



ACS Professional Standards Scheme

Discretionary Monetary Ceiling Guidelines

Version: 1.0

Purpose

The purpose of this document is to set out the requirements and considerations for ACS approving a discretionary monetary ceiling for a participant of the ACS Professional Standards Scheme (PSS).

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1. ACS PSS

1.1. What is a PSS?

A professional standards scheme, regulated by the PSC, is a legal arrangement approved under *Professional Standards Act 1994* (NSW) (the Act) that caps the civil liability, or damages arising from a civil legal proceeding, in the event that a court upholds a claim against a person who is, or was at the time of the event/omission that is the subject of the claim, a participant of that professional standards scheme.

The Scheme Instrument sets out the details of the ACS PSS' scope, jurisdiction, duration and limitation of liability. The ACS Insurance Standards accompanies the Scheme Instrument and sets out the insurance obligations that are required of ACS members participating in the PSS.

1.2. How does the ACS PSS work?

The ACS Professional Standards Scheme (PSS) caps occupational liability of participants to a monetary ceiling (also referred to as the 'cap') of \$2 million per claim if the following requirements can be satisfied:

- PSS participation was pleaded as a defence at the commencement of a proceeding
- They were an PSS participant at the time of the event of the event/omission giving rise to the claims
- They have a current PI insurance policy that:
 - insures them against the 'occupational liability' to which the cause of action relates
 - the amount payable under the PI insurance policy is not less than the amount of the monetary ceiling applicable at time of the act/omission which gave rise to the claim (i.e. \$2 million)
 - the PI insurance is compliant with the ACS Insurance Standards

1.3. What is a discretionary monetary ceiling (DMC)?

The default monetary ceiling applicable to a claim under the ACS PSS is \$2 million. Participants of the ACS PSS may, however, request the ACS to approve a DMC that is higher than the \$2 million cap, provided the applicant can meet the requirements of the DMC Guidelines.

1.4. Why would an ACS PSS participant want a DMC?

There may be different reasons why an ACS PSS participant might apply for a DMC, but they are usually initiated at the request of their client(s) wanting a higher cap or unlimited liability for the ACS PSS participant's work.

1.5. Why do we need guidelines for approval of DMCs?

With actuarial data analysis supporting the current monetary ceiling of \$2 million, the ACS considers that the monetary ceiling of \$2 million is appropriate for the majority of ACS PSS participants' circumstances. Further, due process is needed as DMC:

- may potentially prejudice the objects of the ACS PSS and the Act; and
- effectively forfeit ACS PSS participants' legal right to cap their civil liability at the lower amount of \$2 million.

2. DMC

2.1. Source of ACS' power to grant DMC

ACS has the power to grant discretionary monetary ceilings under section 24 of the Act and clause 5.1 of the ACS PSS instrument.

Section 24 of the Act:

24. **Specification of limits of liability and multiples**

- (1) A scheme may:
 - (a) specify the same maximum amount of liability in relation to all cases to which the scheme applies or different maximum amounts of liability for different cases or classes of case or for the same case or class of case for different purposes, and
 - (b) confer a discretionary authority on an occupational association, on application by a person to whom the scheme applies, to specify in relation to the person a higher maximum amount of liability than would otherwise apply under the scheme in relation to the person either in all cases or in any specified case or class of case.
- (2) A scheme may specify a multiple, monetary ceiling or minimum cap by way of a formula that is to be applied to calculate the multiple, ceiling or cap.

The relevant section in the Scheme Instrument is as follows:

5 **Conferral of discretionary authority**

- 5.1 The Scheme confers on the ACS a discretionary authority, on application by a Participating Member, 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.

2.2. Types of DMC

An ACS PSS participant may request a DMC for liability relating to some or all of their professional services. For example, they may request a DMC of \$5 million for liability relating to professional services provided to a particular client.

3. Discretion of ACS to Approve/Decline/Revoke DMCs

The ACS has the absolute discretion to approve, decline or revoke DMCs on such terms as it sees appropriate.

4. Assessment and effect of DMC

4.1. Who can apply for a DMC?

An ACS PSS participant can apply for a DMC in relation to any or all of their professional services.

4.2. Mode of application

For ACS to consider a DMC, the applicant must complete and provide all relevant details for their request on the DMC application form, published on the ACS' website at www.acs.org.au.

4.3. Supporting documentation for application

To support their DMC application, the applicant should provide the following:

- evidence – e.g. certificate of currency, broker confirmation of policy particulars – of having, or that they will have, the benefit of an adequate professional indemnity insurance that:
 - has a limit of indemnity of at least the amount of DMC they are seeking; and
 - is compliant with the ACS Insurance Standards
- any correspondence that may support the application – e.g. correspondence from client, government tender requirements.

4.4. Timing of DMC application

An ACS PSS participant can apply for a DMC at any time.

4.5. Delegation to approve DMC applications

The Director Capability has delegation to approve DMCs applications and may consult the Chair, ACS Professional Standards Board (PSB).

4.6. Effect of DMC approval

If the ACS approves a DMC, the applicant's monetary ceiling for their liability will increase to the amount of the approved DMC for all or some of their professional services, as at the date specified by the ACS.

4.7. Assessment criteria for DMC application

Applications will only be granted where applicants are able to demonstrate a compelling business case for their DMC application.

In assessing a DMC application, the ACS may have regard to the following considerations:

- the size and structure of the applicant's organisation/business
- the extent to which the \$2 million monetary ceiling is not adequate for the applicant's circumstances
- the nature and extent of any financial burden potentially imposed on the applicant if the DMC is not granted
- the potential benefits to the applicant if the DMC is granted
- the potential impact on the objects of the ACS PSS or the Act
- adequacy of PII coverage

4.8. Duration of DMC

Unless otherwise approved by the ACS, all DMCs are granted on a twelve (12) months basis and CP members need to reapply each year.

4.9. Applicant may request ACS to revoke DMC

At any time after a DMC is granted by the ACS, the applicable ACS PSS participant may request the ACS to revoke the DMC.

5. Variation of DMC Guidelines

5.1. PSB can vary this document

The PSB, at the recommendation of the Director Capability, may vary the guidelines contained in this document from time to time.

5.2. Further guidelines

The ACS may set out further guidelines to complement this document as needed from time to time.

6. Version History

Name	Revision History	Date of Issue	Version
Anna Shin	Initial document	29 February 2024	0.1
Anna Shin	Initial document update	26 February 2025	0.2

7. Approvals

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8. Distribution

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9. Document Control

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