme.
- 4.4 The monetary ceiling is \$2.0 million.
- 4.5 Clause 4.3 only affects liability for damages arising from a single cause of action to the extent to which the liability results in damages exceeding the amount of damages specified in clause 4.1.

- 4.6 Notwithstanding anything to the contrary contained in this scheme if, in particular circumstances giving rise to occupational liability, the liability of any person who is subject to this scheme is capped both by this scheme and also by any other scheme under professional standards legislation (whether of this jurisdiction or under the corresponding law of any other Australian state or territory) and, if the amount of such caps should differ, then the cap on the liability of such person arising from such circumstances which is higher shall be the applicable cap.

5 Discretionary authority

- 5.1 This scheme confers on the ACS a discretionary authority to specify, on application by a person to whom the scheme applies, in relation to that person, a higher maximum amount of liability not exceeding \$10 million, in relation to that person either in all cases or in any specified case or class of case.

6 Duration

- 6.1 This scheme will commence in New South Wales, the Northern Territory, Tasmania, Western Australia, Victoria and Queensland on 1 January 2019.
- 6.2 In the Australian Capital Territory and in South Australia, the scheme will commence:
- (a) on the date provided for in the Minister's notice in relation to the scheme, if a date is provided; or
 - (b) on the first day two months after the day on which notice was given, in any other case.
- 6.3 This scheme will be in force in New South Wales for five years from the date of commencement in that jurisdiction.
- 6.4 For any other jurisdiction, the scheme will be in force for:
- (a) 5 years from the date of commencement in that jurisdiction; or
 - (b) 5 years from the date of commencement in New South Wales;
- whichever period ends first.
- 6.5 Clauses 6.3 and 6.4 are subject to the provisions of each jurisdiction applicable to the revocation, extension or cessation of schemes.