

Australian Capital Territory

Civil Law (Wrongs) Queensland Law Society Professional Standards Scheme 2016

Disallowable instrument DI2016–54

made under the

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

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' occupational liability for negligence is limited in return for commitments to higher standards of service delivery and insurance. These standards are monitored by a professional standards council operating on a national basis (ie the ACT Professional Standards Council).

In 2004, the ACT passed its own PSL, which was incorporated as schedule 4 of the *Civil Law (Wrongs) Act 2002* (the Act). Where an interstate scheme is intended to operate in the ACT, schedule 4, section 4.10 of the Act requires the Attorney-General to give notice that the scheme has been approved by the professional standards council for the jurisdiction in which the scheme was prepared. Notice of an interstate scheme is pre-requisite to its operation by mutual recognition in the ACT and renders the scheme subject to disallowance in the ACT Legislative Assembly.

This instrument gives notice of the Queensland Professional Standards Council's approval of the Queensland Law Society Professional Standards Scheme (the Scheme). The Scheme commences on 1 July 2016 and will remain in force for five years (to 30 June 2021) unless the scheme is revoked, extended, or its operation ceases. It replaces an existing scheme that has previously only operated in Queensland and that is due to expire on 30 June 2016.

The Scheme extends the existing scheme to members of the Queensland Law Society (QLS) who practice in the ACT and other Australian jurisdictions. Despite this, the Scheme does not apply to legal practitioners who do not hold an Australian practising certificate or only hold a corporate practising certificate, or to Government Legal Officers.

The terms of the Scheme limit a member's occupational liability for damages arising from a single cause of action founded on an act or omission occurring in the provision of legal services. Members' liability may be limited under the Scheme for damages up to \$1.5 million or \$10 million depending on the number of principals in the relevant member's law practice and total annual fee income of the firm at the time the act or omission occurred. The Scheme also confers a discretionary authority on the QLS, on application by a member, to approve a higher maximum amount of liability in relation to that member.

The Scheme has been developed in Queensland under the *Professional Standards Act 2004* (Qld) by the QLS, a professional association for solicitors that represents legal professionals working in Queensland, interstate and overseas. The Scheme is intended to operate by mutual recognition in New South Wales, the ACT, South Australia, Western Australia, the Northern Territory and Victoria.

All required processes under the *Professional Standards Act 2004* (Qld) and the Act, including the prescribed period of public notification and submission by the ACT Professional Standards Council to the ACT Attorney-General, were observed in the development of the Scheme.