PROFESSIONAL STANDARDS ACT 2004

Engineers Australia South Australia Scheme

PURSUANT to section 14 (1) of the *Professional Standards Act 2004,* I authorise the publication in the *Gazette* of the Engineers Australia South Australia Scheme.

Pursuant to section 15 (1) *(a)* of the *Professional Standards Act 2004,* I specify 1 September 2009, as the date of commencement of the Engineers South Australia Scheme.

Dated 18 August 2009.

MICHAEL ATKINSON, Attorney-General

Professional Standards Act 2004 (South Australia)

ENGINEERS AUSTRALIA SOUTH AUSTRALIA 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, appointed under the *Professional Standards Act 2004* (South Australia) (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 The Engineering Science and Technology Professional Standards Society (the 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 SA SCHEME

1. Occupational Association

1.1 The Engineers Australia SA Scheme (the scheme) is a scheme under the Professional Standards Act 2004 (South Australia) (*the Act*) prepared by the Institution of Engineers Australia (Engineers Australia) whose business address is 11 National Circuit, Barton, ACT 2000.

2. Persons to Whom the Scheme Applies[1]

2.1 The scheme applies to all members of Engineers Australia who are at the same time also

[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 an officer of a body corporate or a partner of a person is entitled to be a member of the same occupational association as the body corporate or person, but is not a member, the scheme does not apply to that office or partner; if a scheme applies to a person, the scheme also applies to each employee of the person. However, if an employee of a person is entitled to be a member of the same occupational association as the person, but is not a member, the scheme does not apply to that employee. Section 22 provides that the scheme may also apply to other persons as specified in that section.

members of the Engineering Science and Technology Professional Standards Society (the Society).

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 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 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 damages[3] in relation to that cause of action above the amount 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	$1.5 million
2	Category B member	$4 million
3	Category C member	$8 million
4	Category D member	$20 million

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.

[2] Occupational liability is defined in section 4(1) of the *Act* to mean 'civil liability arising (in tort, contract or under statute) 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(2) 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(3) of the *Act* also provides that the *Act* does not apply to liability which may be the subject of proceedings under Part 18 of the *Real Property Act 1886* (South Australia).

[3] Damages as defined in section 4(1) of the *Act* means damages awarded in respect of a claim or counter-claim or claim by way of set-off and 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); and any interest payable in respect of those damages or costs.).

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

"**total annual gross 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 $1 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 less than $1 million; 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 $1 million 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 fee income for the most recent 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.

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, in all cases or in any specified case or class of case.

5 Commencement

5.1 This scheme commences two months after the date of its publication in the Government Gazette 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.