

Australian Capital Territory

Civil Law (Wrongs) Australian Institute of Building Surveyors Professional Standards Scheme 2021 (No 1)

Disallowable instrument DI2021-137

made under the

Civil Law (Wrongs) Act 2002, schedule 4, section 4.10 (Schemes are subject to disallowance)

1 Name of instrument

This instrument is the *Civil Law (Wrongs) Australian Institute of Building Surveyors Professional Standards Scheme 2021 (No 1)*.

2 Commencement

This instrument commences on 1 July 2021.

3 Notice

I give notice of the Professional Standards Council of New South Wales' approval of the attached Australian Institute of Building Surveyors Professional Standards Scheme, which has effect until 31 June 2026.

Shane Rattenbury MLA
Attorney-General
24 June 2021

Professional Standards Act 1994 (NSW)

The Australian Institute of Building Surveyors Professional Standards Scheme

PREAMBLE

- A. The Australian Institute of Building Surveyors Limited (AIBS) is an occupational association.
- B. The AIBS has made an application to the Professional Standards Council, appointed under the Professional Standards Act 1994 (NSW) (the Act), for approval of a scheme under the Act. This document constitutes the scheme (the Scheme)
- C. The Scheme is prepared by the AIBS for the purposes of improving the quality of expertise within the profession and limiting Occupational Liability to the extent to which such liability may be limited under the Act.
- D. The Scheme is to apply to all Practising Members of the AIBS.
- E. The AIBS has furnished the Councils 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 01 July 2021 and remain in force for five (5) years from its commencement subject to s32 of the Act.
- G. The Scheme is intended to apply in New South Wales, Victoria, South Australia, Western Australia, Queensland, Tasmania, Australian Capital Territory, and The Northern Territory and to be prescribed for the purposes of applicable Commonwealth legislation to limit liability for misleading and deceptive conduct in accordance with that legislation..

THE AUSTRALIAN INSTITUTE OF BUILDING SURVEYORS PROFESSIONAL STANDARDS SCHEME

1. Occupational association

1.1 The Scheme is a scheme under the Act prepared by the AIBS whose business address is: Level 5, 828 Pacific Highway, Gordon, NSW, 2072.

2. Persons to Whom the Scheme Applies

2.1 The Scheme applies to:

2.1.1 all Practising Members (including a Body Corporate Member) as defined in the AIBS Membership Policy.

2.1.2 all persons to whom clause 2.1.1 applied at the time of any act or omission giving rise to a cause of action.

2.2 Upon application by a person referred to in clause 2.1, AIBS may exempt the person from the Scheme from the date on which the exemption is granted or a later date specified in the exemption. This clause does not apply to a person to whom the Scheme applies by operation of section 18, 19 or 20 of the Act.

3. Limitation of liability

3.1 The 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 the limits specified in the table in clause 3.4 below.

3.2 If a person to whom the Scheme applies and against whom a proceeding relating to Occupational Liability is brought is able to satisfy the court that:

3.2.1 the person has the benefit of an insurance policy insuring such person against that Occupational Liability, and

3.2.2 the amount payable in respect of that Occupational Liability is not less than the monetary ceiling specified in clause 3.4 below,

the person is not liable in damages in relation to that cause of action above the monetary ceiling.

3.3 For the purposes of the Scheme, an insurance policy must be a policy of a kind which complies with the AIBS Insurance Standards.

3.4 The monetary ceiling is as set out in the following table:

Building Levels	Category	Liability limit
Level 1	Unlimited (all buildings)	\$2 million
Level 2	Limited (less than 2000M2 and 3 storeys or less)	\$1 million

3.5 The 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.

3.6 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 is 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

The Scheme confers on AIBS a discretionary authority to specify, on application by a person to whom the Scheme applies, in relation to that person, a higher monetary ceiling (maximum amount of liability) not exceeding \$10 million, in all cases or in any specified case or class of case.

5. Commencement

The Scheme is intended to commence on the following day:

(a) in New South Wales, the Northern Territory, Queensland, Tasmania, Victoria and Western Australia on 1 July 2021;

(b) in South Australia and the Australian Capital Territory:

(i) on the date provided for in the Minister's notice, if a date is provided; or

(ii) on the first day two months after the day on which notice was given, in any other case.

6. Duration

6.1 The Scheme will be in force for a period of 5 years from the date of commencement unless it is revoked or otherwise ends, or it is extended, in accordance with the Act.

6.2 The Scheme will cease to operate in any jurisdiction other than New South Wales if it is revoked or otherwise ends in accordance with the corresponding law (as defined in the Act) of that jurisdiction.

7. Definitions

“Accredited Members” means a person who has been issued a certificate of accreditation under the National Accreditation Scheme.

“Act” means the Professional Standards Act 1994 (NSW).

“AIBS” means The Australian Institute of Building Surveyors Limited.

“AIBS Insurance Standards” means the insurance standards approved by AIBS from time to time.

“AIBS Membership Policy” means the membership policy effective as at 1 January 2021 (Doc Ref: P006, Version 003/01-Jan-21).

“Body Corporate Member” means a body corporate or other entity which is accredited by AIBS as an Accredited Member.

“Level 1” means building surveying functions for all other classes of buildings (as defined by the Building Code of Australia).

“Level 2” means building surveying functions for Class 1 and Class 10 buildings not exceeding a rise in storeys of 3 (as defined by the Building Code of Australia) unless legislated otherwise.

“National Accreditation Scheme” means the scheme administered by AIBS under which AIBS accredits building surveying professionals to practice.

“Occupational Liability” has the same meaning as in the Act.

“Practising Member” means a Practising Member (including a Body Corporate Member) as defined in the AIBS Membership Policy.