

5.0.2 Guidance

Members' claims data

For Schemes being prepared under Professional Standards
Legislation

June 2021





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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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Pilot



1. Guidance Statement

A key aim of this guidance is to assist your association in completing Module 5.0 *Member's claims data*. This covers information on the history of claims for occupational liability made against members of the occupational association.

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

2. Purpose

The Guidance aims to assist your association in providing information that the Councils require to consider the nature and level of claims made against members of the occupational association in relation to the association's proposed limit of occupational liability.

The information will also allow the Councils to consider the extent of the potential for consumer protection and improved professional standards arising from the Scheme.

3. Requirements

a) Nature and level of claims

In each jurisdiction, the legislation indicates that it is mandatory for the Councils to consider a history of claims for occupational liability made against members of the occupational association. The following sections of the legislation are relevant:

NSW	ACT	NT	Qld	SA	Tas	Vic	WA
s. 10	Sch 4 S 4.7	s. 10	s. 12	s. 11	s. 11	s. 11	s. 23
s. 26	Sch 4 S 4.22	s. 27	s. 27	s. 28	s. 29	s. 28	s. 39

While the legislation requires the Councils to consider the claims made against members of the occupational association before approving a Scheme, and the occupational association's ability to propose a limit of occupational liability, it should be noted that it ultimately the Councils that must make a determination as to the limit of liability to be specified in the Scheme.

Claims data should be categorised in terms of the cause of action of the claims. This will assist the Councils to determine the relevant limits of liability. It will also assist the occupational association to focus its risk management strategies on high-risk areas.

b) Claims database

Occupational associations may elect to provide an electronic claim database with the assistance of insurers or brokers. Some professions have one mandatory insurer who maintains a database of claims and can readily provide the best practice data described above from their database. Other professions may utilise several insurers but have the bulk of their professional indemnity insurance placed through a single broker. In both these



instances, the Councils expect that an electronic claims database should be provided with the assistance of the relevant insurer or broker.

Where an electronic claim database is provided, it should include key dates (date of action or omission giving rise to the claims, date of notification of the claim and dates of each payment arising from the claim). It should include description of the type and the amount of each payment (such as defence costs or payment to claimant), the type and amount of reserve or estimate of future payments, and relevant codes for identifying the types of work or advice giving rise to the claim. Access to the claim database will be restricted to relevant staff within the Councils' actuarial advisors, who will be responsible for preparing summary reports for the consideration of the Councils.

c) Surveys of members

Associations which elect to provide claims data via a member survey should ensure that the data has been collected from a statistically significant sample of their members. For voluntary surveys, this may mean targeting a larger number of members than may otherwise be the case.

In addition, associations should include in their sample a targeted group of members who the association knows or considers may have been likely to have had claims of \$500,000 or above against them.

d) Searches of legal databases

Even if a survey of your members has been undertaken, searches of legal databases may help to identify claims against persons who fall outside the surveyed group.

Note: It is not necessary to search the names of each member of the association. Searches should be made of generic terms including the name of the occupational group in combination with other relevant search terms such as 'negligence', 'negligent', 'damages', 'judgement', 'liable', 'breach of contract' etc.

These issues will be relevant for justifying the monetary ceiling proposed by the association, and the means for determining the monetary ceiling.

For associations, which have different levels of monetary ceilings, data should be provided to justify those ceilings by reference to claims data.

When determining the limitation of liability, the Councils must also consider the need to adequately protect consumers. If insurance is unavailable to cover liability at the level of the highest claim, the Councils may set the limitation of liability lower than the highest claim, if doing so would adequately protect consumers.

e) Actuarial reports

Any actuarial reports provided by an occupational association should address:

- the quality and completeness of the data
- the major gaps in the data
- whether the data is likely to be representative of claims made against members
- whether the majority of claims are below the proposed monetary ceiling or limitation amount



- the trends in the data over time, including the reasons for any patterns in the data.

f) Claim's monitoring committee

An occupational association should establish a claim's monitoring committee for the purpose of monitoring and analysing claims made against its members for occupational liability or have a committee with these responsibilities. The following sections of the legislation are relevant:

NSW	ACT	NT	Qld	SA	Tas	Vic	WA
s 35	Sch 4 s 4.31	s 36	s 36	s 37	s 38	s 37	s 47

The committee can consist of members of the occupational association, as well as industry experts, insurers, brokers, and underwriters, providing advice with an overall goal to minimise claims for occupational liability and mitigate occupational risks.

Sample terms of reference for a claim's monitoring committee may include the following:

- to record the number of notifications and claims at and above \$500,000 (i.e. the amount below which a Scheme can't limit liability, per section 26 in the NSW legislation)
- to record the size of claims at and above \$500,000
- to investigate the root cause of these claims.