

1.0.2 Guidance

The association's capability to operate a Professional Standards Scheme

For Schemes being prepared under Professional Standards
Legislation

June 2021





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1.0	PSC	18 June 2021	1 July 2021	This is a new guidance

Disclaimer

This guidance is applicable only to an occupational association preparing a Scheme for approval under Professional Standards Legislation. It does not constitute legal or other professional advice and should not be relied on as such. An occupational associations should seek its own legal/professional advice to find out how the Professional Standards Legislation and other relevant laws and regulations may apply to it. For access to legislation in force in NSW, go to the official NSW Government website for online publication of legislation at www.legislation.nsw.gov.au.

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1. Guidance Statement

A key aim of this guidance is to assist your association in completing Module 1.0 *The Association and its capability to operate a Professional Standards Scheme*.

This information being sought in the module is central to the *Scheme Application Framework* for seeking approval of Professional Standards Schemes. This involves new applicants being asked by the Professional Standards Councils to complete the module first, before attempting to respond to the rest of the framework. The aim is to test an association's capability to operate a Scheme. The module comprises a template and the following submodules:

- 1.1 *Occupational group and occupational association*
- 1.2 *Association governance, conflicts of interest and financial arrangements*
- 1.3 *Association enterprise/business risk management*
- 1.4 *Other statutory requirements*

However, before commencing these submodules, you should complete the template provided and arrange a meeting (pre-application workshop) with the Authority, to discuss your responses to the template, and any questions you may have regarding the application process.

The guidance has been developed to assist you to understand and respond to the module's terminology and application requirements.

2. Requirements - threshold propositions

A useful starting point to assess readiness is the information contained in the Professional Standards Councils' website under the section titled, '[Are you ready to apply?](#)'. In summary, this section lists a range of propositions for you to consider and help you decide if your association is eligible and ready to apply for a Professional Standards Scheme.

For responding to the module's propositions outlined in Template 1.0.1, the table below provides an overview of typical examples and mitigation actions which your association can consider. Note that this information is to be treated as a guide only.

CATEGORY: MEMBERSHIP		
Module's propositions	Indicia	Possible mitigation
The association cannot compel members to provide data	Member survey results of 50% or less. No clauses in membership contract or forms with the compulsion to respond to association questions.	Discussion with Authority about survey results and Councils' expectations
The association cannot compel members to hold professional indemnity insurance	Professional indemnity insurance pricing as a ratio to turnover. Member opinions on whether professional indemnity insurance is necessary. Other statutory requirements.	Discussion with Authority before application, about professional indemnity insurance Self-identification of non-compulsion by association in pre-application checklist



The association cannot compel members to improve occupational standards	Lack of member engagement with the association (links to inability to compel members to provide data).	Discussion with Authority about occupational standards and member education on standards Annual compliance reporting (APSR) feedback
The association's proposed Scheme only includes a small part of the overall association membership.	The Scheme will exclude over 70% of the total membership of the association (based on the classes of membership included).	Discussion with Authority about excluding classes of membership from the Scheme. Education from the association about Scheme participation correlating with increased consumer protection.
The association does not have the minimum number of members to represent the occupational group.	Benchmark of 500 members, where 250 members are Scheme participants.	Self-identification of risks by association of membership numbers.
The association has corporate members.	Corporate members are identified, along with individual members.	Education by the Authority on the risks associated with corporate membership (especially as a majority of overall membership).
The association does not have a robust and independent systems for consumer complaints resolution and member discipline.	Members are unwilling to submit to the system. Members do not empower the system. No separation between the complaints aspect and discipline aspect of the system.	Self-assessment of the systems by association.
CATEGORY: GOVERNANCE		
The association is not a corporate body or cannot maintain their statutory responsibilities as an incorporated entity.	For example, breaches or non-compliance with <i>Corporations Act 2001</i> (Cth). Non-compliant operation of the incorporated entity.	Evidence of the association's occupational association status.
The association's Constitution does not enable a Scheme to be created and approved.	Clauses within the Constitution that clash with legal requirements for a Scheme. Draft governance documents that have not been approved at the time of submission.	Legal advice received about the Constitution's compatibility with the proposed Scheme. Association review of governance documents as a pre-application check.
The association is part of a complex corporate structure.	Numerous funding avenues. Numerous service companies. Vague SLAs or MOUs. Parent or grandparent companies (including companies based overseas).	Discussion with the Authority about corporate structures.



The association appears to operate as an industrial association (lobbying in the interest of employers) or as a commercial association (sales for the interest of shareholders).	Sources and uses of funds. Website content.	Assessment by the Authority as part of routine analysis.
The association has no volunteer or member committees.	Constitution clauses and By-Laws regarding governing body composition. Governing body current structure.	Association analysis of governance documentation.
The association has no member representatives on the governing body.	Constitution clauses and By-Laws regarding governing body composition. Governing body current structure.	Association analysis of governance documentation.
The association is a Pty Ltd company structure (company limited by shares).	Corporate structure as registered with ASIC.	ASIC register search conducted by the association.
The association is a national association with state-based entities that aren't strategically aligned.	Variation between national and state attitudes towards the application.	Discussion with national and state-based entities to ensure alignment.
The association has an excessively high or low turnover of governing body members.	High turnover (less than 2 years). Low turnover (more than 8 years). Chair is not turned over on a regular basis.	
CATEGORY: OCCUPATIONAL		
The association operates within a high-risk occupational environment, such as: - Financial services - Built environment.	Media monitoring. Royal Commissions or public inquiries.	Environment risk assessment by the Association.
The association's occupational group does not require professional indemnity insurance.	Environmental scanning of PI insurance requirements.	Environment risk assessment by the Association
The association cannot identify consumers of its members' services or the potential harms against those consumers.	Association produces a poor understanding of consumers and potential consumer harms during the application module.	Discussion with the Authority about consumers and potential harms.
The association represents a small proportion of the entire occupational group.		Discussion with the Authority about occupational group representation and correlation with consumer protection.
CATEGORY: POLITICAL RISK / CONFLICT OF INTEREST		
The association has connections or conflicts of interest with key decision-makers (political, media or administrative).	Members of the governing body have public connections to decision-makers.	Authority discussion and scan with association to determine significant conflicts of interest.
CATEGORY: PRIOR PERFORMANCE		



The association expects a Scheme remake, despite poor annual reporting scores and previous non-compliance.	Consistent poor annual compliance reporting performance over a two-year period.	Authority identifies annual compliance reporting (APSR) performance trends and whether non-compliant actions have been improved by the association. Discussion with the Authority regarding previous non-compliance to set expectations.
CATEGORY: RESOURCING		
The association has no visibility over claims and professional indemnity insurance.	No claims monitoring committee. No monitoring systems.	Education by the Authority about claims monitoring and data collection.
The association's application is largely drafted by an external consultant.	Over 50% of the application is created by an external consultant substantially (advice and technical expertise not included). Association's actual resources vary from the quality of the application. Association's PSIP reports quality varies from the quality of the application.	Discussion with the Authority about resourcing and external consultant assistance.
The association does not have enough resources to submit an application or operate the Scheme over its lifecycle.	An insolvency indicia is detected (as per ASIC RG 217). Unable to demonstrate positive net equity. Unable to demonstrate positive earning between 3-5 years of operation.	Self-identification using insolvency indicia in RG 217.
CATEGORY: ADMINISTRATIVE		
The association submits an application for a Scheme remake with less than 10 months until the current Scheme expires.	Reminders sent by the Authority to the association. Communication with Manager Schemes to check timeframes.	Discussion with the association about timeframes before 10 months.
The association's governing body has not considered or approved the association's application before submission.	No covering letter signed by the governing body. No minutes from a meeting of the governing body, approving the application.	