

2.3.2 Guidance

Public Consultation Document

For Schemes being prepared under Professional Standards
Legislation

June 2021





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Approved By	Chief Executive Officer, Professional Standards Councils

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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 Submodule 2.3 *Public consultation document*. This sets out the public consultation requirements of a Professional Standards Scheme proposed by an association consistent with the Professional Standards Legislation.

Public consultation is a critical part of the approval process where the Professional Standards Councils publish the proposed Scheme with a public consultation document inviting feedback from the association members, stakeholders, government agencies, other associations operating a Scheme, and the general public. This process is designed to support sections 8 and 9 of the *Professional Standards Act 1994* (NSW) (using the NSW Act as an example) and equivalent provisions in other jurisdictions. Section 8 of the NSW Act provides that, before approving a Scheme, the Council must publish a notice in a daily newspaper circulating in the relevant jurisdiction(s) explaining the nature and significance of the proposed Scheme, advising where to obtain or inspect a copy, and to inviting comments and submissions from interested persons/parties on the proposed Scheme. Section 9 provides that any person may make a comment or submission to the Council.

2. Purpose

The guidance focuses on how you complete the public consultation document. The aim of the document is to better inform the public about the proposed Scheme so that interested persons are in a position to respond to the Councils' call for comments and submissions on a proposed Scheme. This approach is designed to facilitate a considered process by the applicant association in explaining what the Scheme means, gaining valuable insights into the views of consumers and establishing how the association might communicate the proposed Scheme to its members and consumers of members' services.

Comments and submissions received in response to the public consultation process are a mandatory consideration of the Councils when deciding whether to approve a Scheme.

If the Scheme proceeds to public notification, the public consultation document is uploaded to the Councils' website, together with the draft Scheme instrument and the statutory notice. Your association should also publish the proposed Scheme and public consultation document on your website, as well as informing your members directly.

3. Requirements

Below is the guidance to be used for the submodule. The guidance illustrates how the public consultation document is to be structured and the types of information it is to contain. The guidance below is divided into two parts: firstly, the contents page; and secondly, the body of the document.

a) Contents page of the document

[insert the association logo]

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PUBLIC CONSULTATION DOCUMENT

Purpose

- *Suggested example text is below for your association to consider*



The purpose of this public consultation document is for the Professional Standards Councils (Councils) to seek comments and submissions from the public in considering an application for a Professional Standards Scheme. Gathering comments and submissions from consumers provides the Councils with valuable insights into how consumers view and understand the proposed Scheme.

The Councils are required to give public notice explaining the nature and significance of the Scheme and inviting comments and submissions and the Councils must consider all comments and submissions made to them under [insert relevant section in Professional Standards Legislation, example – Schedule 4 ss 4.5 and 4.7 of the *Civil Law (Wrongs) Act 2002* (ACT)]. This document supports that requirement.

Professional Standards Legislation is Australian state- and territory-based legislation. Its objects (generally across all jurisdictions) are:

- To protect the consumers of services provided by professionals and other occupations
- To facilitate the improvement of occupational standards of professionals and other occupations
- To enable the creation and approval of Schemes that limit the civil liability of persons to whom a Scheme applies.

Public notification of a Scheme does not necessarily mean the proposed Scheme will be approved by the Councils and authorised by the relevant Attorney General or Minister.

The [insert association name] has submitted an application to the Councils to approve a Professional Standards Scheme. The Councils is the body responsible for approving Schemes under the Professional Standards Legislation.

The Council must consider a number of matters before approving a Scheme, as set out in [insert relevant section in Professional Standards Legislation, example – Schedule 4 s 4.7 of the *Civil Law (Wrongs) Act 2002* (ACT)].

The [insert association name] application is being considered by the Councils and is now available for public submissions and comments.

How can I make a comment or submission?

- *Suggested example text is below for your association to consider*

Comments and submissions must be made in writing to the Chief Executive Officer, Professional Standards Councils, within 28 days of public notification. Comments and submissions in the form of a letter to the Professional Standards Councils are preferred.

The Professional Standards Councils is located at Level 2, St James Centre, 111 Elizabeth Street, Sydney, NSW, 2000.

Website: www.psc.gov.au

Email: pscinfo@psc.gov.au



Telephone: 1300 555 772 / (02) 8315 0800.

Comments and submissions received will be public, unless confidentiality is specifically requested, and will be subject to the [insert relevant privacy legislation].

- Add information that will help people make comments and submissions. Use the example text below as a guide and expand as needed.

Consider framing your response around questions, including:

- *Are you a member of the occupational association applying for a Scheme?*
- *Are you already a consumer of the type of services provided by the proposed Scheme?*
- *Do you think the scope of the Scheme is clear? (including work, jurisdictions and membership classes covered by the Scheme)*
- *Is it clear how you, as a member or consumer, could make a complaint?*
- *Can you describe the benefits to consumers of services provided by member of this occupational association being covered by a Scheme?*

BENEFITS OF A PROFESSIONAL STANDARDS SCHEME

How will consumers benefit from the Scheme?

- Describe how the Scheme and the professional standards regime will encourage your association to improve consumer protection.

How does the Scheme enhance the professional standards of [the association] members?

- Describe how the Scheme and the professional standards regime will encourage your association to improve professional standards.

How does limiting participant liability help consumers?

- Describe the trade-off between limitation of liability and consumer protection, including a description of the current regulatory environment.

Is the Scheme professional indemnity insurance?

- Describe how the Scheme influences professional indemnity insurance.

Continuing Educational Program

- Describe how your association's Continuing Professional Development mitigates occupational risks and improves professional standards and consumer protection.

Complaints and Discipline System

- Describe how consumers can access your association's complaints and discipline system and redress under the Scheme.

THE SCHEME



What is a Professional Standards Scheme?

- Describe Professional Standards Schemes, the role of the Professional Standards Councils and the objects of Professional Standards Legislation.

What is the [the association] Scheme?

- Describe your association's Scheme.

Who administers the Scheme?

- Describe the staff within your association who administer the Scheme (paid staff, volunteers, committees, etc.). State your association's physical address.

Who is [the association]?

- Describe the association, including values, mission, and representation.

Where does the Scheme operate?

- Describe the jurisdictions where the Scheme will operate.

When will the Scheme apply?

- Describe the proposed Scheme commencement date.

Does the Scheme apply to all members?

- Describe the classes of membership captured by the Scheme.

How does the Scheme operate?

- Describe how the Scheme operates to protect consumers and limit the liability of Scheme participants.

How is the level of limited liability of participating [the association] members determined?

- Describe the different caps within the Scheme (depending on whether different classes of membership or types of occupational work are captured in the Scheme).

Can a [the association] member opt out of the Scheme?

- Describe the exemption process and reasons – how and why Scheme participants can apply for exemption from the Scheme.

How will consumers know if a [the association] member is covered by the Scheme?

- Describe the disclosure requirements and how the association will monitor that Scheme participants are correctly informing consumers about the Scheme.

How long does the Scheme operate for?

- Describe the proposed Scheme duration.

[THE ASSOCIATION] AND ITS MEMBERS

Who are [the association] members?



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- Describe the classes of membership and the types of members within your association.

What types of work do [the association] members carry out?

- Describe the types of work undertaken by members of your association.

WHERE CAN I FIND MORE INFORMATION?

- State your association's best contact for further information.

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