

Australian Capital Territory

# Civil Law (Wrongs) Engineers Australia (ACT) Scheme 2008 (No 1)\*

Disallowable instrument DI2008–292

made under the

**Civil Law (Wrongs) Act 2002, section 4.10, schedule 4 (Approval of schemes by Minister)**

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**1 Name of instrument**

This instrument is the *Civil Law (Wrongs) Engineers Australia (ACT) Scheme 2008 (No 1)*.

**2 Commencement**

This instrument commences on 1 January 2009.

**3 Approved scheme**

Pursuant to section 4.10, schedule 4 of the *Civil Law (Wrongs) Act 2002* I approve the attached Engineers Australia (ACT) Scheme.

Simon Corbell MLA  
Attorney General  
17 December 2008

\*Name amended under Legislation Act, s 60

**Civil Law (Wrongs) Act 2002 (ACT)**  
**ENGINEERS AUSTRALIA AUSTRALIAN CAPITAL TERRITORY SCHEME**

**PREAMBLE**

- A. The Institution of Engineers Australia (Engineers Australia) is an occupational association.
- B. Engineers Australia has made an application to the Professional Standards Council (the Council), appointed under the *Civil Law (Wrongs) Act 2002* (Australian Capital Territory) (the *Act*) for a scheme under the *Act*.
- C. The scheme is propounded by Engineers Australia 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 Engineers Australia is to apply to members of Engineers Australia who are also members of the Engineering Science and Technology Professional Standards Society (the Society).
- E. All of the Society's Professional Members are members of Engineers Australia, being those members of Engineers Australia who are from time to time admitted to the membership of the Society by the Society's Management Committee.
- F. Engineers Australia 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.
- G. The scheme is intended to 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 Schedule 4, Part 4.2, Division 4.2.3 section 4.28 (1) of the *Act*.

**ENGINEERS AUSTRALIA AUSTRALIAN CAPITAL TERRITORY SCHEME**

**1. Occupational Association**

- 1.1 The Engineers Australia Australian Capital Territory scheme (the scheme) is a scheme under the *Civil Law (Wrongs) Act 2002* (Australian Capital Territory) (the *Act*) prepared by the Institution of Engineers Australia (Engineers Australia) whose business address is 11 National Circuit, Barton, ACT 2600.

**2. Persons to Whom the Scheme Applies<sup>1</sup>**

- 2.1 The scheme applies to all members of Engineers Australia who are at the same time also members of the Engineering Science and Technology Professional Standards Society (the Society).

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<sup>1</sup> Schedule 4, Part 4.2, Division 4.2.2 section 4.16 of the Act provides that if the scheme applies to a person, the scheme applies to each partner of the person; and each employee of the person; and if the person is a corporation, each officer of the corporation; and each person who is, under a regulation made for section 4.25 (Limitation of amount of damages), associated with the person.

2.2 The scheme also applies to all persons to whom the scheme applied under clause 2.1 at the time of any act or omission giving rise to occupational liability.<sup>2</sup>

### 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 or a Category D 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:

- (a) of a kind which complies with the standards determined by Engineers Australia,
- (b) 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 member is not liable in damages<sup>3</sup> 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	\$1.5 million
2	Category B member	\$4 million
3	Category C member	\$8 million
4	Category D member	\$20 million.

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.

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<sup>2</sup> Occupational liability is defined in Schedule 4, Part 4.1, section 4.2 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'. However, Schedule 4, Part 4.1, section 4.3 (1) of the *Act* provides that the *Act* does not apply to liability for damages arising from personal injury to a person, a breach of trust or fraud or dishonesty. Schedule 4, Part 4.1 section 4.3 (2) of the *Act* also provides that the *Act* does not apply to liability which may be the subject of a proceeding under the *Land Titles Act 1925 (ACT)*, Part 16 (Civil rights and remedies).

<sup>3</sup> Damages as defined in Schedule 4, Part 4.1, section 4.2 of the *Act* means damages awarded in respect of a claim or counter-claim or by way of set-off and includes interest payable in respect of an amount awarded as damages; and legal costs and expenses ordered to be paid in connection with an award of damages (other than legal costs and expenses incurred in enforcing a judgment or incurred on an appeal made by a defendant).

3.4 Relevant definitions for the purposes 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) a body corporate who is a member of Engineers Australia to whom the scheme applies;
- b) a partnership some of whose members are members of Engineers Australia to whom the scheme applies;
- c) a sole trader who is a member of Engineers Australia 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 Engineers Australia 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 \$1 million;
- b) an individual 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 \$1 million; and
- c) a sole trader whose total annual fee income for the most recent financial year is less than \$1 million.

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

- a) a body corporate whose total annual fee income for the most recent financial year is \$1 million or more, but is less than \$3 million;
- b) an individual who is a member of a partnership, where the total annual fee income of such partnership for the most recent financial year is \$1 million or more, but is less than \$3 million; and
- c) a sole trader whose total annual fee income for the most recent financial year is \$1 million or more, but is less than \$3 million.

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

- a) a body corporate whose total annual fee income for the most recent financial year is \$3 million or more, but is less than \$10 million;
- b) an individual who is a member of a partnership, where the total annual fee income of such partnership for the most recent financial year is \$3 million or more, but is less than \$10 million; and
- c) a sole trader whose total annual fee income for the most recent financial year is \$3 million or more, but is less than \$10 million.

**“category D member”** means a person who is a member of Engineers Australia to whom the scheme applies and who is:

- a) a body corporate whose total annual fee income for the most recent financial year is \$10m or more, but is less than \$20m;

- b) an individual who is a member of a partnership, where the total annual fee income of such partnership for the most recent financial year is \$10m or more, but is less than \$20m; and
- c) a sole trader whose total annual fee income for the most recent financial year is \$10m or more, but is less than \$20m.

3.5 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 \$1,500,000.

#### **4. Conferral of discretionary authority**

4.1 Pursuant to Schedule 4, Part 4.2, Division 4.2.2, section 4.20 (2) of the *Act*, this scheme confers on Engineers Australia a discretionary authority to specify, on application of a member of Engineers Australia to whom the scheme applies, a higher monetary ceiling (maximum amount of liability) not exceeding \$20 million, in all cases or in any specified case or class of case.

#### **5. Commencement**

5.1 This scheme commences on 1 January 2009.

#### **6. Duration**

6.1 This scheme will be in force for a period of five years from the date of commencement.