

Professional Standards Act 1994 (NSW)

ENGINEERS AUSTRALIA (NSW) SCHEME

PREAMBLE

- A. The Institution of Engineers Australia (Engineers Australia) is an occupational association.
- B. Engineers Australia has made an application to the Professional Standards Council, appointed under the *Professional Standards Act 1994 (NSW)* (the *Act*), for a scheme under the *Act*.
- C. The scheme is propounded by Engineers Australia for the purposes of limiting occupational liability to the extent to which such liability may be limited under the *Act*.
- D. The scheme propounded by Engineers Australia is to apply to members of The Engineering Science and Technology Professional Standards Society (the Society).
- E. All of the Society's Professional Members are members of Engineers Australia, being those members of Engineers Australia who are from time to time admitted to the membership of the Society by the Society's Management Committee.
- F. Engineers Australia has furnished the Council with a detailed list of the risk management strategies intended to be implemented in respect of its members and the means by which those strategies are intended to be implemented.
- G. The scheme is intended to remain in force for five (5) years from its commencement unless prior to that time it is revoked, its operation ceases or it is extended pursuant to s32 of the *Act*.

ENGINEERS AUSTRALIA (NSW) SCHEME

1. Occupational Association

- 1.1 The Engineers Australia (NSW) Scheme (the scheme) is a scheme under the *Professional Standards Act 1994 (NSW)* (the *Act*) prepared by the Institution of Engineers Australia (Engineers Australia) whose business address is 11 National Circuit, Barton, ACT 2006.

2. Persons to Whom the scheme Applies¹

- 2.1 The scheme applies to all members of Engineers Australia who are at the same time also members of the Engineering Science and Technology Professional Standards Society (the Society).

¹ Sections 18 and 19 of the Act provide that if the scheme applies to a body corporate, the scheme also applies to each officer of the body corporate and if the scheme applies to a person, the scheme also applies to each partner of the person, and if the scheme applies to a person the scheme also applies to each employee of the person, provided that if such officer of the corporation or partner of the person or employee of the person is entitled to be a member of the same occupational association, such officer, partner or employee is a member of the occupational association. Section 20 provides that the scheme may also apply to other persons as specified in that section. Section 20A extends the limitation of liability of persons to whom the scheme applies by virtue of sections 18 to 20.

2.2 This scheme also applies to all persons to whom the scheme applied under clause 2.1 at the time of any act or omission giving rise to occupational liability.²

3 Limitation of liability

3.1 If a person who was at the time of the act or omission giving rise to occupational liability a category A member or a category B member or a category C member or a category D member against whom a proceeding relating to occupational liability is brought is able to satisfy the court that such member has the benefit of an insurance policy:

- (a) of a kind which complies with the standards determined by Engineers Australia,
- (b) insuring such member against that occupational liability, and
- (c) under which the amount payable in respect of the occupational liability relating to the cause of action (including any amount payable by way of excess under or in relation to the policy) is not less than the amount of the monetary ceiling (maximum amount of liability) specified in clause 3.2 hereof as applying to such members at the time at which the act or omission giving rise to the cause of action occurred

the member is not liable in damages³ in relation to that cause of action above the amount so specified.

3.2 The monetary ceiling (maximum amount of liability) required for the purposes of limitation of liability under this scheme at the time at which the act or omission giving rise to the cause of action occurred is to be determined according to the following table:

Class	Description	Monetary ceiling (maximum amount of liability)
1	Category A member	\$1 million
2	Category B member	\$2.4 million
3	Category C member	\$4 million
4	Category D member	Such amount not exceeding \$8 million as may be specified by Engineers Australia pursuant to the conferral of discretionary authority pursuant to clause 4.1 hereof to apply to such member.

3.3 This scheme limits the occupational liability in respect of a cause of action founded on an act or omission occurring during the period when the scheme was in force of any person to whom the scheme applied at the time the act or omission occurred.

² Occupational liability is defined in s4(1) of the Act to mean 'civil liability arising (in tort, contract or otherwise) directly or vicariously from anything done or omitted by a member of an occupational association acting in the performance of his or her occupation. However, s5(1) of the Act provides that the Act does not apply to liability for damages arising from the death or personal injury to a person, a breach of trust or fraud or dishonesty. Section 5(2) of the Act also provides that the Act does not apply to liability which may be the subject of proceedings under Part 13 or 14 of the *Real Property Act 1900* (NSW).

³ Damages as defined in section 4 of the Act means damages awarded in respect of a claim or counter-claim or by way of set-off and includes interest payable in respect of an amount awarded as damages; and legal costs and expenses ordered to be paid in connection with an award of damages (other than legal costs and expenses incurred in enforcing a judgment or incurred on an appeal made by a defendant).

3.4 Relevant definitions for the purposes of this clause are as follows:

“total annual fee income” means the amount charged during a financial year for services provided by or on behalf of

- (a) a body corporate who is a member of Engineers Australia to whom the scheme applies
- (b) a partnership some of whose members are members of Engineers Australia to whom the scheme applies
- (c) a sole trader who is a member of Engineers Australia to whom this scheme applies.

“financial year” means a financial accounting period ending 30 June.

“category A member” means a person who is a member of Engineers Australia to whom the scheme applies and who is:

- (a) a body corporate whose total annual fee income for the most recent financial year is less than \$5 million;
- (b) an individual who is a member of a partnership, where the total annual fee income of such partnership for the most recent financial year is less than \$5 million; and
- (c) a sole trader whose total annual fee income for the most recent financial year is less than \$5 million.

“category B member” means a person who is a member of Engineers Australia to whom the scheme applies and who is:

- (a) a body corporate whose total annual fee income for the most recent financial year is \$5 million or more, but is less than \$10 million;
- (b) an individual who is a member of a partnership, where the total annual fee income of such partnership for the most recent financial year is \$5 million or more, but is less than \$10 million; and
- (c) a sole trader whose total annual fee income for the most recent financial year is \$5 million or more, but is less than \$10 million.

“category C member” means a person who is a member of Engineers Australia to whom the scheme applies and who is:

- (a) a body corporate whose total annual fee income for the most recent financial year is \$10 million or more;
- (b) an individual who is a member of a partnership, where the total annual fee income of such partnership for the most recent financial year is \$10 million or more; and
- (c) a sole trader whose total annual fee income for the most recent financial year is \$10 million or more.

“category D member” means a person who is a member of Engineers Australia to whom the scheme applies and who is:

- (a) a body corporate who has applied to Engineers Australia and Engineers Australia has exercised its discretion pursuant to clause 4.1 hereof to specify in relation to that body corporate a higher monetary ceiling (maximum amount of liability) than would otherwise apply under this scheme in relation to that body corporate for such period (if any) as is also specified by Engineers Australia;

- (b) an individual who is a member of a partnership who has applied to Engineers Australia and Engineers Australia has exercised its discretion pursuant to clause 4.1 hereof to specify in relation to that individual a higher monetary ceiling (maximum amount of liability) than would otherwise apply under this scheme in relation to that individual for such period (if any) as is specified by Engineers Australia; and
- (c) a sole trader who has applied to Engineers Australia and Engineers Australia has exercised its discretion pursuant to clause 4.1 hereof to specify in relation to that sole trader a higher monetary ceiling (maximum amount of liability) than would otherwise apply under this scheme in relation to that sole trader, for such period (if any) as is also specified by Engineers Australia.

3.5 This scheme only affects the liability for damages arising from a single cause of action to the extent to which the liability results in damages exceeding \$1,000,000.

4 Conferral of discretionary authority

4.1 Pursuant to s24 of the *Act*, this scheme confers on Engineers Australia a discretionary authority to specify, on application of a member of Engineers Australia to whom the scheme applies, a monetary ceiling (maximum amount of liability) not exceeding \$8 million, in all cases or in any specified case or class of case.

5 Commencement

5.1 This scheme commences on 24 February 2007.

6 Duration

6.1 This scheme will be in force for a period of 5 years from the date of commencement.