

Scheme instrument

Professional Standards Act 1994 (NSW)

The Surveyors Australia Professional Standards Scheme

Preamble

- A. The Surveyors Australia Ltd (SA) is an occupational association for the purposes of the Professional Standards Act 1994 (NSW). (the Act).
 - B. The scheme is prepared by SA for the purposes of limiting occupational liability to the extent to which such liability may be limited under the Act.
 - C. The scheme applies to all Scheme Participating Members of SA who are a Corporate Member, Individual Member or a Corporate Employee Member.
 - D. The scheme will have force in New South Wales and the Australian Capital Territory, Northern Territory, Queensland, South Australia, Tasmania, Victoria, and Western Australia. To the extent that the scheme applies to limit liability in the other jurisdictions, it is subject to the professional standards legislation of those jurisdictions.
 - E. SA has furnished the Council with a detailed list of the risk management strategies to be implemented in respect of its members, and the means by which those strategies are to be implemented.
 - F. SA has furnished the Council with details of its insurance standards and professional indemnity insurance claims monitoring process. SA will not amend these insurance standards while the scheme is in force without prior approval of the Council.
 - G. SA has advised its members to whom the scheme applies that they must have the benefit of a professional indemnity policy that complies with the association's insurance standards and that they remain liable for the amount of any difference between the amount payable to a plaintiff under the policy and the monetary ceiling specified in the scheme.
 - H. SA has furnished the Council with details of its complaints system and discipline system.
 - I. SA and its members to whom the scheme applies have undertaken to comply with all reporting obligations associated with the scheme, in furtherance of the statutory objects of improvement of the occupational standards of its members, and protection of the consumers of such members' services.
 - J. SA has undertaken to remit all fees payable under the Professional Standards Regulation 2024 (NSW) to the Council as and when these become due.
 - K. The scheme is intended to commence on 1 July 2026 and remain in force for 5 years from its commencement unless, prior to that time, it is revoked, its operation ceases, or it is extended.
 - L. Sections 12GNA(2) of the Australian Securities and Investments Commission Act 2001 (Cth), 137(2) of the Competition and Consumer Act 2010 (Cth), and 1044B(2) of the Corporations Act 2001 (Cth) provide for limited liability where a professional standards scheme is prescribed in the relevant regulation. The scheme does not apply to limit any liability under a Commonwealth law unless it has been prescribed under regulations by the Commonwealth.
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The Surveyors Australia Professional Standards Scheme

1. Occupational association

- 1.1 The Surveyors Australia Professional Standards Scheme (the scheme) is a scheme under the Professional Standards Act 1994 (NSW) (the Act) prepared by Surveyors Australia Ltd (SA) whose business address is: Level 12/49-51 York St, Sydney NSW 2000.

2. Persons to whom the scheme applies

2.1 The scheme applies to:

- 2.1.1 all persons who are a Corporate Member, Individual Member or Corporate Employee Member of SA and who are a Scheme Participating Member of SA, and
- 2.1.2 all persons to whom the scheme applies by virtue of the Act and the Corresponding Laws of other jurisdictions in which the scheme applies.

- 2.2 A person referred to in clause 2.1.1 may, on application by that person, be exempted from participation in the scheme by SA with effect from the date specified by SA.

3. Jurisdiction

3.1 The scheme applies in New South Wales.

- 3.2 In addition to New South Wales, the scheme is intended to operate in the Australian Capital Territory, Northern Territory, Queensland, South Australia, Tasmania, Victoria and Western Australia in accordance with the Professional Standards Legislation of those states and territories and subject to the requirements of that legislation ("the corresponding laws"), so that references to a provision of the Act, the application of the scheme to a liability, the limit of a liability under the Act, or what constitutes occupational liability, are intended to pick up the relevant provisions of the corresponding laws, applied mutatis mutandis, to the extent that is necessary for the application of the scheme in any of those jurisdictions.

4. Limitation of liability

- 4.1 This scheme only affects the liability for damages arising from a single cause of action to the extent to which liability results in damages exceeding \$2 million.

- 4.2 If a person who is, or was, at the time of the act or omission giving rise to occupational liability, a person to whom the scheme applies, or applied, and against whom a proceeding relating to occupational liability is brought, is able to satisfy the court that such person has the benefit of an insurance policy:

- a) of a kind which complies with the standards determined by SA,
- b) insuring such person against the occupational liability to which the cause of action relates, and
- c) under which the amount payable in respect of that occupational liability is not less than the applicable monetary ceiling specified in clause 4.3 of this scheme,

then that person is not liable in damages in relation to that cause of action above the monetary ceiling specified in clause 4.3 of this scheme.

4.3 The monetary ceiling is:

Class	Annual Fee Income	Monetary Ceiling (Maximum amount of liability)
1	Up to and including \$2 million.	\$2 million
2	Greater than \$2 million and up to and including \$5 million.	\$5 million
3	Greater than \$5 million.	\$10 million

4.4 Clause 4.2 does not limit the amount of damages to which a person to whom the scheme applies is liable if the amount is less than the amount specified for the purpose in this scheme in relation to a person to whom the scheme applies.

4.5 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.

4.6 Notwithstanding anything to the contrary contained in this scheme if, in particular circumstances giving rise to occupational liability, the liability of any person who is subject to this scheme is capped both by this scheme and also by any other scheme under Professional Standards Legislation (whether of this jurisdiction or under the law of any other Australian state or territory) and, if the amount of such caps should differ, then the cap on the liability of such person arising from such circumstances which is higher shall be the applicable cap.

5. Conferral of discretionary authority

5.1 SA has discretionary authority, on application by a person referred to in clause 2.1, to specify in relation to that person a higher maximum amount of liability than would otherwise apply under the scheme, in all cases or in any specified case or class of case.

6. Commencement and duration

6.1. The scheme will commence:

6.1.1. in New South Wales, the Northern Territory, Tasmania, Western Australia, Victoria, and Queensland, on 1 July 2026; and

6.1.2. in the Australian Capital Territory and in South Australia, on this same date, or such other later date, provided the date is specified in the relevant Minister's notice in relation to the scheme; or

6.1.3. in all other cases, subject to the statutory provisions of each applicable jurisdiction.

6.2 The scheme will be in force in all applicable jurisdictions for 5 years from the date of its commencement in New South Wales

6.3 Clause 6.2 is subject to the provisions of each jurisdiction in relation to the revocation, extension, or cessation of a scheme.

7. Definitions

7.1 Relevant definitions for the purpose of this scheme are as follows:

“Annual fee income” means:

- a. in respect of a corporate member, or a corporate employee member, payments made to the corporate member during the financial year preceding the relevant time in exchange for services provided by or on behalf of the corporate member, but excludes disbursements and GST.
- b. in respect of an individual member, payments made to the member during the financial year preceding the relevant time in exchange for services provided by or on behalf of the member but excludes disbursements and GST.

“Corporate member” has the meaning given to it in the Surveyors Australia Constitution, as amended from time-to-time.

“Corporate Employee Member” has the meaning given to it in the Surveyors Australia By-Laws, as amended from time-to-time.

“Corresponding laws” has the same meaning as it has in the Act.

“Court” has the same meaning as it has in the Act.

“Damages” has the same meaning as it has in the Act.

“Individual member” has the meaning given to it in the Surveyors Australia Constitution, as amended from time-to-time.

“Insurance standards” means the insurance standards approved from time to time by SA.

“Occupational liability” has the same meaning as it has in the Act “person” means an individual or a body corporate.

“Person” means an individual or body corporate.

“Relevant time” means the time of the act or omission giving rise to occupational liability

“Scheme Participating Member” has the meaning given to it in the Surveyors Australia By-Laws, as amended from time-to-time.