

Australian Capital Territory

Civil Law (Wrongs) Engineers Australia (ACT) Scheme 2008 (No 1)

Disallowable instrument DI2008–292

made under the

Civil Law (Wrongs) Act 2002, section 4.10, Schedule 4 (Approval of schemes by Minister)

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 have their negligence liability for economic loss capped in return for a commitment to higher standards of service delivery, monitored by a professional standards council operating on a national basis.

In 2004, the ACT passed its own PSL, which was incorporated as schedule 4 of the *Civil Law (Wrongs) Act 2002* (the Act).

Section 4.10, schedule 4 of the Act provides that the Minister may, in writing, approve a scheme submitted by the ACT Professional Standards Council.

The Institution of Engineers Australia (EA) is the peak occupational association for engineering practitioners in Australia. EA embraces all members of the engineering team in each of the occupational categories of professional engineer, engineering technologist and engineering associate, all disciplines of engineering and has representatives in most universities, research institutes and industry sectors. The EA has prepared the Engineers Australia Australian Capital Territory (ACT) Scheme (the Scheme) for the purposes of limiting occupational liability to the extent to which such liability may be limited under the *Civil Law (Wrongs) Act 2002* (the Act). The ACT Professional Standards Council (ACT Council) submitted the EA Scheme to the Minister in accordance with the Act.

The EA Scheme submitted by the ACT Council has been approved by the Minister and the instrument evidences the approved EA Scheme. The EA Scheme will remain in force for a period of five years from its commencement unless the scheme is revoked, extended, or its operation ceases in accordance with the Act. The EA Scheme commences on 1 January 2009.

A summary of the EA Scheme is attached for further information.

THE ENGINEERS AUSTRALIA SCHEMES IN THE AUSTRALIAN CAPITAL TERRITORY, THE NORTHERN TERRITORY, QUEENSLAND, SOUTH AUSTRALIA, TASMANIA, VICTORIA AND WESTERN AUSTRALIA

SUMMARY

OCCUPATIONAL ASSOCIATION

The Engineers Australia¹ Schemes are individual and separate schemes under:

- the Civil Law (Wrongs) Act 2002 (ACT)
- the Professional Standards Act 2004 (NT)
- the Professional Standards Act 2004 (QLD)
- the Professional Standards Act 2004 (SA)
- the Professional Standards Act 2005 (Tas)
- the Professional Standards Act 2003 (VIC)
- the Professional Standards Act 1997 (WA)

in respect of the class of members of Engineers Australia who are also members of the Engineering, Science and Technology Professional Standards Society (ESTPSS) of Engineers Australia.

Engineers Australia is the peak occupational association for engineering practitioners in Australia with its national headquarters at 11 National Circuit Barton ACT 2600. Engineers Australia was first established in 1919 as The Institution of Engineers, Australia. It was granted a Royal Charter in 1938 and now operates within the terms of the Supplemental Royal Charter and Bye laws granted in 2006. In March 2003 it adopted a new common name, Engineers Australia.

Engineers Australia embraces all members of the engineering team in each of the occupational categories of professional engineer, engineering technologist and engineering associate, all disciplines of engineering and has representatives in most universities, research institutes and industry sectors.

Engineers Australia promotes the science and practice of engineering and represents public policy in engineering. It serves the careers of its members through graduate development, continuing professional development at various levels, publishing, career services and international agreements. Engineers Australia defines the critical competencies required by professional engineers, engineering technologists and engineering associates, conducts programs to determine whether individual practitioners have achieved and maintained these competencies and administers the national engineering registers. It accredits courses of study offered by tertiary education providers and facilitates recognition by and reciprocal membership of overseas engineering institutions.

¹ Engineers Australia is the common name of the Institution of Engineers Australia.

The Engineers Australia schemes are designed to encompass only those members of Engineers Australia who offer their services direct to the public.

Engineers Australia estimates that the schemes will be applicable to approximately 7,500 Engineers Australia members across Australia in the long term.

NATURE OF THE SCHEMES

Each scheme is designed to improve not only the occupational standards of the profession and to protect the consumers of engineering services, but also to limit the civil liability of those members to whom the scheme applies.

The liability limited by the schemes to the extent permitted by the respective Professional Standards Acts, includes all civil liability arising (in tort, contract or otherwise) directly or vicariously from anything done or omitted by a member of the Engineers Australia schemes or to any person to whom the scheme applies in acting in the performance of his or her occupation.

The Engineers Australia schemes do not apply to liability for damages arising from any matter to which the various Acts does not apply, including, but not limited to, liability for damages arising from death or personal injury to a person, a breach of trust, fraud or dishonesty.

All members of the Engineers Australia schemes will be required to display the following disclosure statement on all stationery and business documentation to ensure that consumers are aware of the practitioner's participation in a professional standards scheme - *Liability limited by a scheme approved under Professional Standards Legislation.*

In addition to the obligations placed on individual members of the schemes, Engineers Australia will maintain a public register of members of the schemes which will be accessible from the web page for the scheme on the Engineers Australia website at www.engineersaustralia.org.au. The register will also be available to consumers upon request from any of the nine Engineers Australia offices across Australia.

The register will contain sufficient information to identify members of the schemes and the level of liability applicable to members.

STANDARDS OF INSURANCE

Members to whom the Engineers Australia schemes applies are required to maintain current public liability and professional indemnity insurance policies that meet the insurance standards prescribed by Engineers Australia.

The following classes of members and their respective liability capping will apply.

Class	Description	Maximum amount of liability
1	All persons/firms to whom the scheme applies for which the total annual gross fee income for professional services is less than \$1m unless the person/firm voluntarily selects a class of member subject to a higher limit of liability.	(a) \$1.5m
2	All persons/firms to whom the scheme applies for which the total annual gross fees income for professional services is between \$1m and less than \$3m unless the person/firm voluntarily selects a class of member subject to higher limit of liability.	(b) \$4m
3	All persons/firms to whom the scheme applies for which the total annual gross fees income for professional services is between \$3m and less than \$10m unless the person/firm voluntarily selects a class of member subject to higher limit of liability.	(c) \$8m
**4	All persons/firms to whom the scheme applies for which the total annual gross fees income for professional services is \$10m or more, but is less than \$20m.	(d) \$20m.

** The maximum amount specified does not apply to members of the Tasmanian scheme.

Each scheme includes a proposal to allow any member to increase the liability cap. Such requests will only be accepted on the basis that the increased liability cap will apply to all of the member's work and can only be amended once in any 12 month period. Engineers Australia will retain the right to review and consider favourably any request for a more frequent change in liability capping, however this is not intended to allow frequent changes.

This is to maintain a degree of control and stability of their compensatory mechanisms, namely the professional indemnity insurance requirements. Members who are granted a higher cap will be expected to hold insurance at that higher level for a period of 10 years after they have selected the higher cap to ensure that consumer interests are protected. This will be monitored at each renewal period.

The criteria to be applied to assess the merits of such requests will include:-

- An increase in the professional indemnity insurance to that required of the higher liability limit category.
- The member being able to demonstrate that he/she has sufficient assets to afford to pay the increase in premium and excess associated with the increased insurance requirement.
- To deny the request would cause the member to suffer financial hardship.
- The increase would provide a greater level of consumer protection.

Each year with their annual membership renewal, members of the Engineer Australia schemes will be required to provide evidence of the currency of their professional indemnity and public liability insurance policies, together with any unusual or specific endorsements and/or exclusions imposed by the insurer.

MEMBERSHIP CRITERIA

Membership of each scheme will include both individuals and firms². The eligibility criteria for individual membership of the ESTPSS is a Member of Engineers Australia in the respective occupational category with chartered status (current year) and/or registration on one of the National Engineering Registers. Firms can be members of the ESTPSS on the condition that all employees of the firm with sign-off responsibility³ for engineering work are members of Engineers Australia in the terms outlined above.

Individual members of each scheme will be required to maintain their continuing professional development at a satisfactory level.

At the time of lodging an application to join the Engineers Australia scheme:

- an audit will be undertaken of a member's continuing professional development for the three-year period prior to joining. Random audits will be undertaken thereafter.
- an audit will be undertaken of the risk management systems in place in the member's engineering practice. Random audits will be undertaken thereafter.
- a check will be made of the member's public liability and professional indemnity insurance policies to make sure they comply with Engineers Australia's insurance standards, and annually thereafter.

CLAIMS MONITORING

Members of the schemes will be required to report annually any insurance claims incurred or alerts reported during the previous year.

Engineers Australia will continually review the adequacy of the limitations of liability established for members of the schemes, their insurance requirements and claims performances. Engineers Australia will report annually on claims monitoring and compliance issues.

RISK MANAGEMENT

Engineers Australia has in place a number of strategies relating to membership entry standards and maintenance of competence through compulsory continuing professional development detailed in its Strategic Plan 2005-2010. Membership entry standards and assessment processes are benchmarked and reviewed regularly against national and international standards.

² Bye-law 2.1 provides that the *'members of the Institution shall be the persons whose names are from time to time enrolled in the Register of the Institution.'* "Person" is generally interpreted to include a company or other body corporate unless the contrary intention appears. This interpretation is confirmed by section 160 of the Legislation Act (ACT) which applies this rule of interpretation to legislation. 'Firm' means a partnership or a body corporate.

³ Authorised to 'sign off' means that a person has direct responsibility for the planning, design, execution or review of some specialised technical aspects of engineering projects or programs and/or has ultimate responsibility for the technical integrity of engineering projects or programs.

Members of the schemes will also be required to demonstrate that they have a risk management plan in place in their business, which meets the risk management compliance criteria prescribed by Engineers Australia and which covers the following core elements:

- Job acceptance protocol.
- Terms of engagement.
- Work procedures.
- Business Plan.

Engineers Australia will report annually on the implementation and monitoring of its risk management strategies, the effect of those strategies and any changes made or proposed to be made to them.

COMPLAINTS AND DISCIPLINE

Members of the schemes are subject to a complaints and discipline system administered by Engineers Australia in accordance with the Disciplinary Regulations and Manual of Investigation and Disciplinary Procedures. All members of the schemes agree to abide by the Code of Ethics of Engineers Australia.

SCHEMES ADMINISTRATION

Management of the schemes is vested in the Management Committee appointed by Council of Engineers Australia in February 2004 which comprises the following:

- Chair (Member Engineers Australia appointed by Council).
- Nominee of Engineers Australia, appointed by Council.
- Nominee of the Chair, National Engineering Registration Board.
- Nominee of the President of Engineers Australia, with expertise in risk management matters.
- Nominee representing the insurance industry.

The Executive Officer of the ESTPSS will have primary responsibility for administration of the schemes.