

THE STRATA COMMUNITY ASSOCIATION (NSW) LIMITED PROFESSIONAL STANDARDS SCHEME

Professional Standards Act 1994 (NSW)

PREAMBLE

- A. The Strata Community Association (NSW) Limited (“**SCA NSW**”) is an occupational association.
- B. SCA NSW has made an application to the Professional Standards Council, constituted by the *Professional Standards Act 1994 (NSW)* (“**the Act**”) for a scheme under the Act.
- C. The Scheme is prepared by SCA NSW for the purpose of limiting the Occupational Liability of members of the Scheme to the extent to which such liability may be limited under the Act.
- D. The Scheme is intended to operate under the Act. The objects of the Act include facilitating the improvement of occupational standards of professionals and protecting the consumers of the services provided by professionals.
- E. The Scheme does not affect damages which are below the monetary ceiling specified in the Scheme for each Participating Member. The Scheme limits liability for damages to the monetary ceiling specified for that member provided that that Participating Member has insurance as required under section 21 of the Act.
- F. The Scheme propounded by SCA NSW is to apply to all Participating Members referred to in clause 2 of the Scheme.
- G. SCA NSW 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.
- H. The Scheme is intended to remain in force for a period of five (5) years from its commencement unless it is revoked, extended or ceases in accordance with section 32 of the Act.

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1. Occupational Association

- 1.1. The SCA NSW Professional Standards Scheme (the "**Scheme**") is a scheme under the Act prepared by SCA NSW, whose business address is Suite 102, Level 1, 845 Pacific Highway, Chatswood NSW 2067
- 1.2. Clause 8 provides definitions for certain terms used throughout the Scheme.

2. Persons to Whom the Scheme Applies

- 2.1. This Scheme applies to:
- a) All Professional Strata Manager Members of SCA NSW that have met and at the relevant time were current holders of one or more of the Member Certifications:
 - i. Licensee in Charge Professional Strata Manager (LPSM)
 - ii. Professional Strata Manager (Licensed) (PSM)
 - iii. Associate Professional Strata Manager (APSM)
 - iv. Professional Strata Practice Principal (PSMP)
 - b) All Professional Strata Practice Members of SCA NSW
 - c) All persons to whom the Scheme applies by virtue of the Act, including sections 18, 19, 20 or 20A of the Act (collectively "Participating Members" and each a "Participating Member").
- 2.2. No Participating Member to whom the Scheme applies may choose not to be subject to the Scheme, provided that SCA NSW may, on application by a Participating Member, exempt the Participating Member from the Scheme if SCA NSW is satisfied that he or she would suffer financial hardship in obtaining professional indemnity insurance to the levels set out in clause 3 below.
- 2.3. All Participating Members referred to in clause 2.1 of the Scheme are subject to disciplinary measures under the Constitution and By-Laws of SCA NSW, and are also subject to the professional indemnity requirements set out in the Professional Standards Handbook of the SCA NSW, and are also subject to the professional indemnity insurance requirements under the *Property and Stock Agents Act 2002* (NSW).

3. Limitation of Liability

- 3.1. This Scheme limits the Occupational Liability of a Participating Member for damages;¹ arising from a single cause of action to the extent to which the Liability results in damages exceeding \$750,000.
- 3.2. If a Participating Member against whom a proceeding relating to Occupational Liability is brought is able to satisfy the Court that –
- 3.2.1. the Participating Member has the benefit of an insurance policy or policies insuring him or her against the Occupational Liability to which the cause of action relates; and
- 3.2.2. the amount payable under the policy or policies in respect of that Occupational Liability is not less than the amount of the monetary ceiling (maximum amount of liability) specified in clause 3.3 as applying to such Participating Member to which the cause of action relates –
- the Participating Member is not liable for damages in relation to that cause of action above the amount of the monetary ceiling specified in clause 3.3.
- 3.3. The monetary ceiling (maximum amount of liability) required for the purposes of the limitation of liability under the Scheme is \$750,000.
- 3.4. Nothing in this Scheme is intended to increase, or has the effect of increasing a Participating Member's liability for damages to a person beyond the amount that, other than for the existence of this Scheme, the Participating Member would be liable in law.
- 3.5. In accordance with section 28 of the Act, 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 a person to whom the Scheme applied at the time when the act or omission occurred.
- 3.6. Notwithstanding anything to the contrary contained in this Scheme, if in particular circumstances giving rise to Occupational Liability, the liability of any Participating Member should be 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

¹ Damages as defined in section 4 of the Act means:

- (a) damages awarded in respect of a claim or counter-claim or by way of set-off; and
- (b) 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
- (c) any interest payable on the amount of those damages or costs.

other Australian State or Territory) and, if the amount of such caps should differ, then the cap which is higher shall be the applicable cap.

4. Insurance

- 4.1. Participating Members are required to maintain current professional indemnity insurance with an approved insurer, as required of Strata Managers under the *Property and Stock Agents Act 2002* (NSW) (“the Application Act”).

5. Conferral of discretionary authority

- 5.1. The SCA NSW has discretionary authority, on application by a Participating Member, to specify in relation to the Participating Member, a higher maximum amount of liability than would otherwise apply under the Scheme in relation to him or her either in all cases or in any specified case or class of case.
- 5.2. The SCA NSW must not exercise its power in clause 5.1 unless the Participating Member has satisfied the SCA NSW that the Participating Member is able to access professional indemnity insurance coverage that is commensurate with the higher maximum amount of liability.

6. Jurisdiction

- 6.1. This Scheme applies in New South Wales in accordance with the Act.

7. Commencement date and duration

- 7.1. This Scheme will commence on 1 July 2021 (“the commencement date”) in New South Wales.
- 7.2. This Scheme will be in force for five (5) years from its commencement in New South Wales.
- 7.3. Clause 7.2 is subject to the provisions of the Act applicable to the revocation, extension or cessation of Schemes.

8. Definitions

- 8.1. In this Scheme, the following words and phrases have the following meanings:

“**By-Laws**” means the By-Laws of SCA NSW as amended from time to time.

“Member Certification” means a certification demonstrating that the member has met the professional status criteria determined by the Board of the SCA NSW.

“Financial Year” means a financial accounting period commencing on 1 July and ending 30 June;

“Insurance Policy” means an insurance policy that complies with the *Property and Stock Agents Act 2002* (NSW).

“Occupational Liability” has the same meaning as is ascribed to that term in the Act.²

“Participating Member” has the meaning set out in clause 2.1.

“Relevant Time” means, in respect of a liability potentially limited by the Scheme, the period from the time(s) of the act(s) or omission(s) giving rise to the liability until the date that is seven years after the last such act or omission took place.

“Strata Management Practice” means the activities of a member including those who provide Strata Management Services Licensed by NSW Fair Trading.

² Occupational liability is defined in section 4 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".