

# Civil Law (Wrongs) College of Investigative and Remedial Consulting Engineers Australia Scheme 2012 (No 1)

Disallowable instrument DI2012–281

made under the

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

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## 1 Name of instrument

This instrument is the *Civil Law (Wrongs) College of Investigative and Remedial Consulting Engineers Australia Scheme 2012 (No 1)*.

## 2 Commencement

This instrument commences 2 months after it is notified.

## 3 Notice

I give notice of the New South Wales Professional Standards Council's approval of the attached College of Investigative and Remedial Consulting Engineers Australia Scheme.

Mr Simon Corbell MLA  
Attorney-General  
17.12.2012

**THE COLLEGE OF INVESTIGATIVE AND REMEDIAL  
CONSULTING ENGINEERS AUSTRALIA  
PROFESSIONAL STANDARDS SCHEME**

**PREAMBLE**

- A. The College of Investigative and Remedial Consulting Engineers Australia (CIRCEA) is an occupational association.
- B. CIRCEA 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 prepared for the purposes of limiting occupational liability to the extent to which such liability may be limited under the Act.
- D. The scheme is to apply to all ordinary members of CIRCEA.
- E. CIRCEA 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.
- F. The scheme is intended to commence on 1 December 2012 and 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 32(2) of the Act.
- G. The scheme is also intended to apply in the Australian Capital Territory, Victoria, South Australia, Western Australia, the Northern Territory, and Queensland.

**THE COLLEGE OF INVESTIGATIVE AND REMEDIAL CONSULTING  
ENGINEERS AUSTRALIA PROFESSIONAL STANDARDS SCHEME**

**1. Occupational association**

- 1.1 The College of Investigative and Remedial Consulting Engineers Australia Professional Standards Scheme (the scheme) is a scheme under the *Professional Standards Act 1994 (NSW)* (the Act) prepared for College of Investigative and Remedial Consulting Engineers Australia (CIRCEA) whose business address is Suite 54 Technopark, 6 Herbert Street, St. Leonards, NSW 2066.
- 1.2 The scheme is intended to apply in New South Wales, the Australian Capital Territory, Victoria, South Australia, Western Australia, the Northern Territory, and Queensland.

**2. Persons to Whom the Scheme Applies<sup>1</sup>**

- 2.1 Subject to any exemption under clause 2.3 of the scheme, the scheme applies to all ordinary members of CIRCEA who have the benefit of an insurance policy under which the amount payable in respect of occupational liability is not less than the maximum amount of liability applicable to that

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<sup>1</sup> Section 17 of the Act provides that a scheme applies to all persons within an occupational association or to a specified class or classes of persons within an occupational association. The relevant sections of legislation in other jurisdictions in which the scheme is intended to apply under mutual recognition are: *Civil Law (Wrongs) Act 2002 (ACT)* Schedule 4 Professional Standards ss4.15; *Professional Standards Act 2004 (NT)* ss18; *Professional Standards Act 2004 (Qld)* ss19; *Professional Standards Act 2003 (Vic)* ss19; *Professional Standards Act 1997 (WA)* ss30; *Professional Standards Act 2004 (SA)* ss19.

person at the relevant time, which insurance complies with standards set from time to time by CIRCEA in accordance with section 27 of the Act.

- 2.2 The scheme may apply to other persons who are officers, partners, employees or associates of persons who are covered by the scheme<sup>3</sup>.
- 2.3 A person to whom the scheme applies, other than persons described under clause 2.2 of the scheme, may, on written application to the Board of CIRCEA, be exempted from the scheme by the Board.

### 3 Limitation of liability

- 3.1 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.
- 3.2 If a person, who was at the time of the act or omission giving rise to occupational liability, a person to whom the scheme applied, against whom a proceeding relating to occupational liability is brought, is able to satisfy the court that such person has the benefit of an insurance policy:
- (a) of a kind which complies with the standards determined by CIRCEA;
  - (b) insuring such person against that occupational liability; and
  - (c) under which the amount payable in respect of that occupational liability is not less than the monetary ceiling specified in this scheme,

that person is not liable in damages, in relation to that cause of action, above the monetary ceiling specified in this scheme.

- 3.3 The monetary ceiling 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
1	Category A member	\$1,000,000
2	Category B member	\$5,000,000
3	Category C member	Such amount specified pursuant to clause 4.1 in excess of the monetary ceiling in respect of either Category A member or a Category B member but not exceeding \$10,000,000.

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

*"Category A member"* means a person who is an ordinary member of CIRCEA to whom the scheme applies, who provides advice other than as a Category B member.

<sup>2</sup> Equivalent sections of legislation in other jurisdictions in which the scheme is intended to apply under mutual recognition are: *Civil Law (Wrongs) Act 2002* (ACT) Schedule 4 Professional Standards s4.23; *Professional Standards Act 2004* (NT) s28; *Professional Standards Act 2004* (Qld) s28; *Professional Standards Act 2003* (Vic) s29; *Professional Standards Act 1997* (WA) s40; *Professional Standards Act 2004* (SA) s29.

<sup>3</sup> 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. Equivalent sections of legislation in other jurisdictions in which the scheme is intended to apply under mutual recognition are: *Civil Law (Wrongs) Act 2002* (ACT) Schedule 4 Professional Standards s4.15; *Professional Standards Act 2004* (NT) s18; *Professional Standards Act 2004* (Qld) s19, s21A; *Professional Standards Act 2003* (Vic) s19; *Professional Standards Act 1997* (WA) s31, s32; *Professional Standards Act 2004* (SA) s20, s21.

"Category B member" means a person who is an ordinary member of CIRCEA to whom the scheme applies, and who provides advice predominantly in the geotechnical engineering field.

"Category C member" means a person who is an ordinary member of CIRCEA to whom the scheme applies and who has sought a higher limit of liability under clause 4.1 of the scheme.

- 3.5 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 s24<sup>4</sup> of the Act, this scheme confers on CIRCEA a discretionary authority to specify, on written application of a member of CIRCEA to whom the scheme applies, in relation to that member, a monetary ceiling in excess of the monetary ceiling that would otherwise apply, but not exceeding \$10 million, in relation to the member either in all cases or in any specified case or class of case.

#### **5 Duration**

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

#### **6. Commencement**

- 6.1 This scheme will commence on 1 December 2012. In the event the scheme, or a notice relating to the scheme, is published in the Government Gazette of any jurisdiction after 1 December 2012, the scheme will commence on such day 2 months after the date of its publication in that jurisdiction.

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<sup>4</sup> Equivalent sections of legislation in other jurisdictions in which the scheme is intended to apply under mutual recognition are: *Civil Law (Wrongs) Act 2002* (ACT) Schedule 4 Professional Standards s4.20; *Professional Standards Act 2004* (NT) s25; *Professional Standards Act 2004* (Qld) s25; *Professional Standards Act 2003* (Vic) s26; *Professional Standards Act 1997* (WA) s37; *Professional Standards Act 2004* (SA) s26.