

AN EXPLANATION OF THE PROFESSIONAL STANDARDS LEGISLATION & LIMITED LIABILITY

To assist clients in understanding the now 'Australia Wide' Professional Standards Legislation, and the role of the various Professional Standards Councils [PSC], and its relevance to Shirley Consulting Engineers Pty Ltd [SCE], the following notes have been prepared.

GENERAL INFORMATION ON PROFESSIONAL STANDARDS SCHEMES

Professional Standards Schemes are limitation of liability schemes approved under the professional standards legislation within each State and Territory. The aim of Professional Standards Schemes is to improve professional standards and protect consumers. Only an occupational association can apply for a Professional Standards Scheme, and the Scheme can apply only to members of that association, or to a class of members of that association.

The occupational association must be a single body corporate which represents the interests of persons who are members of the same occupational group, and the membership of which is limited principally to members of that occupational group.

An occupational association needs articles of association or a similar type of instrument that gives it authority over its members. The occupational association must have in place risk management strategies and a complaints and discipline system.

Under the legislation, associations put forward schemes for particular classes of members. The legislation requires that all members of the described class be a member of the Scheme, although there can be provision for people to apply to be excluded. The class can consist of individuals or companies. Occupational associations are required to meet strict compliance requirements once a scheme has been approved and is in operation.

REASONS FOR PROFESSIONAL STANDARDS LEGISLATION

As a result of increased insurance premiums for professional persons / organisations in the late 1980s, the NSW Government drafted the initial Professional Standards Act in 1994 for the purposes of balancing consumer protection with the ever increasing cost of insurance. In effect, professionals & professional associations are granted 'limited liability' in return for members of the associations committing to a high standard of professional service, consumer care and continuing professional development.

As a result of the increased professional standards, an upper limit of occupational [i.e. professional] liability is granted to a member of an approved scheme.

Note: Further information on the Professional Standards Legislation can be obtained from the Professional Standards Councils website [http://www.psc.gov.au/psc/psc_index.html].

Following the introduction of the NSW legislation, a number of professional associations registered compliance schemes under the Professional Standards Act. With the passage of time similar professional standards legislation has been enacted in all states and territories of Australia.

Whilst there are now many professional standards schemes covering lawyers, accountants, engineers, etc., engineering organisations as a group have been generally reluctant to become members of such schemes because of the onerous auditing and industry training requirements that membership of a scheme requires. The CIRCEA scheme also currently [viz: in 2013] has the largest number of engineer members in NSW.

CIRCEA SCHEME & SCE MEMBERSHIP LEVEL

In relation to the specific scheme covering SCE [viz: the CIRCEA Scheme], a copy of the NSW Government Gazette enacting the current [viz: 2012] version of the Scheme is attached.

Note: As SCE undertakes geotechnical work, SCE is a Category B member of the CIRCEA scheme with a monetary ceiling of \$5 million on any claim. SCE has also been covered by the forerunners to the current scheme since 1997.



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- (1) The restricted substances are obtained only from the State Vaccine Centre, and,
 - (2) The restricted substances are securely stored at the nursing home within the temperature range included on the manufacturer's pack, and,
 - (3) The administration of the restricted substances is only to residents of the nursing home, and,
 - (4) The restricted substances are administered by a registered nurse employed at the nursing home, an Authorised Nurse Immuniser, or a medical practitioner, and,
 - (5) An emergency kit containing adrenaline is available at the nursing home, and the administration of adrenaline is at all times undertaken in accordance with the procedures specified in the National Health and Medical Research Council's 'The Australian Immunisation Handbook', as in force from time to time, and,
 - (6) The administration of the restricted substance and adrenaline by a registered nurse employed at the nursing home, other than an Authorised Nurse Immuniser, is in accordance with a written order, signed and dated by a medical practitioner, and,
 - (7) The person who administers the restricted substance or adrenaline records the administration on the patient's medication record.
- 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 for the purposes of limiting occupational liability to the extent to which such liability may be limited under the Act.
 - D. The scheme is to apply to all ordinary members of CIRCEA.
 - 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 commence on 1 December 2012 and 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 section 32 (2) of the Act.
 - G. The scheme is also intended to apply in the Australian Capital Territory, Victoria, South Australia, Western Australia, the Northern Territory, and Queensland.

**THE COLLEGE OF INVESTIGATIVE AND
REMEDIAL CONSULTING ENGINEERS AUSTRALIA
PROFESSIONAL STANDARDS SCHEME**

1. Occupational association

1. The College of Investigative and Remedial Consulting Engineers Australia Professional Standards Scheme (the scheme) is a scheme under the Professional Standards Act 1994 (NSW) (the Act) prepared for College of Investigative and Remedial Consulting Engineers Australia (CIRCEA) whose business address is Suite 54, Technopark, 6 Herbert Street, St Leonards NSW 2066.
2. The scheme is intended to apply in New South Wales, the Australian Capital Territory, Victoria, South Australia, Western Australia, the Northern Territory and Queensland.

2. Persons to Whom the Scheme Applies¹

1. Subject to any exemption under Clause 2.3 of the scheme, the scheme applies to all ordinary members of CIRCEA who have the benefit of an insurance policy under which the amount payable in respect of occupational liability is not less than the maximum amount of liability applicable to that person at the relevant time, which insurance complies with standards set from time to time by CIRCEA in accordance with section 27 of the Act².

SCHEDULE

influenza vaccine
pneumococcal vaccine
oseltamivir
zanamivir

Dated at Sydney, 21 December 2012.

BRUCE BATTYE,
Acting Chief Pharmacist,
Delegate of the Director-General,
Ministry of Health, New South Wales

PROFESSIONAL STANDARDS ACT 1994

Notification Pursuant to Section 13

PURSUANT to section 13 of the Professional Standards Act 1994, I authorise the publication of the College of Investigative and Remedial Consulting Engineers Australia Professional Standards Scheme. The Scheme will commence 2 months after the date of its publication.

GREG SMITH,
Attorney General

THE PROFESSIONAL STANDARDS ACT 1994 (NSW)

The College of Investigative and Remedial
Consulting Engineers Australia
Professional Standards Scheme

Preamble

- A. The College of Investigative and Remedial Consulting Engineers Australia (CIRCEA) is an occupational association.

¹ Section 17 of the Act provides that a scheme applies to all persons within an occupational association or to a specified class or classes of persons within an occupational association. The relevant sections of legislation in other jurisdictions in which the scheme is intended to apply under mutual recognition are: Civil Law (Wrongs) Act 2002 (ACT) Schedule 4 Professional Standards subsection 4.15; Professional Standards Act 2004 (NT) subsection 18; Professional Standards Act 2004 (Qld) subsection 19; Professional Standards Act 2003 (Vic) subsection 19; Professional Standards Act 1997 (WA) subsection 30; Professional Standards Act 2004 (SA) subsection 19.

² Equivalent sections of legislation in other jurisdictions in which the scheme is intended to apply under mutual recognition are: Civil Law (Wrongs) Act 2002 (ACT) Schedule 4 Professional Standards section 4.23; Professional Standards Act 2004 (NT) section 28; Professional Standards Act 2004 (Qld) section 28; Professional Standards Act 2003 (Vic) section 29; Professional Standards Act 1997 (WA) section 40; Professional Standards Act 2004 (SA) section 29.

2. The scheme may apply to other persons who are officers, partners, employees or associates of persons who are covered by the scheme³³.
3. A person to whom the scheme applies, other than persons described under Clause 2.2 of the scheme, may, on written application to the Board of CIRCEA, be exempted from the scheme by the Board.

3. Limitation of liability

- 3.1 This scheme only affects 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.
- 3.2 If a person, who was at the time of the act or omission giving rise to occupational liability, a person to whom the scheme applied, 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 CIRCEA;
 - b. insuring such person against that occupational liability; and
 - c. under which the amount payable in respect of that occupational liability is not less than the monetary ceiling specified in this scheme,
 that person is not liable in damages, in relation to that cause of action, above the monetary ceiling specified in this scheme.
- 3.3 The monetary ceiling 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:

<i>Class</i>	<i>Description</i>	<i>Monetary ceiling</i>
1	Category A member	\$1,000,000
2	Category B member	\$5,000,000
3	Category C member	Such amount specified pursuant to clause 4.1 in excess of the monetary ceiling in respect of either Category A member or a Category B member but not exceeding \$10,000,000.

³³ 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 person is entitled 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 sections 18 to 20. Equivalent sections of legislation in other jurisdictions in which the scheme is intended to apply under mutual recognition are: Civil Law (Wrongs) Act 2002 (ACT) Schedule 4 Professional Standards section 4.15; Professional Standards Act 2004 (NT) section 18; Professional Standards Act 2004 (Qld) section 19, section 21A; Professional Standards Act 2003 (Vic) section 19; Professional Standards Act 1997 (WA) section 31, section 32; Professional Standards Act 2004 (SA) section 20, section 21.

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

“**Category A member**” means a person who is an ordinary member of CIRCEA to whom the scheme applies, who provides advice other than as a Category B member.

“**Category B member**” means a person who is an ordinary member of CIRCEA to whom the scheme applies, and who provides advice predominantly in the geotechnical engineering field.

“**Category C member**” means a person who is an ordinary member of CIRCEA to whom the scheme applies and who has sought a higher limit of liability under clause 4.1 of the scheme.

- 3.5 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 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 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.

4. Conferral of discretionary authority

- 4.1 Pursuant to section 24⁴ of the Act this scheme confers on CIRCEA a discretionary authority to specify, on written application of a member of CIRCEA to whom the scheme applies, in relation to that member, a monetary ceiling in excess of the monetary ceiling that would otherwise apply, but not exceeding \$10 million, in relation to the member either in all cases or in any specified case or class of case.

5. Duration

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

6. Commencement

- 6.1 This scheme will commence on 1 December 2012. In the event the scheme or a notice relating to the scheme, is published in the *NSW Government Gazette* of any jurisdiction after 1 December 2012, the scheme will commence on such day 2 months after the date of its publication in that jurisdiction.

PROFESSIONAL STANDARDS ACT 1994

Notification Pursuant to Section 13

PURSUANT to section 13 of the Professional Standards Act 1994, I authorise the publication of the Institute of Public Accountants Professional Standards Scheme. The Scheme will commence on 1 January 2013.

GREG SMITH,
Attorney General

⁴ Equivalent sections of legislation in other jurisdictions in which the scheme is intended to apply under mutual recognition are: Civil Law (Wrongs) Act 2002 (ACT) Schedule 4 Professional Standards section 4.20; Professional Standards Act 2004 (NT) section 25; Professional Standards Act 2004 (Qld) section 25; Professional Standards Act 2003 (Vic) section 26; Professional Standards Act 1997 (WA) section 37; Professional Standards Act 2004 (SA) section 26.