

Australian Capital Territory

# Civil Law (Wrongs) Australian Computer Society (NSW) Scheme 2009 (No 1)

Disallowable instrument DI2009–268

made under the

**Civil Law (Wrongs) Act 2002, section 4.10, Schedule 4 (Approval of schemes by Minister)**

## EXPLANATORY STATEMENT

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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 have their negligence liability for economic loss capped in return for a commitment to higher standards of service delivery, monitored by a professional standards council operating on a national basis.

In 2004, the ACT passed its own PSL, which was incorporated as Schedule 4 of the *Civil Law (Wrongs) Act 2002* (the ACT Act).

Section 4.10, Schedule 4 of the Act provides that the Minister may approve an interstate scheme submitted by the appropriate council for the jurisdiction in which the scheme was prepared.

The Australian Computer Society (ACS) is the recognised association for information and communication technology professionals. It is a national organisation and has representation in each State and Territory. The ACS has prepared the Australian Computer Society (NSW) Scheme (the ACS Scheme) for the purposes of limiting occupational liability to the extent to which such liability may be limited under the Act. The ACS Scheme is intended to operate as a scheme of New South Wales, the ACT, the Northern Territory, Queensland and Victoria. The New South Wales Professional Standards Council (the NSW Council) submitted the ACS Scheme to the ACT Minister in accordance with the requirements under the NSW *Professional Standards Act 1994* (the NSW Act) and the requirements under the ACT Act.

The ACS Scheme submitted by the NSW Council has been approved by the ACT Minister and this instrument evidences the approved scheme. The ACS Scheme will remain in force for a period of five years from its commencement unless the scheme is revoked, extended, or its operation ceases pursuant to section 32 of the NSW Act. The ACS Scheme commences on 1 January 2010.

A summary of the ACS Scheme is attached for further information.

## **Summary of the Australian Computer Society (NSW) Scheme**

### **OCCUPATIONAL ASSOCIATION**

The Australian Computer Society (ACS) is the recognised association for information and communication technology professionals. It is a national organisation and has representation in each state and territory.

### **SCHEME JURISDICTION**

The ACS scheme will apply in New South Wales and other Australian states and territories, subject to mutual recognition provisions under their respective professional standards legislation.

### **APPLICATION OF THE SCHEME**

The scheme will apply to ACS members who qualify as Certified Computer Professional (CCP). A list of CCPs will be published on the ACS web site.

### **NATURE OF THE LIABILITY TO BE LIMITED**

The scheme operates for the purpose of improving the operational standards of ICT professionals and to protect the consumers of their services. It limits the civil liability of ACS CCP members.

The liability limited by the scheme includes, to the extent permitted by the Act, all civil liability arising (in tort, contract or otherwise) directly or vicariously from anything done or omitted by any person to whom the scheme applies in acting in the performance of their occupation. The scheme does not apply to liability for damages arising from any matter to which the Act does not apply, including but not limited to, liability for damages arising from death or personal injury to a person, breach of trust, fraud or dishonesty.

The amount of damages above which ACS CCP members are not liable is \$1.5 million. A member may apply to the ACS to specify a higher amount of liability, not exceeding \$10M, than would otherwise apply under the scheme. A member may apply to the ACS to be exempted from the scheme.

### **STANDARDS OF INSURANCE FOR SCHEME MEMBERS**

CCP members must have an insurance policy, which complies with the standards set by the ACS, for at least the amount appropriate to their level of liability defined in the scheme. They are also required to provide a detailed CCP activity statement declaring compliance with the ACS insurance standards and that they have available funds to cover any excess within the policy.

### **RISK MANAGEMENT**

ACS members undergo a rigorous assessment process on application for membership of the ACS. CCP members, as with all ACS members, are bound by the ACS Code of Ethics and Code of Professional Conduct. In addition, CCP members must undertake continuing professional development programs that are assessed annually by the ACS.

CCP members are required to undertake 30 hours of continuing professional development activities annually and provide details of these including objectives and outcomes of each activity. This ensures that CCP members are up to date with all the knowledge necessary for a competent ICT professional.

ACS members wishing to achieve CCP status must undertake a professional practice program, equivalent to a university graduate diploma, that specifically addresses professionalism within the ICT sector.

### **COMPLAINTS AND DISCIPLINE**

All ACS members are subject to the Society's complaints and discipline system. The complaints and discipline system allows complaints about the professional conduct of members to be investigated, evaluated and, where appropriate, disciplinary action to be taken.

### **CLAIMS MONITORING**

CCP members are required to contact the ACS as soon as they are aware of any claim against them. The Chair of the ACS Disciplinary Committee will monitor the claim over its life and then determine whether any action is necessary and advise the Professional Standards Management Committee of any risk management issues that might arise from the claim.

### **ADMINISTRATION OF THE SCHEME**

The scheme will be managed by the Professional Standards Management Committee of the ACS. The committee consists of the Chairs of the Membership Standards and the Professional Development Boards and the Chair of the Disciplinary Committee. The Professional Standards Management Committee reports annually to the ACS Council.

The Chair of the Disciplinary Committee is responsible for claims and insurance monitoring under the scheme and reporting on any insurance activity.

### **FURTHER INFORMATION**

Further information on the ACS and the ACS scheme are available from [www.acs.org.au](http://www.acs.org.au). A register of members to whom the ACS scheme applies is published on the ACS web site.