

Cross-Agency Taskforce on Regulatory Alignment
The Australian Government

By email: RegulatoryAlignmentTaskforce@Health.gov.au

Online: http://healthau.au1.qualtrics.com/jfe/form/SV_9YPn7rjltFsOsOW

Dear Taskforce

Professional Standards Councils' submission to Stage 2 consultation on aligning regulation across care and support sectors

The Professional Standards Councils welcome the opportunity to assist in the alignment of regulation across the aged care, disability support and veterans' care sectors. The Councils acknowledge and support the progress that the Australian Government is making towards regulatory alignment across these care sectors. We understand the Taskforce aims to assure the community that providers and workers will be able to deliver better quality services for Australians, with resources and efforts focused on continuous improvement.

These commendable aims are closely related to the work of the Councils and the objectives of the national system for professional standards regulation.

The Councils have an explicit statutory function to advise, encourage and assist in the development of regulatory capacity of occupational associations. Through experience with a range of professions over 25 years, the Councils are well-positioned to assist with capacity-building across occupations to regulate the standards of competence and conduct of their members.

In the Councils' view, and consistent with their statutory mandate, a risk management approach that focuses on improved consumer protections and continuous improvement of professional standards can deliver proportionate, clear and consistent regulatory obligations with appropriate safeguards against harm across diverse occupational settings.

Solutions to the challenges of cross-sector regulation

More than mere compliance with the law is needed to deliver quality and safety across the support and care sector. Formal regulation can be more effective in protecting consumers when it is reinforced by robust, supervised professional standards regulation. Incorporating professional standards regulation into the realignment would strengthen the efforts of care and support workers and providers to exceed minimum requirements, improve occupational standards, and to use their special knowledge and skills in the public interest.

Participation in the professional standards regime equips occupational associations to proactively identify, regulate, and address competence and conduct issues by improving standards that better protect consumers in line with the expectations of the wider community.

The national system for professional standards regulation is relevant to the Taskforce's consideration of solutions as it recognises the need for the care and support sector to actively participate in lifting standards and in changing workforce culture if it is to deliver safe and quality services consistently across jurisdictions. It is through active participation

and accountability of the workforce that improvements in standards can become self-sustaining and enduring.

It also recognises that the sector has a practical awareness of the problems that exist and that the work required to bring positive change cannot be done by governments alone. In this regard, it is clear that formal regulation by government and professional standards regulation by industry each have a role to play, and that they can be mutually reinforcing.

Given that many occupations in the care and support sector may be in the developmental phase, professional standards regulation, industry adjustment or capacity building may be warranted. The national system for professional standards regulation contains mechanisms for developing the regulatory capacity of occupational associations and their members. It also provides an environment where a broad community of practice can drive continuous improvements in the regulatory efforts of occupational associations.

A summary of the professional standards regulatory regime is enclosed at **annexure A**.

The Councils' regulatory agency, the Professional Standards Authority, has previously written to the Senior Officer Group, responding to relevant aspects of the regulatory system canvassed in the background paper 'Aligning regulation across Australia's care and support sectors'. There is potential for occupational associations to play a part in the practitioner registration and code of conduct processes, particularly in respect of intermediaries in the three sectors.

Provider registration and Code of Conduct

The Councils note that public registers of providers may be particularly supported by the professional standards regime. Similarly to the public registers delivered by associations with professional standards schemes in the legal and accounting professions, practitioner registration by occupations makes it easier for providers to expand across sectors and jurisdictions.

Service providers that act as intermediaries between a consumer and a complex service system have a direct effect on their clients' wellbeing and financial position, calling for high standards of conduct and competence.

Associations as regulators of their members can assess suitability for registration, and assess qualifications, continuing professional development and insurance requirements to maintain registration, in accordance with the requirements of the professional standards regime.

Associations can also establish and enforce codes that protect (and increase protections) for consumers of the services provided by an association's members. Under the professional standards regime, codes of conduct and ethics are developed with the objective of protecting consumers. Further, they involve consumers in the process of developing and improving the code, and are expected to be clearly communicated and available to, the public.

Establishing the conduct and competency which a consumer and the members can expect from every association member is critical in this process, as well as a complaints and discipline system to respond to breaches of the code. In doing so, codes are designed to have practical application in terms of required conduct, public accountability, and transparency.

Associations can develop and deliver a single core set of standards that address common outcomes that are sought across the sector, supplemented by those that are specific to different types of care and support

Cost-effectiveness and continuous improvement

While formal regulation can be predominately focused on compliance and enforcement, the professional standards regime is predominately focused on rewarding good behaviour and continuous improvement in the professional standards of service providers.

Both forms of regulation have positive features and, in combination, provide greater regulatory assurance across an industry. This understanding of the contribution of each was summarised in a report commissioned by the Councils on 'The Value of Contemporary Professional Associations'¹.

Positives of State Regulation	Positives of Professional Associations
<ul style="list-style-type: none"> • State provides uniform certification and entry and practice standards, and a protected monopoly or quasi-monopoly over occupational domain. • Professionals are no longer incentivised by maximised profits. • Secures employment cultivates altruism. • Can address information asymmetry, negative externalities, and distributional concerns. • Can discipline substandard professionals. 	<ul style="list-style-type: none"> • Associations generate and enforce more precise certification and entry and practice standards based on insider knowledge of best practice. • Only members of the association (who meet standards) can supply those professional services. • Professionals are incentivised by a mix of values and interests. • Some degree of secure employment cultivates altruism. • Context for group mission, virtues, collegiality, and improvement. • Can offer the 'symbolic rewards' and sanctions of peer recognition and reputation.

Complementing formal regulation with the professional standards regime presents a powerful opportunity for industry to demonstrably act on emerging community expectations and broaden consumer protections by introducing the benefits of a proactive and continuous improvement approach to setting and raising professional standards.

Professional standards regulation by occupational associations draws on the capacity of their members to exercise peer-accountability to determine and regulate the relevant levels of conduct and competence required for their own profession to meet its public interest obligations and social license through standards setting, data collection and analysis, and behaviour modification strategies.

This form of regulation can be cost-effective, in as much as it expands coverage and spreads the costs of compliance beyond the reach of state registration, through efforts such as audit and quality assurance resources, data analysis and early risk-identification, coupled with systemic responses such as bespoke educational interventions, and deployment of new standards.

The two forms of regulation can be mutually reinforcing, so that better regulatory outcomes are achieved for the community than either form may deliver in isolation.

¹ Dr Justine Rogers and Deborah Hartstein, 'The Value of Contemporary Professional Associations' (Research Paper, The Australian Research Council, 2018) 9.

A medium to longer term option on the roadmap

The professional standards regime is a historically well-proven, state-based, federally consistent, and publicly visible vehicle for professional accountability.

Provider or worker registration based on participation in the regime, with adherence to a common code of conduct and ethics, would support a nationally consistent approach, as well as streamlining the registration process and improving professional standards and conduct across the sectors to deliver increased consumer confidence.

Further information about the Councils' role and the national system of professional standards regulation is available at www.psc.gov.au

The Councils commend the professional standards regime to you as a potentially powerful part of the regulatory alignment to enhance consumer protection and improve standards across Australia's support and care sectors.

We would be pleased to provide a briefing and further information to support your work. Please contact me by telephone on 02 8315 0888 or by email at roxane.marcelle-shaw@psa.gov.au, if we can be of assistance.

Yours sincerely



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The professional standards regulatory regime

The national system of professional standards regulation was developed in the 1990s, against a backdrop of escalating professional indemnity claims that led to professional service providers either leaving their profession, reducing their insurance, or forgoing insurance. This threatened to leave aggrieved clients with the prospect of being unable to recover damages even if successful in their claim.

Governments agreed it was preferable to provide some guarantee of payment for most claimants than to have a system of unlimited liability with no certainty of any. Beginning in 1994, each state and territory government has established arrangements to set a statutory cap on damages tied to safeguards to protect the interests of consumers.

The vision was to **strengthen consumer protection** and **raise standards** of service delivery by professionals and others while ensuring better access to professional indemnity insurance.²

The system consists of:

- occupational associations,³ operating
- professional standards schemes, enabled by
- professional standards legislation, and the
- Professional Standards Councils.

A **professional standards scheme** is a disallowable instrument underpinned by an occupational association's commitments to monitor, enforce, and improve the professional standards of its members. Schemes operate to drive associations to regulate the conduct of their members and establish robust consumer protection mechanisms.

In return, a scheme provides eligible members with a mechanism to cap the civil liability for damages that professionals and others who take part in an association's scheme may be required to pay if a court upholds a claim against them. The liability caps will vary across and within occupational groups depending on risk factors such as the nature or volume of the work and are usually propounded by the relevant occupational association, often supported by professional actuarial analysis.

There are currently 19 Australian occupational associations that operate schemes. These associations collectively cover more than 88,000 professionals in diverse fields who provide services to millions of Australian individuals and businesses.

Generally, schemes are established following an application by an occupational association to the Professional Standards Councils.

Schemes are established under **professional standards legislation** in each state or territory which share common objects:

- a) to enable the creation of schemes to limit the civil liability of professionals and others,

² *Review of the Law of Negligence* (Final Report, September 2002).

³ An "occupational association" is defined in professional standards legislation as a body corporate "which represents the interests of persons who are members of the same occupation group" and "the membership of which is limited principally to members of that occupation group". An occupation group is also defined to include a "professional group" and a "trade group". The legislation provides that a scheme may also apply to other persons including officers of body corporates, to which, as well as partners, employees, or prescribed associates of persons to whom, a scheme applies.

- b) to facilitate the improvement of occupational standards of professionals and others,
- c) to protect the consumers of the services provided by professionals and others,
- d) to constitute the Professional Standards Council to supervise the preparation and application of schemes and to assist in the improvement of occupational standards and protection of consumers.⁴

Each state and territory has its own **Professional Standards Council**. State and territory governments have agreed that each Council will be constituted by the same 11 members to ensure coordinated and streamlined decision-making, collectively forming the Councils. The functions of the Councils are to:

- advise the relevant Minister concerning the approval, amendment, or revocation of schemes
- advise, encourage, and assist associations in the improvement of occupational standards and self-regulation such as through; codes of ethics, codes of practice, quality management, risk management, complaint resolution, voluntary mediation services, membership requirements, discipline of members and continuing occupational education
- monitoring the occupational standards of persons covered by schemes
- monitoring the compliance by associations with their detailed risk management strategies

Further functions include conducting forums and publishing advice and information. In effect, Councils supervise associations that regulate their members (as a meta-regulator) to monitor and assist them in developing effective consumer protection and improving their professional standards by implementing detailed risk management strategies and professional integrity systems.

In August 2018, the Councils published a statement of their three-year strategic intent and goals which focus on responding to contemporary community expectations and regulatory challenges in achieving the objects of the professional standards legislation: [Strategy 2021](#).

The national professional standards regulatory system is **funded** from statutory fees paid by associations.

⁴ *Civil Law (Wrongs) Act 2002* (ACT) sched.4.1; *Professional Standards Act 1994* (NSW) s.3; *Professional Standards Act 2004* (NT) s.3; *Professional Standards Act 2004* (Qld) s.4; *Professional Standards Act 2004* (SA) s.3; *Professional Standards Act 2005* (Tas) s.3; *Professional Standards Act 2003* (Vic) s.3; *Professional Standards Act 1997* (WA) s.3.