

4.0.2 Guidance

# Professional risk management strategies

For Schemes being prepared under Professional Standards  
Legislation

June 2021





## Table of Contents

1. Guidance statement .....	2
2. Legislative obligations .....	4
3. Other resources .....	4
4. Professional risk management framework .....	5
4.1 Consumer risk.....	5
4.2 Consumer harm .....	5
a) QUESTIONS: Documentation evidence.....	6
• Commentary .....	6
b) QUESTIONS: Implementation and other statutory or regulatory requirements .....	7
• Commentary .....	7
c) QUESTIONS: Improvements & consumer protection outcomes .....	7
• Commentary .....	8
5. Related application modules .....	9

<b>Document Number</b>	1.0
<b>Last Endorsed</b>	New document
<b>Next Review</b>	12 months after commencement of application framework pilot program and every three years thereafter
<b>Written By</b>	Director, Professional Standards Regulation
<b>Approved By</b>	Chief Executive Officer, Professional Standards Councils

### Revision History

Version	Approved by	Approval date	Effective date	Sections modified
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](http://www.legislation.nsw.gov.au).

The Professional Standards Councils and their national support agency, the Professional Standards Authority, disclaim any and all liability to any person in respect of anything done, or



---

the consequences of anything done, or omitted to be done, in reliance upon the whole or any part of this guidance.

### **Copyright information**

© The Professional Standards Councils, 2021

You may copy, distribute, display, download and otherwise freely deal with this guidance and related application materials, provided you attribute the Professional Standards Councils as the owner. However, you must obtain permission from the Professional Standards Councils if you wish to (1) modify, (2) charge others for access, (3) include in advertising or a product for sale, or (4) obtain profit from any of these materials.

Pilot



## 1. Guidance Statement

A key aim of this guidance is to assist your association in completing Module 4.0 *Professional risk management strategies*. This covers the relevant professional risk strategies under the Professional Standards Legislation, which is mandatory for applicant associations to submit when seeking approval for a Professional Standards Scheme.

The guidance has been developed to assist you to understand and respond to the module's terminology and application requirements, particularly the use of professional risk management as a regulatory objective for strengthening consumer safeguards in an association member's activities.

Scalability of the application requirements is an important factor in the Councils' assessment. In doing so, the adoption and application of these requirements by some associations will vary according to their context. The Authority will help you to identify areas of greatest need and where resources can best be applied, if required.

You will notice that other professional risk management processes will be assessed separately as part of your application. For ease of completion, these exist as stand-alone modules, including:

- Association codes (code of ethics, practice, conduct)
- Resolution of complaints from (members') client's system
- Discipline of members
- Association insurance standards
- Enterprise risk management
- Scheme compliance plan - for complying with the Professional Standards Legislation, including occupational association (e.g. incorporation) requirements.

## 2. Legislative obligations

The legislation requires applicant associations seeking approval for a Scheme to submit the following information to the Councils. The relevant sections of the legislation (using the *Professional Standards Act 1994* (NSW), as an example) are:

- (a) sections 10 and 36 in respect of associations providing their detailed list of professional risk management strategies intended to be implemented in respect of members; and the means by which they intend to implement those strategies. The means of implementation may be imposed as a condition of membership or otherwise
- (b) section 37 in respect of associations providing information on their risk management strategies to the Councils if requested to do so.

## 3. Other resources

In preparing to complete the module, the Councils recommend your association become familiar with the concepts and context of professional risk management found in the following brief articles published on the Councils website under the tab 'Research Library of Modern Professionalism': (i) *Professions and Risk*, and (ii) *Public Risk*.



## 4. Professional risk management framework

A key function of the professional risk management system is reducing the risk of harm to consumers described as:

### 4.1 Consumer risk

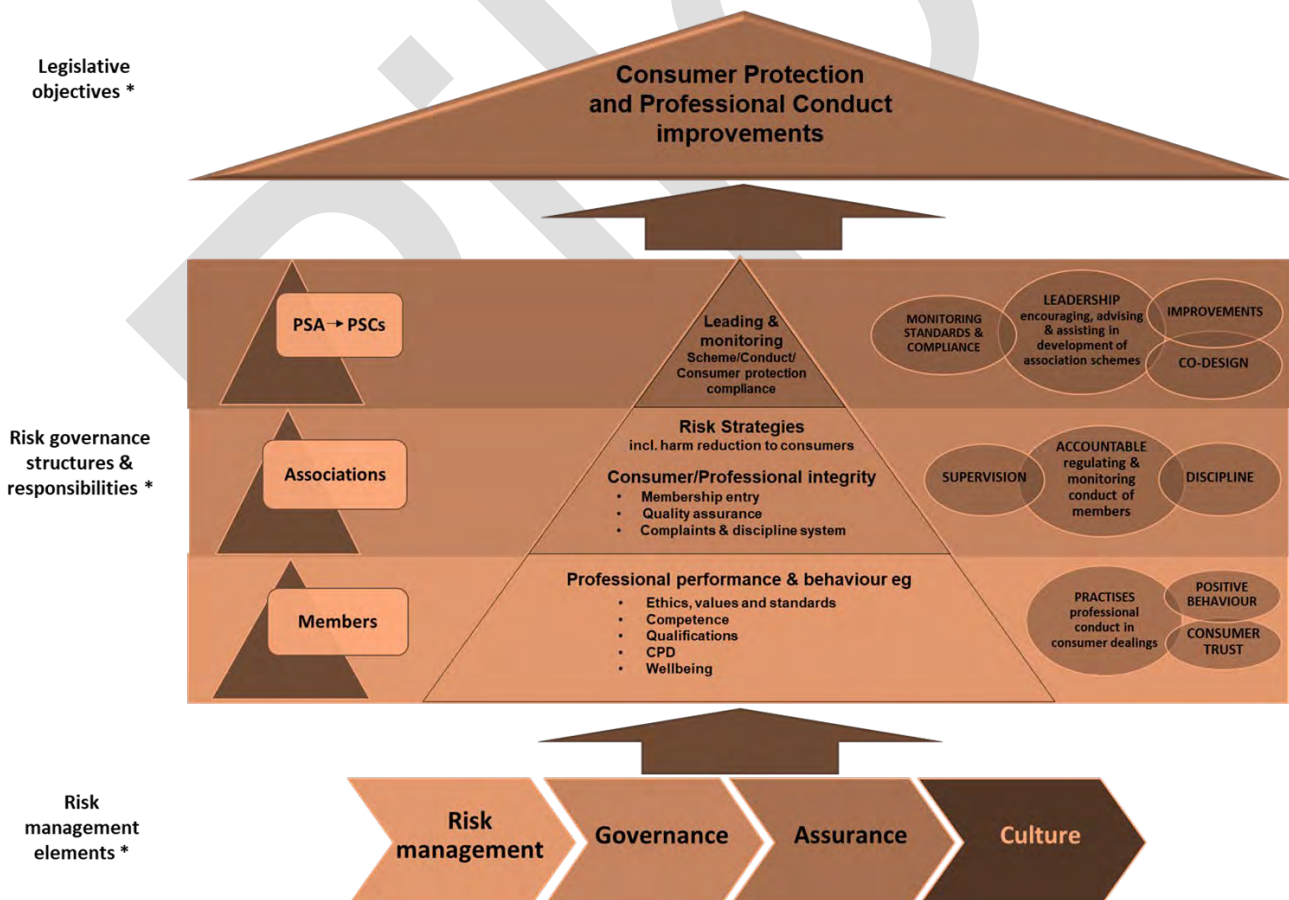
- Consumer risks relate to the uncertainty about the outcomes of the consumer's experience resulting from dealings with an association and/or member of an association.

### 4.2 Consumer harm

- Consumer harm relates to the suffering caused by an adverse outcome that consumers may experience in their dealings with an association and/or member of an association.

The Councils' professional risk management structure is set out below. Structured by consumer protection and professional standards improvements, the framework is based on the following governance relationships:

- **association members:** professional performance and behaviours
- **associations:** consumer focussed risk strategies and implementation
- **Councils:** leadership in encouraging, advising, and assisting consumer safeguards.



\* Note: the association needs to position its professional risks management system in the context of other statutory requirements and regulators, by identifying the part of the professional standards regulatory environment which is regulated by your association



This guidance adapts a number, but not all, of the elements found in the Australian Standard to enhance professional risk management. The module asks your association to describe the elements leadership and commitment consistent with the Australian Standard, *AS ISO 31000:2018 Risk Management – Guidelines* (Australian Standard), as depicted below:



The next sections of this guidance set out the information being sought by the module alongside a brief commentary on each to explain their relevance for professional risk management. Note that the template includes a best practice example of how professional risks and related treatment plans could be presented to the Councils.

#### a) QUESTIONS: Documentation evidence

Firstly, the module and the template identify the following focus areas for considering professional risk management strategies:

- **Association membership requirements** (entry, annual, ongoing, fit, and proper)
- **Continuing occupational education requirements** (continuing professional development)
- **Quality management undertaken by the association** (including member audits, quality reviews)
- **Risk management required of members by the association and/or their firms.**

For each of the above strategies, the module's template asks that you provide and explain your association's current, or proposed, professional risk management strategies by providing materials or documents such as:

- *relevant constitution elements*
- *approved policy, procedures, processes*
- *forms, templates, internal or external standards*
- *oversight by executive bodies or committees and their terms of reference*
- *standing communication to members*
- *website content.*

#### • **Commentary**

The above list of materials and documents seeks to establish an evidentiary framework by which the Councils can assess the scale, depth, and consistent application of the professional risk management strategies that you currently or propose to apply.



The value of this documentation is that it assists the Councils to understand the range of strategies and processes which you have in place. You are guided to provide your documents and framework and only provide explanation where the documents are not self-explanatory.

## **b) QUESTIONS: Implementation and other statutory or regulatory requirements**

Moving on, the module's template asks the following questions about how your strategy is implemented and whether your association or members are subject to other statutory or regulatory requirements for all or part of the strategies:

- *where a professional risk management strategy is proposed, or being amended, discuss how your association will implement the professional risk management strategy, including the association's resources (e.g. staff, financial, IT), and implementation timetable.*
- *where your association or members are subject to a statutory or regulatory requirement for all or part of a professional risk management system strategies, provide the Councils with references to the relevant statutory provisions, regulator, and explain the interaction between the association as a professional standards co-regulator and the statutory regulator (examples include scheduled meetings or consultation, membership of panels or committees).*

### **• Commentary**

The question about whether your association or members are subject to a statutory or regulatory requirement for all or part of the strategies is important. It is designed to help the Councils to better understand the statutory context in which your association and members operate and, importantly, to ensure an effective regulatory relationship with the Councils alongside the provisions required by other statutes.

Refer also to Submodule 1.4 *Other statutory requirements*.

## **c) QUESTIONS: Improvements & consumer protection outcomes**

The module's template asks that you provide the following (and, as noted above, the Template includes a best practice example of how professional risks and related treatment plans could be presented):

- *describe your association's detailed plans to improve each of the listed professional risk management strategies as well as the strategies to address consumer harms and risks.*
- *describe the role and responsibilities of your association's executive and governing body in assessing the effectiveness of each of the listed professional risk management strategies, within a framework of continuous improvement and consumer protection. A key question is how does your governing body go about seeking relevant independent expert advice to support its decision-making?*
- *describe the ways your professional risk management requirements are communicated to your members, and how you assess and improve the communication of professional risk management.*
- *describe what measures you use to assess the effectiveness of your risk management strategies and their frequencies (e.g. qualitative metrics such as measures of satisfaction, or quantitative such as actual numbers or dollar amounts), and how the measures contribute to continuous improvement of the professional risk management strategies, and further protecting consumers of the services provided by your members.*
- *describe your association's professional risk management system improvement cycle, for example:*





- *how emerging trends from the outcomes of conduct and competence processes (including but not limited to consumer claims, notification, and complaints data) are used to inform revisions of the professional risk management system*
- *how your association identifies and incorporates best practice*
- *how the purpose for, and benefits of, the improvement is identified and confirmed*
- *how adequate resources are assigned to the improvement*
- *how the process is free of inappropriate or conflicted influence (including by government, the profession, employers, or other interested parties)*
- *the process of engaging and consultation with stakeholders (e.g. members, public, consumers, regulators, related occupational associations) to assure alignment*
- *the development of practical measures of effectiveness of each professional risk management strategy, for example, collection, collation, analysis and reporting to the governing body*
- *what changes require governing body approval and formal approval by a general meeting of members.*

#### • **Commentary**

The purpose of this information is for your association to demonstrate the scale and quality of the governance, improvement, and consumer protection outcomes of your professional risk management strategies.

The questions being asked are directed to showing the dynamics of governance, communication, and stakeholder participation in making sure that your strategies operate effectively, for example:

- active commitment of your executive and governing body to establish and continuously reinforce the importance of the identified strategies throughout your association and members
- independent advice obtained by your executive and governing body to verify its decision-making in such areas as protecting consumers of the services provided by your members
- how emerging trends from areas such as consumer claims and complaints data are used to inform revisions of your strategies
- effective communication and consultation regarding your strategies across all levels of the association and members, including active engagement with stakeholders (e.g. members, public, consumers, related occupation associations) to assure alignment with your strategies
- the extent and quality of resources assigned by your association to identify and progress improvements.

How your strategies will or are proposed to address consumer risks and harms is an important consideration for your association. Examples of consumer risks and harms emanating from professional work categories are below: (see Submodule 3.1 *Consumers affected by the Scheme and identification of consumer harms*)





Categories	Professional activity	Harms - examples
<b>Non-technical</b> (behavioural interaction)	<b>Market practice</b>	Suffering from e.g. financial loss experienced by vulnerable or disadvantaged consumers
<b>Technical</b> (exclusive, competency based)	<b>Delivery/provision of goods and services</b>	Suffering from e.g. loss of time or delays
	<b>Personal information/privacy/data protection</b>	Suffering e.g. inappropriate use or inadequate protection

Data sources are essential for professional risk management. This relates to how data sources, collation and assessment processes are used by your association to identify and manage professional risks. Data sources are wide and can include information from the regulators, press and social media, legal decisions and settlements, insurance claims, complaints and disciplinary system, member surveys, member feedback and other associations.

Practical measures and metrics, designed to show the effectiveness of your risk management strategies, are vital to demonstrate their success. Such measures may be qualitative (e.g. measures of satisfaction) or quantitative (e.g. actual numbers or dollar amounts). In addition, you need to state how they are going to measure the effect of the strategy.

Note that the information on your strategies' continuous improvement is also linked to the Councils' annual reporting process (see Module 6.0 *Annual Professional Standards Report capacity and capability*).

## 5. Related application modules

Other professional risk management processes need to be assessed as part of the application process. These exist as stand-alone modules, or other modules/submodules, as indicated below:

- Codes (code of ethics or code of practice)
- Resolution of complaints by clients and voluntary mediation services
- Discipline of members
- Association insurance standards
- Notification of limitation of liability (disclosure of the Scheme by members)
- Enterprise risk management
- Scheme compliance plan for complying with the Professional Standards Legislation and corporation requirements.