



ACS Professional Standards Scheme – ACS Insurance Standards

Application of ACS Insurance Standards

1. All Participating Members of the ACS Scheme must have the benefit of an Insurance Arrangement which, at a minimum, is compliant with the ACS Insurance Standards for the duration of the Scheme or the date on which the person otherwise ceases to be a Participating Member of the Scheme.
2. The ACS Insurance Standards document contains:
 - 2.1 **Standards** which represent minimum requirements with which Participating Members are required to comply in order to gain the benefit of the Limitation of Liability provided by the Scheme. Standards are designated by the use of the word 'must'.
 - 2.2 **Advisory Statements** which the ACS encourages Participating Members to adopt but which do not have the status of Standards for the purpose of application of the Professional Standards Legislation. Participating Members are not required to comply with these provisions. Advisory Statements are designated by use of the word 'should'.
 - 2.3 **Permissive Statements** which identify insurance arrangements which a Participating Member may adopt and which, if adopted, will not place the Participating Member in breach of the ACS Insurance Standards. Permissive Statements are designated by the use of the word 'may'.
3. For the avoidance of doubt, the failure by Participating Member to hold cover of the type referred to in any Advisory Statement of Permissive Statement does not constitute non-compliance with the ACS Insurance Standards.

The insurer

4. Subject to clause 5, the Insurance Arrangement must be placed with an insurer which is regulated or authorised by APRA under the *Insurance Act 1973* (Cth) to write professional indemnity insurance in Australia.
5. Notwithstanding clause 4, the Insurance Arrangement may be placed with an Unauthorised Foreign Insurer provided that the ACS has been provided with a letter signed by a qualified insurance broker certifying that:
 - 5.1 at least one policyholder is a high-valued insured; or
 - 5.1 an atypical risk is being insured against; or
 - 5.2 the risk being insured against cannot reasonably be placed in Australia; or
 - 5.3 the policy is required by the law of a foreign jurisdiction within the meaning of Part 2 of the *Insurance Regulations 2002* (Cth).
6. The insurer should be financially stable and able to meet the claim(s) in full.



Who is covered by the Insurance Arrangement?

7. The Participating Member must be either:
 - 7.1 an insured under the Insurance Arrangement; or
 - 7.2 a third-party beneficiary under the Insurance Arrangement.
8. The Insurance Arrangement must indemnify all past, present and future partners or employees of the insured.
9. If the insured is corporate entity, the Insurance Arrangement must indemnify past, present, and future officers of the entity.
10. The Insurance Arrangement should indemnify the insured for claims arising from work performed by contractors and sub-contractors engaged by the insured.
11. Where the Participating Member is an insured and the Insurance Arrangement does not cover contractors or sub-contractors referred to in clause 10, the Participating Member should take reasonable steps to satisfy themselves that their contractors and sub-contractors have their own insurance arrangement in place that:
 - 11.1 provides indemnity in respect of their performance of the Occupational Services; and
 - 11.2 complies with the ACS Insurance Standards.

Claims made cover

12. The PI Policy must provide indemnity for claims made, or claims made and notified, during the relevant period of insurance. It may also provide indemnity for facts or circumstances from which may give rise to a claim, which are notified during the relevant period of insurance.
13. The PI Policy should have a continuous cover extension.
14. Subject to the ICA, a Participating Member should take care to ensure that notice is given to the insurer as soon as practicable and during the relevant period of insurance, of any claim, or fact or circumstance which might give rise to a claim, of which it becomes aware during the relevant period of insurance.
15. Subject to the ICA, a Participating Member should take care to disclose to the insurer, prior to renewal of the PI Policy, all known facts or circumstances which might give rise to a claim.

Scope of cover

16. The PI Policy must indemnify the Participating Member, against Occupational Liability relating to a cause of action founded on an act or omission during the period when the Scheme was in force.



17. The PI Policy should provide cover in respect of Occupational Services provided by the Participating Member.

Sum Insured, Defence Costs and Maximum Excess

18. Where a proceeding is brought against a person who was a Participating Member at the time of the act or omission giving rise to the Occupational Liability, such person must have the benefit of a PI Policy with a Sum Insured not less than:

- 18.1 in respect of an Occupational Liability arising out of an act or omission of the person occurring during the currency of this Scheme, the amount of the Monetary Ceiling specified in paragraph 4.3 of the Scheme Instrument (\$2,000,000); and

- 18.2 in respect of an Occupational Liability arising out of an act or omission of the person occurring during the currency of any previous ACS professional standards scheme of which the person was a participating member ("Prior Scheme"), the amount of the Monetary Ceiling specified in that Prior Scheme.

("Statutory Minimum Sum Insured Requirement")

19. The Sum Insured for the PI Policy must:
 - 19.1 provide at least one automatic reinstatement of the Sum Insured; or
 - 19.2 have an Aggregate Sum Insured which is no less than two (2) times the amount required to comply with the Statutory Minimum Sum Insured Requirement.
20. The PI Policy must cover Defence Costs as follows:
 - 20.1 where the PI Policy's Sum Insured is cost inclusive¹ the PI Policy must:
 - (a) comply with the Statutory Minimum Sum Insured Requirement; and
 - (b) provide additional cover of at least \$500,000.
 - 20.2 where the PI Policy provides unlimited cost-in-addition cover,² the PI Policy must comply with the Statutory Minimum Sum Insured Requirement;
 - 20.3 where the PI Policy provides sub-limited costs-in-addition cover,³ the PI Policy must:
 - (a) comply with the Statutory Minimum Sum Insured Requirement; and

¹ An insurance policy is cost inclusive where the Sum Insured is eroded by reference to any payment made by the insurer by way of indemnification of the insured's Defence Costs and expenses.

² An insurance policy provides 'costs-in-addition' cover where the Sum Insured is not eroded by any payment made by the insurer by way of indemnification of the insured's Defence Costs and expenses. Costs-in-addition cover is unlimited where there is no Sum Insured specified in respect of the amount which the insurer is required to pay to the insured by way of indemnification of the insured's Defence Costs and expenses.

³ Costs-in-addition cover is sub-limited where the policy specifies a separate limit of indemnity or sum insured in respect of the amount which the insurer is required to pay to the insured by way of indemnification of the insured's legal defence costs and expenses.



- (b) provide a Defence Costs sub-limit of no less than \$500,000.
21. The requirements as to Defence Costs in clause 20 do not apply where a Participating Member holds business assets of a net market value greater than \$1,000,000.⁴
22. The Sum Insured under the PI Policy:
- 22.1 should apply on a 'per claim' or 'any one claim' basis;
- 22.2 may be subject to an aggregation clause which:
- (a) treats all causally connected or interrelated acts or omissions as a single act or omission under this Policy; and/or
- (b) treats all claims arising out of a single act error or omission as a single claim.

Excess

23. Subject to clause 26, the PI Policy must, in respect of the Occupational Services carried out by a Participating Member, have an excess not greater than the Maximum Excess applicable to any one Claim, where the Maximum Excess is determined according to the following table:

Annual gross fees earned (as a sole trader, partnership or company) for the financial year immediately preceding the policy year	Maximum Excess
\$0 - \$499,999	\$5,000
\$500,000 to \$1,999,999	\$10,000
\$2,000,000 to \$4,999,999	\$25,000
\$5,000,000 to 9,999,999	\$50,000
\$10M+	\$100,000

24. The excess under the PI Policy should be set at a level which, having regard to the financial position of the Participating Member at the time the policy is entered into, can reasonably be expected to be able to be paid by the Participating Member at least twice in any 12-month period.
25. The Participating Member shall, if requested by the ACS at any time, provide evidence to satisfy the ACS that the Participating Member has sufficient assets to pay the excess under its PI Policy at least twice in any 12-month period.

⁴ On request, the Participating Member must provide the ACS, in writing, with details of such assets, and during the relevant period of insurance, be able to satisfy the ACS that they could be made payable within a reasonable period.



26. Notwithstanding clause 23, the ACS has a discretionary authority to specify, on application by a Participating Member, a higher excess, in relation to the Participating Member either in all cases or in any specified case or class of case. The Participating Member should supply to the ACS, in support of any application, evidence from the Participating Member's insurance broker as to:
 - 26.1 whether the proposed excess is in line with current insurance market practice;
 - 26.2 whether an excess which complies with clause 23 is reasonably available to the Participating Member in the insurance market;
 - 26.3 any factors specific to the Participating Member which constitute exceptional circumstances.
27. The PI Policy should not contain a provision stipulating that a separate excess will apply to a claim brought by a distinct claimant.

Retroactive date

28. Where the PI Policy contains a retroactive date, that date must be no later than the latest of:
 - 28.1 the date on which the contracting insured first commenced carrying out the Occupational Services;
 - 28.2 the date on which the contracting insured first took out a professional indemnity insurance in respect of their Occupational Liability; and
 - 28.3 the date on which the contracting insured took out a new professional indemnity insurance policy as a result of a merger or acquisition of a business, where past liabilities are covered under a separate policy.

Consumer protection legislation

29. The PI Policy must provide cover, to the full extent of the Sum Insured, in respect of an unintentional breach of the misleading and deceptive conduct provisions of Consumer Protection Legislation applicable to the Occupational Services to which the Scheme applies.

Run-off cover

30. Where reasonably available, the PI Policy should provide automatic run-off cover for a period of at least seven (7) years in the event that the named insured ceases to carry on the insured professional business at any time during the currency of the policy.
31. Where a PI Policy of the type referred to in clause 30 is not reasonably available, a Participating Member should use best endeavours to maintain the benefit of run-off cover or continuous PI Policy for a period of seven (7) years following cessation of the contracting insured's business. This clause will continue to bind a former Participating Member after they cease to be a Participating Member.



Exclusions

32. The PI Policy must not contain any exclusion, or combination of exclusions, which would result in any mandatory requirement of the ACS Insurance Standards being wholly or substantially negated.
33. The PI Policy should, to the extent reasonably available in the insurance market, not contain exclusions which would result in the PI Policy not providing cover for a material proportion of claims likely to be made against the Participating Member in respect of the Participating Member's Occupational Services.

Cyber Liability

34. To the extent reasonably available, Participating Member should obtain cover in respect of the Participating Member's Occupational Liability for loss or damage suffered by third parties as a consequence of a cyber breach.
35. Such cover may be obtained either as part of the PI Policy or as a separate policy (or as a combination of both). Where it is obtained as a separate policy, it should comply with each of the following requirements in these Insurance Standards: 4 or 5, 7, 8, 9, 10, 12, 18, 22.1 and 27.⁵

Excess-layer insurance

36. Where reasonably available, Participating Members should seek to obtain a single PI Policy which complies with the ACS Insurance Standards.
37. Participating Members may take out an insurance program consisting of two or more PI Policies (being primary and excess-layer policies) which, taken together, comply with the ACS Insurance Standards provided that all policies comply individually with the ACS Insurance Standards otherwise than as to the limit of indemnity and excess.
38. In the case of an insurance program consisting of two or more policies (being primary and excess-layer policies), any excess policy(s) should preferably follow the form of the primary insurance.

Exemptions and approvals

39. The ACS may, in its discretion, grant an exemption to a specific Participating Member, or group of Participating Members, from compliance with one or more of Standards contained in the ACS Insurance Standards.
40. The ACS may, in its discretion, approve a policy provision even though that provision does not or may not strictly comply with a mandatory policy requirement set out in the ACS Insurance Standards where, in the reasonable assessment of the ACS:

- 40.1 the provision is not inconsistent with the objectives of the ACS Insurance Standards; and

⁵ For the avoidance of doubt, for the purpose of clauses 34 and 35 (only) each of the requirements in clauses 4, 7, 8, 9, 12, 18, and 27 of these Insurance Standards should be read as if the word "must", appearing in that clause, was the word 'should'.



- 40.2 in the absence of such approval, the Standard(s) would operate unfairly and/or cause undue hardship to a Participating Member.
41. Where a provision in a PI Policy has been approved by the ACS, the PI Policy shall not be non-compliant with the ACS Insurance Standards by reason only of the fact that it contains that provision.
42. The ACS may, in its discretion, approve a particular form of PI Policy wording even though that policy wording does not or may not strictly comply with one or more Standards set out in the ACS Insurance Standards where, in the reasonable assessment of the ACS:
- 42.1 the policy wording, considered as a whole, is not inconsistent with the objectives of the ACSACS Insurance Standards; and
- 42.2 in the absence of such approval, the ACS Insurance Standards would operate unfairly and/or cause undue hardship to a Participating Member or group of Participating Members.
43. Where a particular form of PI Policy wording has been approved by the ACS, any PI Policy held by a Participating Member, or which a Participating Member has the benefit of, shall not be non-compliant with the ACS Insurance Standards by reason of the fact that it is in that form.

Limitations on Exemptions and Approvals

44. Notwithstanding clauses 39, 40 and 42, the ACS may not grant an exemption or approval, where the grant of such exemption or approval would have the effect that:
- 44.1 a Participating Member or groups of Participating Members would not be required to comply with, or
- 44.2 a policy held by a Participating Member or group of Participating Members would not comply with,
- any of the Standards contained in clauses:
- (a) 7, 12, 18;
- (b) 8, 9, 10 (in each case other than in respect of exemptions or approvals granted to specified Participating Members who are former officers, partners or employees);
- (c) either 4 or 5.

Procedure

45. The discretions referred to in clauses 39, 40 and 42 may be exercised by the ACS:
- 45.1 in the case of clause 39, on application by a Participating Member or of the ACS' own volition;



- 45.2 in the case of clauses 40 and 42, on application by a Participating Member, an insurer, or of the ACS' own volition;
- 45.3 in respect of a specific Participating Member, group of Participating Members or all Participating Members;
- 45.4 on such conditions as the ACS may impose (including in respect of the provision of material in support of any application).
46. In deciding whether or not to exercise the discretions referred to in clauses 39, 40 and 42, the ACS must have regard to:
- 46.1 in the case of clause 39, whether the cover required by the particular Standard is available to such Participating Member or Group of Participating Members;
- 46.2 in the case of clauses 40 and 42:
- (a) the extent to which the provision or the policy complies with the Standards;
 - (b) the extent to which the provision or the policy fails to comply with the Standards;
 - (c) whether cover which would fully comply with the Standards is reasonably available to the Participating Member or group of Participating Members or all Participating Members.
- 46.3 the objectives of the Professional Standards Legislation, the Scheme and the ACS Insurance Standards;
- 46.4 the cost to the Participating Member or group of Participating Members of full compliance with the ACS Insurance Standards;
- 46.5 the effect which granting such exemption or approval might have on the rights of users of the Occupational Services of the Participating Member or group of Participating Members;
- 46.6 whether any conditions should be placed on any proposed exemption or approval which would mitigate any potential adverse impact of the exemption or approval on:
- (a) the achievement of the objectives of the Professional Standards Legislation, the Scheme and the ACS Insurance Standards;
 - (b) the rights of users of the Occupational Services of the Participating Member or group of Participating Members,

Reliance on broker's confirmation

47. The ACS may rely on confirmation from a broker or agent of an insurer that the PI Policy complies with the ACS Insurance Standards.



Definitions

“ACS” means the Australian Computer Society Incorporated.

“ACS Insurance Standards” means the insurance Standards approved by the ACS from time to time as set out in this document. It does not include any Advisory Statement or Permissive Statement set out in this document.

“Aggregate Sum Insured” means the maximum amount specified in a policy of professional indemnity insurance for which an insurer is required to pay by way of indemnification of the insured in respect of all claims in any policy period.

“Claim” means the receipt by of a claim for compensation made by a third party against a person who was a Participating Member at the time of the act or omission giving rise to the Occupational Liability, and which must take the form of:

- (a) a writ, statement of claim, summons, application or other originating legal or arbitral process, cross claim, counter claim, or third party or similar party notice; or
- (b) any other form of written or verbal notice.

“Consumer Protection Legislation” means the *Trade Practices Act 1974* (Cth); Schedule 2 of the *Competition and Consumer Act 2010* (Cth); Division 2 Part 2 of the *Australian Securities and Investment Commission Act 2001* (Cth); Part 7 of the *Corporations Act 2001* (Cth) or any similar or related legislation of a State or Territory of Australia.

“Defence costs” means the costs incurred by an insurer, or the reasonable costs incurred by a Participating Member with the insurer's consent, in the investigation, defence, reporting or negotiation for settlement of any Claim, and does not include the costs of the third party that is claiming against the Participating Member.

“ICA” means the *Insurance Contracts Act 1984* (Cth)

“Insurance Arrangement” means each of the following:

- (a) a PI Policy; and
- (b) if applicable, any other insurance necessary for a Participating Member to cover their Occupational Liability (e.g. cyber liability insurance).

“Limitation of Liability” means the amount of the limitation of liability provided for in clause 4.3 of the Scheme Instrument.

“Maximum Excess” means the excess outlined in the table at clause 23.

“Member” means a Member of the ACS.

“Monetary Ceiling” means the applicable monetary ceiling specified in clause 4.3 of the Scheme Instrument.

“Occupation” means the occupational vocation carried out by Participating Members by application of the qualifications, training, skills, practices, disciplines, specialisations,



standards, guidelines and experience of an ordinary person who holds the ACS certification of Certified Professional.

“Occupational Liability” means civil liability arising (in tort, contract or otherwise) directly or vicariously from anything done or omitted by a Participating Member acting in the performance of their Occupation.

“Participating Member” means a Member to whom the Scheme applies, or applied, pursuant to clause 2.1 and who has not been exempted from participation in the Scheme pursuant to clause 2.3 of the Scheme.

“Prior Scheme” has the meaning given to it in clause 18.2.

“Scheme” means the in-force ACS Professional Standards Scheme set out in the document entitled ‘The Australian Computer Society Incorporated Professional Standards Scheme’.

“Scheme Instrument” means the document entitled ‘The Australian Computer Society Incorporated Professional Standards Scheme’.

“PI Policy” means a professional indemnity insurance policy.

“Professional Standards Legislation” has the same meaning as defined in the Scheme Instrument.

“Standards” means the minimum requirements stated in the ACS Insurance Standards with which Participating Members are required to comply in order to gain the benefit of the Limitation of Liability provided by the Scheme. Standards in the ACS Insurance Standards are designated by the use of the word ‘must’. Standards do not include Advisory Statements (as identified at clause 2.2) or Permissive Statements (as identified at clause 2.3).

“Statutory Minimum Sum Insured Requirement” means the amount of the Sum Insured required by these ACS Insurance Standards as set out at clause 18.

“Sum Insured” means the maximum amount specified in insurance policy for which an insurer is required to pay by way of indemnification of the insured. The sum insured may be stated to apply in respect of each claim or series of claims or in respect of all claims in any policy period.

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

“Unauthorised Foreign Insurer” has the same meaning as in regulation 4 of the *Insurance Regulations 2002* (Cth).