

Australian Capital Territory

Civil Law (Wrongs) Professional Surveyors' Occupational Association Scheme 2010 (No 1)

Disallowable instrument DI2010–44

made under the

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

EXPLANATORY STATEMENT

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 Professional Surveyors' Occupational Association NSW Inc. (PSOA) is an occupational association for sole traders, partners and corporations undertaking survey work who meet the organisation's requirements for membership. The PSOA has prepared the Professional Surveyors' Occupational Association Scheme (the PSOA Scheme) for the purposes of limiting occupational liability to the extent to which such liability may be limited under the Act.

The PSOA 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 PSOA 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 PSOA Scheme submitted by the NSW Council has been approved by the ACT Minister and this instrument evidences the approved scheme. The PSOA Scheme will remain in force until 11 November 2012 unless the scheme is revoked, extended, or

its operation ceases pursuant to section 32 of the NSW Act. The PSOA Scheme commences on the day after notification of the instrument.

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

Summary of the Professional Surveyors' Occupational Association Scheme

The Professional Surveyors' Occupational Association Scheme (the scheme) is a scheme under the *Professional Standards Act 1994* (NSW) (the *Act*) prepared by the Professional Surveyors Occupational Association NSW Inc (PSOA).

The PSOA is a professional association whose address is:
Professional Surveyors Occupational Association NSW Inc (PSOA)
P O Box A1155
Sydney South
NSW 1235
Website: www.psoa.com.au

PSOA is an occupational association for sole traders, partners and corporations undertaking survey work who meet the PSOA's requirements for membership. PSOA was incorporated in 1996. Affairs are managed through the Board assisted by an Administration Officer.

Nature of the liability to be limited

The scheme operates for the purpose of improving the occupational standards of professionals and others in the surveying industry, to protect the consumers of their services. It also limits the civil liability of persons covered by the scheme. The scheme applies to all members of PSOA.

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 a member of the Association or to any person to whom the scheme applies in acting in the performance of his or her occupation. The scheme does not apply to liability for damages arising from any matter to which the *Act* does not apply.

Standards of insurance

Members of the Association covered by the scheme are required to maintain a current professional indemnity insurance policy that meets the standards specified from time to time by the Association. The amount payable under the insurance policy in respect of occupational liability is to be not less than the person's limitation of liability. In addition, members are to maintain sufficient assets to cover any deductible applicable under the insurance policy.

Risk management

The Association administers strategies to maintain and improve occupational standards and to minimise risk. As a primary strategy, the Association maintains membership entry requirements. Risk management strategies include the requirement to meet standards of continuous professional development (CPD) and abide by a Code of Ethics and Code of Practice.

Members are required to have professional indemnity insurance. The Association undertakes claims monitoring to identify trends, to evaluate and improve strategies, to assist member education and to reduce risk.

Membership is restricted to sole traders, partners and corporations who have a minimum turnover relating to survey work of 900 units where 1 unit is equivalent to

\$100 at October 2006 to increase by CPI at 1 July each year. This restriction is to exclude organisations that are only involved in survey practice on a part time basis.

Sole traders, partners and the nominated representative of corporations are required to hold a bachelor degree in surveying or a related topic or be a Registered Surveyor. Sole traders, partners and all professional/degree qualified employees of a corporation are required to undertake 15 approved CPD points per year where 1 CPD equates to 1 hour of training.

Advanced Diploma and Diploma qualified staff are required to undertake 5 hours of CPD or for part time employees 0.3% of total hours worked.

All other employees are required to undertake 2 hours of CPD or for part time employees 0.1% of total hours worked.

The requirement of CPD for all employees is to encourage the culture of continued learning and improvement within an organisation. Members are required to provide a report of CPD activities for all individuals annually. Sanctions may be applied for failure to comply with the minimum requirements set out in the Association CPD Policy.

The Association encourages members to implement a program of quality assurance. On renewal members are required to provide a schedule of changes made to procedures during the year to ensure annual reviews are undertaken.

Members are required to certify annually that they have complied with risk management strategy requirements and are randomly audited to check their compliance with the scheme.

Members are subject to the Association's Complaints and Disciplines Regulations. Investigations may be commenced as a result of a complaint received from any member of the public. A range of penalties and sanctions may be imposed depending on the outcome of the investigation.

Scheme management

The management of the scheme is undertaken by the Board of PSOA with the assistance of an Administration Officer.