

1.1.2 Guidance

Occupational group and occupational association

For Schemes being prepared under Professional Standards
Legislation

June 2021





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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 Submodule 1.1 *Occupational Group and Occupational Association*. This covers information required to demonstrate to the Professional Standards Councils that the association applying for a Professional Standards Scheme is an occupational association.

This information is mandatory under the Professional Standards Legislation for applicant associations when seeking approval of a Scheme.

2. Purpose

Under section 7 of the *Professional Standards Act 1994* (NSW) and corresponding sections in legislation in other states and territories, the Councils only have the power to consider a Scheme prepared by (or requested to be prepared by) an *occupational association*.

For the Councils to be satisfied that an association is an *occupational association*, the association must demonstrate that it satisfies *all three* of the following criteria:

- a) the association is a body corporate
- b) the association represents the interests of persons who are members of the same occupational groups (or related occupational groups, in states and territories whose Professional Standards Legislation permits related occupational groups)
- c) the association's membership must be limited principally to members of that (or those) occupational group(s).

3. Requirements

Below sets out the required information that your association is to provide.

a) Is the association a body corporate?

What is being asked is for your association to provide evidence of current incorporated status e.g. a copy of the entity's current certificate of incorporation or company registration.

b) Does the association represent the interests of persons who are members of the same occupational group?

- provide evidence that the association represents the interests of persons who are members of the same occupational group. The meaning of *occupational group* is discussed below
- to establish that the association represents the interests of persons who are members of the same occupational group, you must demonstrate that the association speaks and acts for the interests of its members. For example, the association might undertake activities such as advocacy or policy reform work on behalf of the interests of its members.
- whether the association *represents* the interests of members of an occupational group is a matter of fact about which the Councils must be satisfied. In relation to this criterion, the Councils may consider:
 - o the association's constitution, rules of incorporation, statutory rules and/or other relevant documentary evidence.



- evidence of the association's activities - to determine whether the association does what it is formed to do.
 - where other parties' interests are also represented, the occupational association should demonstrate and provide evidence of an effective and active conflicts of interest policy and process.
- c) **Does the association represent the interests of persons who are members of a related occupational group?**
- If the association purports to represent related occupational groups, you must show that the occupational groups are related as occupational groups and not merely related by sub-categories of work within a common industry.
 - In jurisdictions which do not permit related occupational groups to be part of a single Scheme, you may have to demonstrate that the work done by the group is sufficiently homogeneous for it to be viewed as a single occupational group. For example, one of the matters which the Councils may consider is the association-based post-graduate training and qualification requirements of group members, and whether those requirements are the same for *all* members.
- d) **Is membership limited principally to members of that occupational group?**
- You will need to demonstrate that the eligibility criteria in the association's Constitution limits membership mainly to members of that particular occupational group (or those related occupational groups). It is not sufficient to demonstrate that the membership composition, at the time of application, is principally members of the occupational group.
- e) **Does the occupational association represent the interests of members of a professional group, a trade group, or another eligible occupational group?**
- All Professional Standards Legislation defines the term *occupational group* as follows: "*occupational group* includes a professional group and a trade group".
 - You will need to demonstrate that the association represents the interests of a professional group, a trade group, or another occupational group.
 - a **professional group** is a group of people with specialised knowledge and particular competence. While the concept of what constitutes a "profession" is an evolving concept and will be a matter of fact and degree in each case, it is likely to be an occupation which:
 - requires the application of professed or specialised knowledge as opposed to mere skill, and requires particular competence in applying that knowledge
 - is often characterised by the completion of tertiary studies (i.e. a degree) involving successful completion of assessment as a mandatory prerequisite for entry into the profession
 - requires admission into a professional association to practice the profession, although this may not always be the case
 - requires members to comply with a set of standards, and accept disciplinary sanctions for breach of these
 - aims for altruistic public service, with public interest prioritised over professional and personal interests



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- has broad community acceptance and recognition as a “profession”.
 - o a **trade group** is an occupational group of people with specialised skills, usually physical or manual in nature. Trade groups will typically:
 - have common entry and qualification requirements
 - be recognised in the community as belonging to a particular trade group.
 - If the association is representing the interests of an occupational group that is neither a recognised professional nor trade group, you will need to demonstrate to the Councils’ satisfaction that the association nonetheless represents the interests of an **occupational group**. That is, you will need to show that the members of the group possess certain identifiable characteristics that allow those members to be considered to be related on the basis of having the same habitual employment, business, trade or calling and would be recognised by the community as belonging to the same vocational group.
 - Whether the association is an occupational group is a factual enquiry. This enquiry will focus on the work that the group does, not on the industry in which it operates. Some factors which the Councils may consider in relation to whether or not an occupational group exists include:
 - o whether members of the group are engaged in the same endeavour, using accepted techniques and principles
 - o the training and education requirements for admission into the group, and whether those requirements are common for all members
 - o whether a single body has assumed an occupational oversight function.