

Guidance Note

# Mutual recognition of multi-jurisdiction professional standards schemes

General principles governing the operation of  
schemes recognised under professional standards  
legislation across jurisdictions

April 2024





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1.0	PSCs	22 March 2024	12 April 2024	New guidance note



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## What is the purpose of this guidance note?

This guidance note sets out general high-level principles regarding the operation of approved professional standards schemes across jurisdictions. **It provides general guidance only and does not constitute legal advice.**

Occupational associations and professionals should seek their own legal advice, as required, regarding the operation of professional standards legislation – including the operation of schemes, liability caps and mutual recognition provisions.

## Mutual recognition of professional standards schemes across jurisdictions

### Background

Under professional standards legislation, an occupational association may apply for a professional standards scheme in a particular state or territory (referred to in this note as “the home jurisdiction”). Such a scheme may indicate an intention to operate as a scheme of the home jurisdiction and one or more other jurisdictions.

The professional standards legislation of each state and territory allows for such “interstate” schemes to operate within them. This provides the basis for the ‘mutual recognition’ of schemes across Australian states and territories.

### How mutual recognition works

It is the legislation of the other jurisdiction, not the legislation of the home jurisdiction, which gives a scheme operative effect in that other jurisdiction.

If a scheme instrument is approved in the home jurisdiction with a provision indicating an intention to apply in other jurisdictions, the requirements of the legislation in those other jurisdictions must be met before the scheme will have force within them.

A scheme thereby becomes part of the law of the other jurisdictions.



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## 1. General principles

### 1.1 General principle 1

A participant in a professional standards scheme approved in one jurisdiction (“home scheme”) can rely on the liability cap applicable to that scheme in respect of work performed in a second jurisdiction (if the liability is an occupational liability covered by the scheme), provided that the home scheme has been recognised in the second jurisdiction.

#### 1.1.1 Example

If:

- a person is a participant in a professional standards scheme approved under the *Professional Standards Act 1994* (NSW) which is in force in NSW, and
- the relevant scheme instrument states that the scheme is intended to operate as an interstate scheme in South Australia in accordance with the *Professional Standards Act 2004* (SA), and
- the scheme has been given effect as provided for under the South Australian Act,

then the person would be entitled to rely upon the liability cap set out in the NSW scheme in respect of relevant liability arising from work performed in South Australia.

### 1.2 General principle 2

Where the participant in a professional standards scheme seeks to rely on the liability cap of the home scheme in respect of work performed in a second jurisdiction (as described under General principle 1 above), such reliance would be subject to any exclusions or limitations applicable under the professional standards legislation of the second jurisdiction.

This is because it is the legislation of the second jurisdiction which gives the scheme its operative effect in the second jurisdiction – notwithstanding that the scheme was approved in the home jurisdiction. Professionals should be aware that the professional standards legislation of some jurisdictions excludes (that is, does not apply so as to limit) particular types of occupational liability that may be covered in other jurisdictions.



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### 1.3 General principle 3

Under professional standards legislation, if a scheme applies to a person it also applies to the person's officers, employees and partners, unless the officer, employee or partner is entitled to be a member of the same occupational association (but is not a member).

Accordingly, it is possible that a person could be a participant in a scheme in their home state or territory as a member of their occupational association, and a participant in their employer's scheme in another jurisdiction.

### 1.4 General principle 4

Professional standards legislation does not prohibit a person from participating in multiple schemes, subject to the person's eligibility to be a participant in each scheme. We note there may be other matters, such as insurance coverage, which should be considered.

### 1.5 General principle 5

In any given matter, where:

- a participant in a scheme is undertaking work across jurisdictions, or
- a person is a participant in more than one scheme across more than one jurisdiction,

the applicability of a particular scheme liability cap will depend on the circumstances of the case.

This is because there could be some complexity in such cases. This could arise from the type of cause of action, multiple alleged causes of action, the location(s) of the alleged act or omission causing the relevant alleged loss, the potential applicability of more than one scheme, and so on.

If the issue arises, professionals should always seek their own legal advice based on the circumstances of the particular case.