

INVESTIGATIVE AND REMEDIAL ENGINEERS (NSW) SCHEME

PREAMBLE

- A. The College of Investigative and Remedial Engineers of 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 by CIRCEA 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 CIRCEA is to apply to all ordinary and retired members of CIRCEA who have not applied for an exemption.
- 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 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 s32 of the Act.

INVESTIGATIVE AND REMEDIAL ENGINEERS (NSW) SCHEME

1. Occupational association

1.1 The Investigative and Remedial Engineers (NSW) scheme (the scheme) is a scheme under the Professional Standards Act 1994 (NSW) (the Act) prepared by the College of Investigative and Remedial Engineers of Australia (CIRCEA) whose business address is Suite 106, Building B, 20 Lexington Drive, Bella Vista, NSW, 2153.

2. Persons to Whom the Scheme Applies¹

2.1 The scheme applies to all ordinary and retired members of CIRCEA..

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

2.3 A person may, on application by a person, be exempted from the scheme by the Board of CIRCEA.

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 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 CIRCEA,

¹ 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 persons enlisted 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 section 20. (Note: there is no equivalent to s20A in the PSL in any other jurisdiction.)

² Occupational liability is defined in s4(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, s5(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, a breach of trust or fraud or dishonesty. [Note: All jurisdictions other than NSW exclude a lawyer acting in a Personal Injury matter.] Section 5(2) of the Act also provides that the Act does not apply to liability which may be the subject of proceedings under Part 13 or 14 of the Real Property Act 1900 (NSW).

- (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 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	\$1,000,000.00
2	Category B member	\$5,000,000.00
3	Category C member	Such amount not exceeding \$10,000,000 as may be specified by CIRCEA pursuant to the conferral of discretionary authority pursuant to clause 4.1 hereof to apply to such member.

- 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:
- “**category A member**” means a person who is a an ordinary or retired member of CIRCEA to whom the scheme applies.
- “**category B member**” means a person who is an ordinary or retired member of CIRCEA to whom the schemq applies, an provides advice predominantly in the geotechnical engineering field.
- “**category C member**” means a person who is a member of CIRCEA to whom the scheme applies and who has applied to CIRCEA and CIRCEA has exercised its discretion pursuant to clause 4.1 hereof to specify in relation to that person a higher monetary ceiling (maximum amount of liability) than would otherwise apply under this scheme in relation to that person for such period (if any) as is also specified by CIRCEA.
- 3.5 This scheme only effects 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.

4. Conferral of discretionary authority

- 4.1 Pursuant to s24 of the Act, this scheme confers on CIRCEA a discretionary authority to specify, on application of a member of CIRCEA to whom the scheme applies, a monetary ceiling (maximum amount of liability) not exceeding \$10 million, in all cases or in any specified case or class of case.

5. Commencement

- 5.1 This scheme⁴ commences on 5 December 2006.

6. Duration

- 6.1 This scheme⁴ will be in force for a period of 5 years from the date of commencement.

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 coats and expenses incurred in enforcing a judgment or incurred on an appeal made by a defendant).

⁴ Gazetted by NSW Government on 17 November 2006 (Gazette No. 139)