

**This scheme commenced on 5 December 1996 and  
ceased on 4 December 2000.**

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**THE INVESTIGATIVE AND REMEDIAL ENGINEERS SCHEME  
*Professional Standards Act 1994 (NSW)***

**1. PREAMBLE**

The College of Investigative and Remedial Engineers of Australia Inc. is an occupational association of Specialist Consulting Engineers.

The College requires members to be independent practising professional engineers with qualifications equal to that of a Corporate Member of the Institution of Engineers and be registered on the National Professional Engineers Register 3 of the Institution of Engineers of Australia.

The CIRCEA charter requires of its members that:

- they have had a minimum of twenty years practice as a professional Engineer;
- they have had a minimum of five years experience as a Principal of a consulting engineering practice;
- they have played a recognised leadership role in their field of expertise;
- they are a practitioner rather than a manager and, to this end, they expend a personal minimum of 500 hours each year in the practice of investigative, remedial or forensic (IRF) engineering consultancy; and
- \in order to ensure the importance and autonomy of IRF consultancy, the proportion of IRF work should constitute at least 25% of the total turnover of the practice.

**Risk Management**

The College provides to its members a continuing series of seminars on topics particular to practice management and IRF engineering.

The College of Investigative and Remedial Engineers of Australia Inc. for the purpose of covering sole practices or incorporated companies or partnerships of Specialist Engineers intends that this scheme will classify the limit of liability of the members.

The College has established a system of Risk Management based on Australian and New Zealand Standard 4360:1995 which is mandatory for each practice covered by this scheme.

This Risk Management system will be audited on a two yearly basis by the College. Seminars will be conducted by the College on Risk Management from time to time in order to assist new members of the scheme, which amongst other things requires those registered:

- to undertake at least 50 hours of continuing professional development per year in order to renew their annual registration;
- to adhere to the Institution of Engineers Australia Code of Ethics; and
- to be subject to a Complaints & Discipline Mechanism.

## **2. THE SCHEME**

### **2.1 OCCUPATION ASSOCIATION**

The Investigative & Remedial Engineers Limitation of Liability Scheme is a scheme of the College of Investigative and Remedial Consulting Engineers of Australia Inc.

### **2.2 PERSONS TO WHOM THE SCHEME APPLIES**

The Scheme applies to:-

- those persons determined by the occupational association as satisfying the specified criteria for inclusion in the Scheme;
- those persons to whom the Scheme applies by virtue of Sections 18 and 19 of the Professional Standards Act 1994 No 81; and
- any person proscribed by the regulations for the purpose of Section 29(4) of the Act

#### **2.2.1 CRITERIA FOR INCLUSION IN THE SCHEME**

The occupational association will consider the following criteria when making up the list of persons to whom the Scheme applies:

- the person must be a member of the occupational association and must renew that membership annually;
- the person must have the benefit of insurance to an amount of the limit of limitation of liability applying to that person at the relevant time which insurance complies with standards determined from time to time by the occupational association in accordance with Section 27 of the Act; and
- the person must declare annually that sufficient assets are held to cover the amount of the uninsured deductible up to \$10,000, or that a bank guarantee for amounts above that limit is held.

## 2.3 CLASS OF PERSONS

Class 1	Persons whose maximum fee for any single engagement contract is limited to \$165,000.
Class 2	Persons whose maximum fee for any single engagement contract is limited to \$330,000.
Class 3	Persons whose maximum fee for any single engagement contract is limited to \$660,000
Class 4	Persons whose maximum fee for any single engagement contract exceeds \$660,000.

## 2.4 LIMITATION OF LIABILITY

A Person to whom the Scheme applies and against whom a cause of action relating to occupational liability is brought is not liable in damages above the limitation amount if the person has an insurance policy:

- insuring the person against that occupational liability; and
- under which the amount payable in respect of the occupational liability relating to that cause of action is not less than the amount of the monetary ceiling specified in the scheme in relation to the person at the time at which the cause of action arose.

The maximum amounts of liability applied in respect of different classes of person are specified in the following table:

Class of persons	Maximum fee for any one engagement contract	Limitation of Liability Monetary Ceiling
1	\$165,000.00	\$500,000.00
2	\$330,000.00	\$1,000,000.00
3	\$660,000.00	\$2,000,000.00
4	\$660,000.00	\$3,000,000.00

Persons in each class must not accept a fee for which they do not hold appropriate insurance to at least the level of the monetary ceiling shown in the above table.

In respect of Classes 2, 3, and 4 the damages which may be awarded against the person are to be determined in accordance with Section 23 of the Act, for which purpose the "limitation amount" is a reasonable charge for the services provided multiplied by three, but must not exceed the amount of the specified monetary ceiling.

## 2.5 STANDARDS OF INSURANCE

### 2.5.1 General

The insurance held by members as determined by the occupational association must, unless the occupational association otherwise agrees, be of the following minimum standard:

- (1) Indemnify the Insured up to the Limit of Indemnity against all sums which the Insured shall become legally liable to pay as a result of any claim first made against the Insured during the Period of Insurance and reported to the Insurers during the Period of Insurance;
  - (a) for breach of professional duty by reason of any negligent act, error or omission, committed or alleged to have been committed by the Insured (or their predecessors in business and any person now or heretofore employed by the Insured or their predecessors in business or hereafter to be employed by the Insured during the Period of Insurance) in the conduct of the Business conducted by or on behalf of the Insured in a professional capacity;  
  
or;
  - (b) by reason of any negligent act, error or omission committed or alleged to have been committed in connection with appointments held individually by the Insured when acting as trustees, executors, receivers, managers, liquidators, directors or secretaries of companies (including partial secretarial work such as share transfers and the like), or as an official of a charity PROVIDED the fees received from such activities form part of the insured's income AND PROVIDED WHETHER that such claim or claims would have been covered under (a) above but for the fact that the person was so acting; and
- (2) In addition, pay the costs and expenses incurred with the written consent of the Insurers in the defence or settlement of any such claim.

### 2.5.2 Quantum

A limit of indemnity at least equal to the limitation of liability for the Class of member in accordance with 2.2 and 2.4 of this scheme and an excess in accordance with 2.2 of this scheme;

### **2.5.3 Extensions**

Typically the policy is to extend to:-

#### **2.5.3.1 Libel and Slander**

to indemnify the Insured against claims by any person for Libel and Slander.

#### **2.5.3.2. Previous Business**

to indemnify any person who is or becomes or ceases to be during the Period of Insurance a partner, director or principal of the Insured, against claims first made during the Period of Insurance for breach of professional duty by reason of any negligent act, error or omission on the part of that person or that persons partners, co-directors or employees in the conduct of the same business as the Insured's business before that person joined the Insured. For the purposes of this Extension only, the Retroactive Date is unlimited.

#### **2.5.3.3 Outgoing Principals**

to include former principals, partners. or directors of the Business.

#### **2.5.3.4 Dishonesty**

to indemnify the Insured in respect of claims for damages for breach of professional duty arising out of or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of employees, fellow partners or co-directors PROVIDED THAT the Policy shall not provide indemnity to any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission.

#### **2.5.3.5 Fidelity - to a sub limit of \$100,000**

indemnify the Insured, up to but not exceeding \$100,000 in the aggregate for all claims under this extension, against any loss of money or of any other property whatsoever –

- (a) belonging to the Insured, or
- (b) for which the Insured is legally liable, which the Insured shall, during the Period of Insurance discover they have sustained in consequence of any dishonest or fraudulent act or omission of any employee, fellow partner or co-director in the conduct of the Business PROVIDED that the Insurers shall not be liable under

this extension for:

- (i) any loss sustained in consequence of any act or omission after date of discovery by the Insured of such fraud or dishonesty;
- (ii) costs incurred by the Insured to substantiate its loss;
- (iii) any loss attributable to a person who is unsuccessfully prosecuted for fraud.

#### **2.5.3.6 Loss of Documents**

If during the currency of the Policy the Insured shall discover and shall within 7 days of the date of discovery give written notice thereof to the Insurers that any Document (as hereinafter defined) the property of or entrusted to the insured which now or hereafter are or are by them supposed or believed to be in their hands or in the hands of any other Party or Parties to or with whom such Documents have been entrusted lodged or deposited by the Insured in the ordinary course of business have within the territorial limits of Commonwealth of Australia or the Dominion of New Zealand been destroyed damaged or lost or mislaid and after diligent search cannot be found the Policy shall indemnify the Insured for-

- (a) any legal liabilities of whatsoever nature which they may incur to third Parties in consequence of such Documents having been so destroyed, damaged, lost or mislaid; and
- (b) all costs, charges and expenses of whatsoever nature incurred by the Insured in replacing and/or restoring such Documents, in addition, pay the costs and expenses incurred with the written consent of the Insurers in the defence or settlement of any such claim.

Provided always that:-

- (i) the amount of any claim for costs, charges and expenses as above shall be supported by Bills and/or Accounts which shall be subject to approval by some competent person to be nominated by the Insurers with approval of the Insured;
- (ii) no liability shall attach hereto for any loss brought about or contributed to by the dishonesty of any of the Insured's partners or employees unless Extension covering Fidelity is included in the indemnity provided by the Policy;
- (iii) no liability shall attach hereto for any loss brought about by wear, tear and other gradually operating causes;

For the purposes of this Extension "Documents" shall mean deeds, Wills, agreements, maps, plans, books, letters, certificates, forms and documents of any nature whatsoever including computer printouts BUT SHALL NOT MEAN or extend to any form of computer records nor computer memory

whether programmes, software or otherwise and however recorded NOR SHALL IT MEAN or extend to include bearer bonds or coupons, stamps, bank or currency notes or negotiable instruments.

#### **2.5.3.7 Breach of Fiduciary Duty**

subject otherwise to its terms, conditions, limitations and exclusions, indemnify the Insured in respect of claims arising in consequence of a breach in fiduciary duty owed to a client PROVIDED THAT such breach does not arise from a fraudulent, reckless or wilful act or omission of the Insured.

#### **2.5.3.8 Trade Practices Act**

subject otherwise to the terms, conditions, limitations and exclusions, indemnify the Insured in respect of claims for damages or compensation made against the Insured under the terms of the Trade Practices Act 1974 (Commonwealth), the Fair Trading Act 1987 (NSW) or similar legislation in other States or Territories, and which arise from misleading or deceptive conduct not being deliberate or fraudulent conduct PROVIDED THAT this extension of indemnity shall not include claims made under the penal or criminal provisions of those Acts or legislation.

#### **2.5.3.9 Breach of Copyright**

indemnify the insured for breach of Copyright arising out of an alleged or actual infringement of copyright, patent or trademark, provided that the breach was not wilful.

#### **2.5.3.10 Working Arrangements**

where working arrangements have been made or may be made by the insured with other firms, corporations or individuals, the Insured shall be protected within the terms of the Certificate, for any claims against the Insured arising directly or indirectly from such arrangements.

For the purposes of this extension the expression "working arrangements" shall mean only those arrangements made by the Insured with other firms, corporations or individuals for the purpose of conducting the professional business.

#### **2.5.3.11 Joint Ventures**

indemnify the Insured for any legal liability arising out of any activities in which they are engaged as a joint venturer. On payment

of any loss there under, the Insured shall subrogate to the Company his or their rights of procedure against any other person or persons for the recovery thereof.

For the purpose of this endorsement, "Joint Venture" means an enterprise carried on in common by the Insured with a third party or parties (not being insured under the Certificate) in respect of a specific project or contract.

#### **2.5.4. A minimum of one (1) automatic reinstatement**

To be agreed that upon notification to the Insurers during the Period of Insurance of any claim made against the Insured or of circumstances which are likely to give rise to a claim, the Policy shall be deemed to be reinstated for such amount, if any as may be ultimately paid by the Insurers in respect of such claim, so as to remain in force during the Period of Insurance for the Limit of Indemnity stated in the Schedule of the Policy, provided always that the aggregate of the amounts so reinstated shall not exceed an amount equal to the said Limit of indemnity.

It is the intention of the Policy and this extension that the sums thus reinstated shall provide cover in respect of subsequent claims or losses in the same Period of Insurance which are totally unrelated to the claim(s) or circumstance(s) that gave rise to the claim(s) already notified.

#### **2.5.5 Run off Cover (when applicable)**

provide run off cover where requested for persons no longer practising and who require PI cover for work previously undertaken.

## **2.6 COMPLAINTS AND DISCIPLINARY MATTERS**

The scheme adopts the provisions of the College of Investigative and Remedial Engineers of Australia Incorporated (CIRCEA) Complaints and Discipline Code. All members of the occupational association must comply with the Institution of Engineers Code of Ethics 1994 and the requirements of the NPER 3 registrar & the scheme adopts the provisions of the Regulations for NPER 3 "Disciplinary Regulations IEAust 1994" for dealing with failure to maintain appropriate engineering standards, for complaints and discipline under NPER 3.