

Professional Standards Act 2003 (Victoria)
ENGINEERS AUSTRALIA VICTORIA 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)* (*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 Engineers Australia who meet the eligibility criteria to join the scheme. A person who is eligible must apply for membership in the prescribed form and be approved by the Engineers Australia Professional Standards Schemes Committee.
- E. Engineers Australia has furnished the Council with a 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 apply in Victoria, New South Wales and South Australia.

ENGINEERS AUSTRALIA VICTORIA SCHEME

1. Occupational Association

- 1.1 The Engineers Australia Victoria scheme (the scheme) is a scheme under the *Professional Standards Act 2003 (Victoria)* (*the Act*) prepared by the Institution of Engineers Australia (Engineers Australia) whose business address is 11 National Circuit, Barton, ACT 2600.

2. Persons to Whom the scheme Applies¹

- 2.1 The scheme applies to members of Engineers Australia who meet the eligibility criteria in Engineers Australia General Regulation 2.01(3) and approved by the Engineers Australia Professional Standards Schemes Committee, unless exempted by Engineers Australia.
- 2.2 The 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

¹ Sections 19, 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. Section 22 provides that the scheme may also apply to other persons as specified in that section.

- 2.3 Engineers Australia may exempt a member from the scheme who meets the eligibility criteria but who is found to be unsuitable for reasons other than being a financial member and/or a member in the eligible grade and occupational category of membership.

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 or a category E 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 of the monetary ceiling 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 million
3	Category C member	\$ 5 million
4	Category D member	\$ 10 million
5	Category E member	\$ 20 million
6	Category F member	Limited liability does not apply

² Occupational liability is defined in section 4(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, section 5(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, an intentional tort, 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 section 110 of the Transfer of Land Act 1958 (Victoria).

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).

3.3 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 are as follows:

“annual turnover” means the amount charged during a financial year for services provided by or on behalf of an engineering practice.

“financial year” means a financial accounting period ending 30 June immediately preceding the date of application for the scheme/renewal of scheme membership.

“category A member” means a person who is a member of Engineers Australia to whom the scheme applies and who at the relevant time is a proprietor, a partner, a director or an employee in an engineering practice which generates an annual turnover less than \$1m for the financial year.

“category B member” means a person who is a member of Engineers Australia to whom the scheme applies and who at the relevant time is a proprietor, a partner, a director or an employee in an engineering practice which generates an annual turnover of \$1m or more but less than \$5m for the financial year.

“category C member” means a person who is a member of Engineers Australia to whom the scheme applies and who at the relevant time is a proprietor, a partner, a director or an employee in an engineering practice which generates an annual turnover of \$5m or more but less than \$10m for the financial year.

“category D member” means a person who is a member of Engineers Australia to whom the scheme applies and who at the relevant time is a proprietor, a partner, a director or an employee in an engineering practice which generates an annual turnover of \$10m or more but less than \$50m for the financial year.

“category E member” means a person who is a member of Engineers Australia to whom the scheme applies and who at the relevant time is a proprietor, a partner, a director or an employee in an engineering practice which generates an annual turnover of \$50m or more for the financial year.

“category F member” means a person who is a member of Engineers Australia to whom the scheme applies and who at the relevant time is a proprietor, a partner, a director or an employee in an area of engineering practice where limited liability does not apply.³

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.

³ Category F members are members working in engineering practice in the following sectors:

- (i) Commonwealth/State/Territory/Local Government & tertiary institution employees - an individual member of the scheme who is an employee of the Commonwealth/State/Territory/Local Government or a tertiary institution and who provides services for the Commonwealth/State/Territory/Local Government or tertiary institution internal processes only is exempt from the insurance requirement. Proof of employment by a Commonwealth/State/Territory or Local Government department or agency or tertiary institution will be required. *Note:* fully private tertiary institutions will be treated in the same way as companies working for government and will not be exempted from the insurance standards set by EA for the Scheme.
- (ii) Individual/Corporation who derives 100% income from Commonwealth/State Government/tertiary institution contract - PSS members who fall into this category are exempt from the insurance requirement on the basis that 100% of their income is derived from a Government/tertiary institution type contract upon condition of engagement on a non-recourse basis. Non-recourse basis means that the Commonwealth will indemnify the contractor for any damages. Proof of engagement on a non-recourse basis by a Commonwealth/State/Territory/Local Government department or agency or tertiary institution will be required.

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 monetary ceiling (maximum amount of liability) not exceeding \$50 million, 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

This scheme commences on [insert date].

6. Duration

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*.