

Australian Capital Territory

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

Disallowable instrument DI2017-290

made under the

Civil Law (Wrongs) Act 2002, section 4.10, schedule 4 (Approval of schemes by Minister) and section 4.11, schedule 4 (Amendment and revocation of schemes)

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

The Law Society of South Australia (LSSA) is a professional association for solicitors that represents legal professionals working in South Australia, interstate and overseas. The LSSA Professional Standards Scheme (the LSSA scheme) is to apply to Admitted Members or Company Members of the Society who have professional indemnity insurance that complies with the *Legal Practitioners Act 1981* (SA) in respect of a liability potentially limited by the scheme.

The LSSA scheme limits the occupational liability of members of the LSSA. 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. The LSSA 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 LSSA scheme has been amended to apply in Tasmania. The scheme operated in all mainland states and territories prior to the amendment. The scheme has been developed in South Australia under the *Professional Standards Act 2004* (SA) by the LSSA, and is intended to operate in Tasmania under mutual recognition provisions.

The amendments to the scheme submitted by the South Australian Professional Standards Council have been approved by the ACT Minister and this instrument evidences the approved amendments. The amendments to the scheme apply in the ACT on the day after notification of this instrument (despite anything in the amending instrument).

The LSSA scheme commenced on 1 July 2017 and will remain in force for five years (to 30 June 2022) unless the scheme is revoked or extended, or its operation otherwise ceases (Disallowable instrument DI2017–55).