

**This scheme commenced on 22 August 1997 and
ceased on 21 August 2000.
This is now an archived document retained for records purposes only.**

Please refer to the Professional Standards Act 1994 for further
details about the effect of the cessation of a scheme.

PROFESSIONAL ENGINEERS SCHEME
Professional Standards Act 1994 (NSW)

PREAMBLE

1.0 OCCUPATIONAL ASSOCIATION

For the purpose of covering both individual engineers and incorporated companies or partnerships the Institution of Engineers, Australia (IEAust) and The Association of Consulting Engineers Australia (ACEA) have jointly prepared the Professional Engineers Limitation of Liability Scheme. Although for the purposes of the Act Part 1(IEAust) and Part 2 (ACEA) will be regarded as separate schemes they will be jointly administered by the Scheme Management Committee (SMC) which will monitor claims and have general oversight of the management of the Schemes. The Secretary of the SMC will be the CEO ACEA.

1.0.1 The Institution of Engineers, Australia

The Institution of Engineers, Australia (IEAust) is the professional body for engineers in Australia. It has more than 60,000 members including students, engineering associates and engineering technologists as well as professional engineers from all disciplines and industry sectors. The Institution was incorporated under Royal Charter first granted on 10 March 1938.

The National Professional Engineers Register, Section Three (NPER-3) identifies members and non-members whose academic qualifications, cumulative and current experience satisfy certain criteria. Their commitment to ethical conduct and continuing professional development must also be of the standard considered appropriate by the profession for independent professional practice in the areas of engineering expertise concerned.

Registered Office:

Engineering House

11 National Circuit

Barton ACT 2601

1.0.2 The Association of Consulting Engineers Australia

The Association of Consulting Engineers Australia (ACEA) is an incorporated national industry association representing over 80% of Australian firms providing engineering and management

services as consulting engineers. Established in 1952 with Divisions in every state and territory, the Association has approximately 450 member firms employing over 10,000 staff. To qualify as a member firm-the principals of that firm must be individual members of the ACEA of which there are nearly 900. The ACEA is the Australian member association of the Federation Internationale Des Ingenieurs Conseils (FIDIC) the international body of consulting engineers.

Registered Office:

Level 12

75 Miller Street

North Sydney NSW 2060

ACN No.064 052 615

2.0 RISK MANAGEMENT

The occupational associations intend that all persons in Part 1 of the Scheme:

- (a) adhere to the Code of Ethics of the IEAust;
- (b) maintain registration on NPER-3, which requires them to certify each year that their involvement in relevant continuing professional development over the preceding three years, or the period for which they have been registered, whichever is less, has averaged at least 50 weighted hours per year; and to acknowledge that compliance with this requirement will be subject to random audit; and
- (c) during each two year period, attend at least one risk management seminar approved for that purpose by IEAust, and to maintain their expertise by private study, for which purpose each participant will receive an individual copy of the ACEA Risk Management Guidelines, and of all updates to that publication; and
- (d) undergo structured on the job training (SOJT) based on the ACEA Risk Management Guidelines.

It is also intended that the principals of ACEA Member Firms participating in Part 2 of the scheme are responsible for risk management within their firm and that:

- (a) in respect to the conduct of their business they adhere to the Code of Ethics of the ACEA
- (b) all those eligible maintain registration on NPER-3, which requires them to certify each year that their involvement in relevant continuing professional development over the preceding three years, or the period for which they have been registered, whichever is less, has averaged at least 50 weighted hours per year; and
- (c) during each two year period principals and senior staff attend at least one risk

management seminar approved for that purpose by the ACEA, and to maintain their expertise by private study, for which purpose each member will receive an individual copy of the ACEA Risk Management Guidelines, and of all updates to that publication; and

- (d) employees undergo structured on the job training (SOJT) based on the ACEA Risk Management Guidelines where it is relevant to their employment.

PROFESSIONAL ENGINEERS SCHEME -PART 1

1.0 The Occupational Association

For the purposes of this Part, the Professional Engineers Limitation of Liability Scheme is a scheme of the Institution of Engineers, Australia.

2.0 Persons to Whom Scheme Applies

The scheme applies to:-

- (a) Those persons within specified classes whom the occupational association has listed as being eligible for the scheme;
- (b) Each partner and employee of those persons, except if a partner or employee of those persons is entitled to be a member of the occupational association but is not a member; and
- (c) persons prescribed by the regulations for the purposes of section 29(4) of the Professional Standards Act 1994 (the Act).

2.1 Classes of Persons

1. Individual engineers whose potential liability arises from professional practice for their employer; and
2. Individual engineers whose potential liability arises from professional practice as a self employed sole practitioner whose only staff, if any, are not eligible for membership of the occupational association and whose maximum fee for any single engagement is limited to \$165,000.

2.2 Criteria for Inclusion in a Class of Persons

The occupational association will consider the following criteria when making up the list of persons constituting the specified classes of persons:-

- (a) The person must be a member of the occupational association and all natural persons must be Corporate Members of IEAust and registered on Section 3 of the National Professional Engineers Register (NPER-3);

- (b) All natural persons must include as part of their continuing professional development the topic "risk management" to standards set by the occupational association pursuant to Sections 10(e) and 36(2) of the Act;
- (c) The person must have an insurance policy insuring the person against occupational liability as defined in the Act and which complies with standards determined by the occupational association pursuant to Section 27 of the Act; and
- (d) The person must pay any fees set by the occupational association.

3.0 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:-

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

3.1 The maximum amounts of liability applied in respect of different classes of persons, are specified in the following table:-

Class of Person	Maximum Fees	Monetary Ceilings/Limitation Amount
1	Employee	\$500,000
2	\$165,000	\$500,000

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 table above for their maximum fee.

4.0 Standards of Insurance

The occupational association has determined that members of all classes are to have insurance which as a minimum covers:-

- (a) Breach of professional duty resulting in any loss or damage other than death or personal injury. Where other loss, provided that the other loss is not one arising from a breach of trust or dishonesty, is pleaded in the same claim as death or personal injury, the limitation will apply to the other loss;
- (b) Breach of the Fair Trading Act of the States and/or Territories under which the

scheme operates; -

- (c) Retroactive cover for any claim that may be affected by the operation of the Act;.
- (d) One automatic reinstatement per insurance year; and
- (e) The complete scope of work undertaken by the member in providing services to their client.

5.0 Complaints & Disciplinary Matters

The Scheme adopts the provisions of the regulations for NPER-3 entitled "Disciplinary Regulations and Regulations for Dealing with Failure to Maintain Appropriate Engineering Standards - IEAust 1994" to be applied in respect of persons under this Part. All members of the occupational association must abide by the "Institution of Engineers Code of Ethics 1994".

PROFESSIONAL ENGINEERS SCHEME - PART 2

1.0 The Occupational Association

For the purposes of this Part, the Professional Engineers Limitation of Liability Scheme is a scheme of The Association of Consulting Engineers Australia.

2.0 Persons to Whom Scheme Applies

The scheme applies to:-

- (a) those persons within specified classes whom the occupational association has listed as being eligible for the scheme;
- (b) persons within the meaning of Sections 18 & 19 of the Act to whom the scheme may apply; and
- (c) persons prescribed by the regulations for the purposes of section 29(4) of the Professional Standards Act 1994 (the Act).

2.1 Classes of Persons

1. ACEA Member Firms whose maximum fee for any single engagement is limited to \$165,000;
2. ACEA Member Firms whose maximum fee for any single engagement is limited to \$330,000;
3. ACEA Member Firms whose maximum fee for any single engagement is limited to \$660,000; and

4. ACEA Member Firms whose maximum fee for any single engagement may exceed \$660,000.

2.2 Criteria for inclusion in a Class of Persons

The occupational association will consider the following criteria when making up the list of persons constituting the specified classes of persons:-

- (a) The person must be a member of the occupational association and all natural persons must be Corporate Members of IEAust and registered on Section 3 of the National Professional Engineers Register (NPER-3);
- (b) All natural persons must include as part of their continuing professional development the topic 'risk management' to standards set by the occupational association pursuant to sections 10(e) and 36(2) of the Act;
- (c) The person must have an insurance policy insuring the person against occupational liability as defined in the Act and which complies with standards determined by the occupational association pursuant to Section 27 of the Act; and
- (d) The person must pay any fees set by the occupational association.

3.0 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:-

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

3.1 In respect of Classes 2,3 & 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.

3.2 Different maximum amounts of liability apply in respect of different classes of persons, as specified in the following table:-

Class of Person	Maximum Fees	Monetary Ceilings/Limitation Amount
1	\$165,000	\$500,000
2	\$330,000	\$1,000,000
3	\$660,000	\$2,000,000
4	\$660,000+	\$3,000,000

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 table above for their maximum fee.

4.0 Standards of Insurance

The occupational association has determined that members of all classes are to have insurance which as a minimum covers:-

- (a) Breach of professional duty resulting in any loss or damage other than death or personal injury. Where other loss, provided that the other loss is not one arising from a breach of trust or dishonesty, is pleaded in the same claim as death or personal injury, the limitation will apply to the other loss;
- (b) Breach of the Fair Trading Act of the States and/or Territories under which the scheme operates;
- (c) Retroactive cover for any claim that may be affected by the operation of the Act;
- (d) One automatic reinstatement per insurance year; and
- (e) The complete scope of work undertaken by the member in providing services to their client.

5.0 Complaints and Disciplinary Matters

The Scheme adopts the provisions of "The ACEA Complaints and Disciplinary Procedure 1995" to be applied in respect of persons under this Part. All members of the occupational association must abide by the "ACEA Code of Ethics 1994".