

Australian Capital Territory

Civil Law (Wrongs) Law Society of South Australia Professional Standards Scheme 2017

Disallowable instrument DI2017–55

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 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 a precondition to its operation in the ACT and renders the scheme subject to disallowance in the ACT Legislative Assembly.

This instrument gives notice of the South Australian Professional Standards Council's approval of the Law Society of South Australia Professional Standards Scheme (the Scheme).

The Scheme commences on 1 July 2017 and will remain in force for five years (to 30 June 2022) unless the scheme is revoked, extended, or its operation ceases. It replaces a previous scheme that expired on 30 June 2017.

The Scheme limits the occupational liability of members of the Law Society of South Australia (LSSA) arising from a cause of action that is founded on an act or omission, which occurred during the operation of the Scheme. 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 LSSA, on application by a member, to approve a higher maximum amount of liability in relation to that member.

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

The LSSA's development of the Scheme has satisfied all required processes under the *Professional Standards Act 2004 (SA)* and the Act, including the prescribed period of public notification and submission of the Scheme to the Attorney-General.