

*Professional Standards Act 2003 (Victoria)***ENGINEERS AUSTRALIA VICTORIA PROFESSIONAL STANDARDS 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 (the Council), appointed under the *Professional Standards Act 2003 (Vic)* (Act), for approval of 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 Engineers Australia who are also members of The Engineering Science and Technology Professional Standards Society (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 section 34 of the Act.

ENGINEERS AUSTRALIA VICTORIA PROFESSIONAL STANDARDS SCHEME**1. Occupational Association**

- 1.1 The Engineers Australia Victoria Professional Standards Scheme (scheme) is a scheme under *the Act* prepared by Engineers Australia whose business address is 11 National Circuit, Barton, ACT 2600.
- 1.2 The scheme is intended to operate in Victoria and in New South Wales.

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 (Society).

¹ Sections 20 and 21 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. 'Partner' and 'Officer' have particular meanings as defined in the Act. Section 22 provides that the scheme may also apply to other persons as specified in that section.

- 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 to whom this scheme applies 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 court³ that:
- (a) such member has the benefit of an insurance policy insuring the member against the occupational liability to which the cause of action relates, and
 - (b) the amount payable under the policy in respect of that occupational liability⁴ 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 damages in relation to that cause of action above the amount of that monetary ceiling (maximum amount of liability).

- 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	\$1.5 million
2	Category B member	\$4 million
3	Category C member	\$8 million
4	Category D member	\$20 million

² The definition of '**occupational liability**' in section 4 of the Act, applies in this scheme. By that definition, 'occupational liability' means 'civil liability arising (in tort, contract or otherwise) directly or vicariously from anything done or omitted to be done by a member of an occupational association acting in the performance of his or her occupation'. However, section 5(1) of the Act relevantly provides that the Act does not apply to liability for damages arising from the death of, or personal injury to, a person, , a breach of trust, 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 section 110 of the *Transfer of Land Act 1958*' (Victoria).

The definition of '**occupational association**' in section 4 of the Act, applies in this scheme. By that definition 'occupational association' means 'a body corporate –

- (a) which represents the interests of persons who are members of the same occupational group; and
- (b) the membership of which is limited principally to members of that occupational group.'

The definition of '**occupational group**' in section 4 of the Act, applies in this scheme. By that definition 'occupational group' includes 'a professional group and a trade group'.

The definition of '**Damages**' in section 4 of the Act, applies in this scheme. By that definition, 'damages' means

- (a) damages awarded in respect of a claim or counter-claim or claim by way of set-off; or
- (b) costs in or in relation to the proceedings ordered to be paid in connection with such an award (other than costs incurred in enforcing a judgment or incurred on an appeal made by a defendant); or
- (c) any interest payable on the amount of those damages or costs.

³ The definition of '**court**' in section 4 of the Act, applies in this scheme. By that definition, 'court' 'includes a tribunal and an arbitrator'.

⁴ Clause 3.1 invokes 23 of the Act. Section 4(2) of the Act provides that 'a reference in the Act to **the amount payable under an insurance policy in respect of an occupational liability**' (referred to in clause 3.1 of this scheme and s 23 of the Act) 'includes a reference to -

- (a) defence costs payable in respect of a claim, or notification that may lead to a claim (other than reimbursement of the defendant for time spent in relation to the claim), but only if those costs are payable out of the one sum insured under the policy in respect of the occupational liability; and
- (b) the amount payable under or in relation to the policy by way of excess.'

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.

3.4 Relevant definitions for the purposes of this clause 3 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 \$1million;
- (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 \$1million; or
- (c) a sole trader whose total annual fee income for the most recent financial year is less than \$1 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 \$1 million or more, but is less than \$3 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 \$1 million or more, but is less than \$3 million; or
- (c) a sole trader whose total annual fee income for the most recent financial year is \$1million or more, but is less than \$3 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 \$3 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 \$3 million or more, but is less than \$10 million; or
- (c) a sole trader whose total annual fee income for the most recent financial year is \$3 million or more, but is less than \$10 million.

“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 whose total annual fee income for the most recent financial year is \$10 million or more, but is less than \$20 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 \$10 million or more, but is less than \$20 million; or

- (c) a sole trader whose total annual turnover for the financial year is \$10 million or more, but is less than \$20 million.

- 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 \$1,500,000.
- 3.6 Notwithstanding anything to the contrary contained in this scheme, if in particular circumstances giving rise to occupational liability the liability of any person who is subject to this scheme should be capped both by this scheme and also by any other scheme under Professional Standards legislation (whether of this jurisdiction or under the law of any other Australian state or territory) and if the amount of such caps should differ then the cap on the liability of such person arising from such circumstances which is higher shall be the applicable cap.

4 Conferral of discretionary authority

- 4.1 Pursuant to section 26(b) 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 higher monetary ceiling (maximum amount of liability) not exceeding \$20 million than would otherwise apply under this scheme in relation to the person, either in all cases or in any specified case or class of case.
- 4.2 If in the exercise of its discretion under clause 4.1, Engineers Australia has specified a higher monetary ceiling (maximum amount of liability) than would otherwise apply under the scheme in relation to a person, the maximum amount of liability in relation to that person is that higher maximum amount.

5 Commencement

- 5.1 This scheme commences on 19 January 2010 in Victoria and on 24 February 2013 in New South Wales with the authorisation of the Minister.

6 Duration

- 6.1 This scheme will be in force for a period of five years from the date of commencement in Victoria unless, before the end of this period, it is revoked, its operation is extended by notice from the Minister under section 34 of the Act, or its operation ceases because of the operation of another Act.