

Scheme instrument

Professional Standards Act 1994 (NSW)

The Strata Community Association (NSW) Limited Professional Standards Scheme

Preamble

- A. The Strata Community Association (NSW) Limited (SCA (NSW)) is an occupational association for the purposes of the *Professional Standards Act 1994 (NSW)* (the Act).
- B. SCA (NSW) prepared the scheme for the purposes of limiting Occupational Liability to the extent to which such liability may be limited under the Act.
- C. The scheme applies to all persons who are a:
 - a) professional strata manager member,
 - b) strata practice member, or
 - c) strata practice employee members.
- D. The scheme will have force in New South Wales in accordance with the Act.
- E. SCA (NSW) has furnished the Professional Standards Council (the Council) with a detailed list of the risk management strategies to be implemented in respect of its members, and information concerning how those strategies are to be implemented.
- F. SCA (NSW) has furnished the Council with details of its insurance standards and professional indemnity insurance claims monitoring process. SCA (NSW) will not amend these insurance standards while the scheme is in force without prior approval of the Council.
- G. SCA (NSW) has advised its members to whom the scheme applies that they must have the benefit of a professional indemnity policy that complies with the association's insurance standards and that they remain liable for any difference between the amount payable to a plaintiff under the policy and the monetary ceiling specified in the scheme.
- H. SCA (NSW) has furnished the Council with details of its complaints system and discipline system.
- I. SCA (NSW) and its members to whom the scheme applies have undertaken to comply with all reporting obligations associated with the scheme, in furtherance of the statutory objects of the improvement of the occupational standards of its members, and protection of the consumers of such members' services.
- J. SCA (NSW) has undertaken to remit all fees payable under the *Professional Standards Regulation 2024 (NSW)* to the Council as and when these become due.
- K. The scheme is intended to commence on 1 July 2026 and remain in force for three (3) years from its commencement in New South Wales unless, before that time, it is revoked, its operation ceases, or it is extended.
- L. Sections 12GNA(2) of the *Australian Securities and Investments Commission Act 2001 (Cth)*, 137(2) of the *Competition and Consumer Act 2010 (Cth)*, and 1044B(2) of the *Corporations Act 2001 (Cth)* provide for limited liability where a professional standards scheme is prescribed in the relevant regulation. The scheme does not apply to limit any liability under a Commonwealth law unless it has been prescribed under regulations by the Commonwealth.

The Strata Community Association (NSW) Limited Professional Standards Scheme

1. Occupational association

1.1. The Strata Community Association (NSW) Limited Professional Standards Scheme (the scheme) is a scheme under the *Professional Standards Act 1994* (NSW) (the Act) prepared by the Strata Community Association (NSW) Limited [SCA (NSW)] whose business address is Level 2, 50 Berry Street, North Sydney NSW 2060.

2. Persons to whom the scheme applies

2.1. The scheme applies to:

2.1.1. all persons who are a:

- 2.1.1.1. professional strata manager member,
- 2.1.1.2. strata practice member, or
- 2.1.1.3. strata practice employee member, and

2.1.2. all other persons to whom the scheme applies by virtue of the Act.

2.2. A person referred to in clause 2.1.1 may, on application, be exempted from participation in the scheme by SCA (NSW) with effect from the date specified by SCA (NSW) if SCA (NSW) is satisfied that he or she would suffer financial hardship in obtaining professional indemnity insurance to the standards determined by SCA (NSW).

3. Jurisdiction

3.1. The scheme applies in New South Wales in accordance with the Act.

4. Limitation of liability

4.1. 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 \$750,000.

4.2. If a person who is, or was, at the time of the act or omission giving rise to occupational liability, a person to whom the scheme applies, or applied, and 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 SCA (NSW),
- b) insuring such person against the occupational liability to which the cause of action relates, and
- c) under which the amount payable in respect of that occupational liability is not less than the applicable monetary ceiling specified in clause 4.3 of this scheme,

then that person is not liable in damages in relation to that cause of action above the monetary ceiling specified in clause 4.3 of this scheme.

4.3. The monetary ceiling is \$750,000.

4.4. Clause 4.2 does not limit the amount of damages to which a person to whom the scheme applies is liable if the amount is less than the amount specified for the purpose in this scheme in relation to a person to whom the scheme applies.

4.5. 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.

4.6. 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.

5. Conferral of discretionary authority

- 5.1. SCA (NSW) has discretionary authority, on application by a person referred to in clause 2.1.1, to specify in relation to that person a higher maximum amount of liability than would otherwise apply under the scheme, in all cases or in any specified case or class of case.

6. Commencement and duration

- 6.1. The scheme will commence in New South Wales on 1 July 2026.
- 6.2. The scheme will be in force in New South Wales for three (3) years from the date of its commencement.
- 6.3. Clause 6.2 is subject to the provisions of the Act in relation to the revocation, extension, or cessation of a scheme.

7. Definitions

- 7.1. Relevant definitions for the purpose of this scheme are as follows:

“court” has the same meaning as it has in section 4 of the Act

“damages” has the same meaning as it has in section 4 of the Act

“occupational liability” has the same meaning as it has in section 4 of the Act

“person” means an individual or a body corporate

“professional strata manager” means a member of SCA (NSW) within the Professional Strata Manager Members class as set out in clause 7.1(a) of the SCA (NSW) Constitution, as amended from time to time.

“strata practice member” means a member of SCA (NSW) within the Strata Practice Members class as set out in clause 7.2(b) of the SCA (NSW) Constitution, as amended from time to time.

“strata practice employee member” means a member of SCA (NSW) within the Strata Practice Employee Members class as set out in clause 7.2(c) of the SCA (NSW) Constitution, as amended from time to time.