

**INSTRUMENT AMENDING THE
PROFESSIONAL SURVEYORS' OCCUPATIONAL ASSOCIATION SCHEME**

PREAMBLE

- A. The Professional Surveyors' Occupational Association NSW Incorporated (PSOA) is an occupational association.
- B. The Professional Surveyors' Occupational Association Scheme (the scheme) commenced on 12 November 2007.
- C. This instrument of amendment is prepared by PSOA for the purposes of amending the Professional Surveyors' Occupational Association Scheme.

AMENDMENT TO THE SCHEME

- 1.0 This instrument to amend the Professional Surveyors' Occupational Association Scheme is prepared under the *Professional Standards Act 1994* (NSW) (the Act) by the Professional Surveyors' Occupational Association NSW Incorporated (PSOA) whose business address is PO Box A1155 Sydney South 1235.

Preamble to the scheme

- 1.1 In recital B of the Preamble, replace the word "appointed" with the word "constituted", thus: "PSOA has made an application to the Professional Standards Council, constituted under the *Professional Standards Act 1994* (NSW) (the Act), for a scheme under the Act.
- 1.2 In recital D of the Preamble, replace the phrase "...Other Persons as defined in ss18, 19, 20 and 20A of the Act" with "...to certain other persons by operation of the Act."
- 1.3 Omit recital F and in its place insert the following paragraph:
 - F. The scheme shall be in force after its commencement until 11 November 2012, unless otherwise extended, or it is revoked, or otherwise ceases operation or to have effect.
- 1.4 Insert recital G after recital F, thus:

The scheme is intended to operate as a scheme of New South Wales, the Australian Capital Territory, the Northern Territory, Queensland and Victoria

Persons to whom the scheme applies

- 1.5 In clause 2.2 of the scheme, delete the phrase “The scheme applies to persons by virtue of sections 18, 19, 20 and 20A...” with “This scheme will also apply to certain other persons by operation...”

Limitation of liability

Definitions

- 1.6 Omit Clause 3.4 of the scheme from “category A member” and in its place insert the following:

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

.....

“category A member” means a person who is a member of PSOA 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 \$2,500,000;
- (b) an individual or body corporate 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 \$2,500,000; or
- (c) a sole trader whose total annual fee income for the most recent financial year is less than \$2,500,000.

“category B member” means a person who is a member of PSOA to whom the scheme applies and who is:

- (a) a body corporate whose total annual fee income for the most recent financial year is \$2,500,000 or more, but is less than \$5,000,000;
- (b) an individual or body corporate who is a member of a partnership, where the total annual fee income of such partnership for the most recent financial year is \$2,500,000 or more, but less than \$5,000,000; or
- (c) a sole trader whose total annual fee income for the most recent financial year is \$2,500,000 or more, but less than \$5,000,000.

“category C member” means a person who is a member of PSOA to whom the scheme applies and who is:

- (a) a body corporate whose total annual fee income for the most recent financial year is \$5,000,000 or more;
- (b) an individual or body corporate who is a member of a partnership, where the total annual fee income of such partnership for the most recent financial year is \$5,000,000 or more; or
- (c) a sole trader whose total annual fee income for the most recent financial year is \$5,000,000 or more.

1.7 Insert clause 3.5:

“This scheme only affects liability for damages arising from a single cause of action to the extent to which the liability results in damages exceeding \$1,000,000.”

Conferral of discretionary authority

1.8 Omit Clause 4.1 of the scheme and in its place insert the following:

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

Application

1.9 Insert heading “5 Application” after clause 4.1, and thereafter insert clause 5.1:

“The scheme will operate as a scheme of New South Wales, the Australian Capital Territory, the Northern Territory, Queensland and Victoria.”

Duration

1.10 Heading “5 Duration” will become heading “6 Duration” by virtue of insertion of the new heading “5 Application”. Clause 5.1 will likewise become clause 6.1.

1.11 Omit clause 6.1 (as above) and in its place insert the following:

6.1 The scheme shall be in force after its commencement until 11 November 2012, unless otherwise extended, or it is revoked, or otherwise ceases operation or to have effect.

COMMENCEMENT

2.0 The amendment will commence in New South Wales on the date immediately following the date of its publication in the Government Gazette.

The amended scheme is included as *attachment A*.

Professional Standards Act 1994 (New South Wales)

PROFESSIONAL SURVEYORS' OCCUPATIONAL ASSOCIATION SCHEME

PREAMBLE

- A. The Professional Surveyors' Occupational Association NSW Incorporated (PSOA) is an occupational association.
- B. PSOA has made an application to the Professional Standards Council, constituted under the *Professional Standards Act 1994 (NSW)* (the Act), for a scheme under the Act.
- C. The scheme is prepared by PSOA 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 PSOA is to apply to all members of the PSOA and to certain other persons by operation of the Act.
- E. PSOA 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 shall be in force after its commencement until 11 November 2012, unless otherwise extended, or it is revoked, or otherwise ceases operation or to have effect.
- G. The scheme is intended to operate as a scheme of New South Wales, the Australian Capital Territory, the Northern Territory, Queensland and Victoria

THE PSOA SCHEME

1. Occupational Association

- 1.1** The PSOA scheme (the scheme) is a scheme under the *Professional Standards Act 1994 (NSW)* (the Act) prepared by the Professional Surveyors' Occupational Association NSW Incorporated (PSOA) whose business address is Level 6, 321 Pitt Street, Sydney NSW.

2. Persons to whom the scheme applies

- 2.1** The scheme applies to all members of the PSOA who or which comply with the requirements of the PSOA and the insurance requirements set out in 3.1.
- 2.2** The scheme will also apply to certain other persons by operation of the Act.
- 2.3** The scheme also applies to all persons to whom the scheme applied under clause 2.1 or 2.2 at the time of any act or omission giving rise to occupational liability.

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 or policies:
- of a kind which complies with the standards determined by PSOA,
 - insuring such member against that occupational liability, and
 - 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 person is not liable in damages 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
2	Category B member	\$2,000,000
3	Category C member	\$5,000,000

- 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 purpose of this clause are as follows:

“total annual fee income” means the amount charged during a financial year for services provided by or on behalf of:

- a body corporate who is a member of PSOA,
- a partnership some of whose members are members of PSOA to whom the scheme applies, or
- a sole trader who is a member of PSOA 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 PSOA to whom the scheme applies and who is:

- a body corporate whose total annual fee income for the most recent financial year is less than \$2,500,000;
- an individual or body corporate 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 \$2,500,000; or

- c) a sole trader whose total annual fee income for the most recent financial year is less than \$2,500,000.

“**category B member**” means a person who is a member of PSOA to whom the scheme applies and who is:

- a) a body corporate whose total annual fee income for the most recent financial year is \$2,500,000 or more, but is less than \$5,000,000;
- b) an individual or body corporate who is a member of a partnership, where the total annual fee income of such partnership for the most recent financial year is \$2,500,000 or more, but less than \$5,000,000; or
- c) a sole trader whose total annual fee income for the most recent financial year is \$2,500,000 or more, but less than \$5,000,000.

“**category C member**” means a person who is a member of PSOA to whom the scheme applies and who is:

- a) a body corporate whose total annual fee income for the most recent financial year is \$5,000,000 or more;
- b) an individual or body corporate who is a member of a partnership, where the total annual fee income of such partnership for the most recent financial year is \$5,000,000 or more; or
- c) a sole trader whose total annual fee income for the most recent financial year is \$5,000,000 or more.

- 3.5 This scheme only affects 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 PSOA a discretionary authority to specify, on application of a member of PSOA to whom the scheme applies and in relation to that person, a higher monetary ceiling (maximum amount of liability) not exceeding \$10 million, than would otherwise apply under the scheme in relation to the person either in all cases or in any specified case or class of case.

5 Application

- 5.1 The scheme will operate as a scheme of New South Wales, the Australian Capital Territory, the Northern Territory, Queensland and Victoria.

6 Duration

- 6.1 The scheme shall be in force after its commencement until 11 November 2012, unless otherwise extended, or it is revoked, or otherwise ceases operation or to have effect.