

## Introduction

# The professional standards scheme application process

## Acknowledgement of Country

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The Professional Standards Councils and the Professional Standards Authority acknowledge the Traditional Custodians of the lands where we work and live. We celebrate the diversity of Aboriginal peoples, and their ongoing cultures and connections to the lands and waters of Australia. We pay our respects to Elders past, present and emerging.

## Using this guidance

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This guidance will help you understand what a professional standards scheme does, and how to apply to operate one.

All associations interested in applying should read the following sections:

- [Understanding the role of professional standards schemes](#)
- [Understanding the application process.](#)

Then depending on your circumstances, go to the relevant section for your application type:

- [Applying for the first time](#)
- [Applying to remake a scheme](#)
- [Applying to amend a scheme.](#)

The Professional Standards Authority is here to answer your questions and to guide you as you work through your application.

## Understanding the role of professional standards schemes

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### What is a professional standards scheme?

A professional standards scheme is a legal instrument that caps the damages that participating members of an occupational association may be liable for if a court upholds a claim against them and the claim meets certain criteria. Schemes cannot cap liability for certain events, including death or personal injury, breach of trust, fraud, or dishonesty.

An association with an approved scheme must meet statutory reporting obligations and show that it regulates its members to improve their professional standards and protect consumers of their professional services. This benefits the association by increasing consumer confidence in the profession.

A scheme operates for up to 5 years, at the Councils' discretion. At the end of the approved period, the scheme expires and has no legal effect. Before it expires, the association may apply for a new scheme, intended to operate in continuity with the old scheme.



An association usually applies for a scheme in the state or territory where it is incorporated or headquartered, for the scheme to operate there. However, the professional standards legislation operates as a harmonised national system. So, if a scheme would operate in 2 or more states or territories, the application will be considered under the corresponding laws using mutual recognition provisions. These provisions require the Councils to consider any matter that the Councils for the other jurisdictions would have to consider.

## What are the Professional Standards Councils and the Authority?

The **Professional Standards Councils** are independent statutory bodies established under professional standards legislation to facilitate, approve, and supervise professional standards schemes of occupational associations.

There are 8 Councils – 1 for each state and territory of Australia – with a total of 11 members. Responsible Ministers in each jurisdiction have agreed to appoint the same 11 members to their Councils. This allows the Councils to meet as one and decide on professional standards schemes from all states and territories.

The **Professional Standards Authority** is the Councils' national regulatory support agency. If you apply to operate a professional standards scheme, the Authority will typically be your first point of contact. The Authority is a business unit of the NSW Department of Customer Service, within the Better Regulation Division.

Throughout the scheme application framework, both are referred to as 'we' or 'us'.

## How does a scheme work?

When the Councils approve a scheme, this creates a regulatory relationship between the Councils and the association. The Councils oversee the association's regulation of its members.

This relationship has 3 key aspects:

- The Councils provide leadership by encouraging, advising, and assisting the association to develop regulatory capacity and professional standards in line with professional standards legislation.
- The association regulates and monitors the compliance obligations and conduct of its members through robust systems to protect consumer interests (such as standards for professional indemnity insurance, consumer-focused risk management strategies and complaints and disciplinary procedures).
- The association completes annual reports to the Councils over the life of the scheme. The Councils incorporate these into the Councils' Annual Report, which is presented to responsible ministers and may be required to be tabled in relevant parliaments.

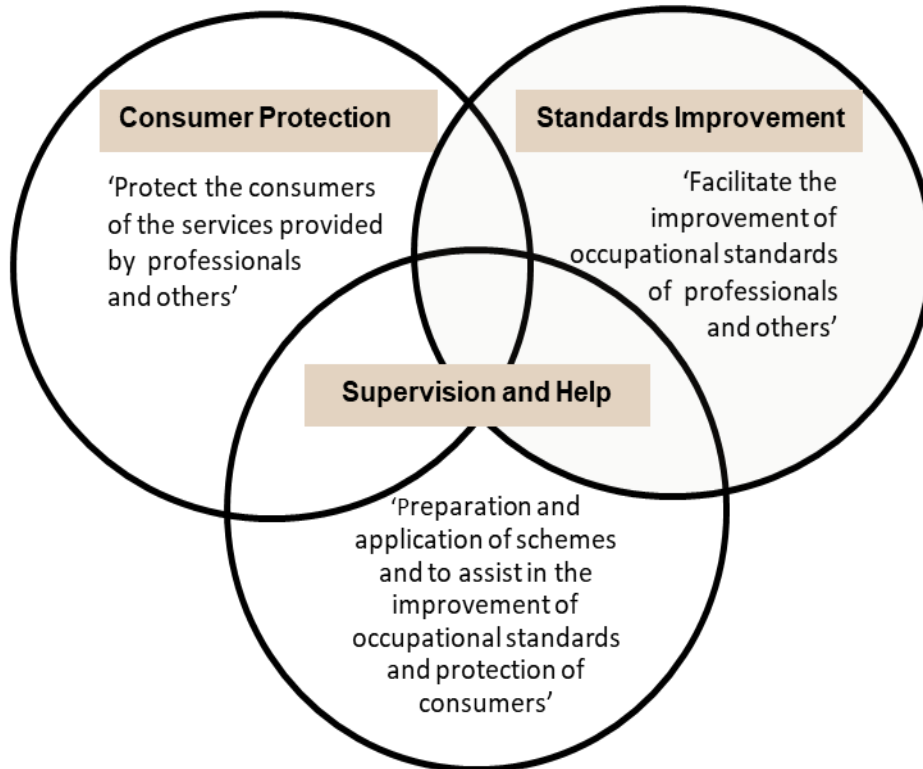
Associations enter this regulatory relationship voluntarily. However, once a scheme is approved by the Councils, all compliance obligations are mandatory. If an association cannot meet these obligations, we can review and revoke its scheme.

The following diagram shows the functions of the Councils and the association:



### Co-regulatory framework

#### Professional Standards Councils – meta-regulator



#### Occupational Association – self regulatory elements from the legislation

Risk management	Complaint resolution	Quality management
Code of ethics	Discipline of members	Voluntary mediation services
Code of practice	Membership requirements	Continuing occupation education

### What is the professional standards legislation?

Each state and territory has its own professional standards legislation. Though wording varies slightly between jurisdictions, this legislation has 4 aims:

1. To enable the creation of schemes to limit the civil liability of professionals and others.
2. To facilitate the improvement of occupational standards of professionals and others.
3. To protect the consumers of the services provided by professionals and others.
4. To establish the Professional Standards Councils to supervise the preparation and approval of schemes and to help in the improvement of occupational standards and protection of consumers.



The legislation for each jurisdiction is as follows:

State or territory	Title of legislation
Australian Capital Territory	Civil Law (Wrongs) Act 2002 (ACT)
New South Wales	Professional Standards Act 1994 (NSW)
Northern Territory	Professional Standards Act 2004 (NT)
Queensland	Professional Standards Act 2004 (Qld)
South Australia	Professional Standards Act 2004 (SA)
Tasmania	Professional Standards Act 2005 (Tas)
Victoria	Professional Standards Act 2003 (Vic)
Western Australia	Professional Standards Act 1997 (WA)

## Understanding the application process

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### What is the application framework?

The application framework is the documents and templates we have developed to support associations applying for a scheme, regardless of their scale and regulatory experience. This modular framework can help you to scope, and to project manage your application, as you can complete and submit each module separately. Please note, however, that you should not rely on any part of the framework as legal advice or instruction and should not read it as such.

The framework will help you to understand:

- the objects of the legislation
- the relevant statutory requirements when applying for a scheme
- your compliance reporting obligations during the term of a scheme
- what we consider when approving a scheme
- the Councils' ongoing statutory functions.

It will also ensure that you provide relevant information in a clear, consistent and accessible format.

The framework includes 6 modules and 13 submodules, as shown below. Each module and submodule has an **overview** explaining its legal context and the broad requirements for completion.

Almost all include a **template** to complete and submit with your application to provide the required information and evidence. We strongly recommended that you use these templates unless your association's unique circumstances require you to convey *all* this information in a different way.

Many also include **guidance**. This is *not* part of the application. It is there to help you collate the information required, following regulatory best practice. It also explains why we ask for this information and how we will use it to assess your application. There are no guidance documents for modules where the reporting requirements are self-explanatory. However, you can contact us for help or advice if you have difficulty completing those or any other modules.



Modules and submodules		Template	Guidance
<b>Module 1</b>	<b>Readiness to operate a professional standards scheme</b>	✓	✓
1.1	Occupational group and occupational association	✓	✓
1.2	Governance, conflicts of interest and financial arrangements	✓	✓
1.3	Enterprise risk management system	✓	
1.4	Other statutory requirements	✓	
<b>Module 2</b>	<b>Cover letter and attachments</b>	✓	
2.1	Scheme instrument	✓	✓
2.2	Insurance standards	✓	✓
2.3	Public consultation document	✓	
2.4	Scheme compliance plan	✓	
Modules and submodules		Template	Guidance
<b>Module 3</b>	<b>Eligibility</b>	✓	✓
3.1	Consumers and consumer harms	✓	✓
<b>Module 4</b>	<b>Professional risk management strategies</b>	✓	✓
4.1	Codes of ethics and practice	✓	✓
4.2	Consumer complaints system	✓	✓
4.3	Disciplinary system	✓ ✓	✓
<b>Module 5</b>	<b>Members' claims data</b>	✓	✓
5.1	Professional indemnity insurance cost and availability	✓	
<b>Module 6</b>	<b>Annual Professional Standards Report</b>		✓

## What is covered in the modules and submodules?

Module 1 assesses whether your association is an occupational association and, therefore, eligible to have a scheme approved under professional standards legislation. If you meet this threshold, you must then show you can operate a scheme and meet the statutory reporting requirements.



The key elements of the application are:

- a cover letter from your governing body, asking the Councils to approve your draft scheme instrument
- your draft scheme instrument
- a copy of your association's approved insurance standards
- a public consultation document
- details of other regulatory processes that apply to your association and its members
- payment of the relevant application fee (upon submission) plus \$50 per eligible member (at the commencement of the scheme), as prescribed by the professional standards regulation in your jurisdiction.

The remaining modules and submodules examine your association's systems and resources to:

- ensure members disclose their limited liability under the scheme
- monitor and enforce members' insurance requirements under the scheme
- continuously improve risk management practices
- audit membership numbers each year
- pay the regulatory fees for the scheme
- manage and resolve consumer complaints about members
- take disciplinary action against members where necessary
- understand your role as a regulator of professional standards, including your interaction with other regulators.

Some modules use the same series of questions to assess your systems and capabilities in different areas.

These are:

- 1.3 – Enterprise risk management system
- 4 – Professional risk management strategies
- 4.1 – Codes of ethics and practice
- 4.2 – Consumer complaints system
- 4.3 – Disciplinary system.

## What information is required?

We ask for a range of information and supporting evidence with your application. This information is mandatory and either explicitly required by law, or reasonably required for us to fulfill our statutory responsibilities.

Our application materials use the terms **must**, **should**, **should preferably** and **may** to indicate how necessary it is to provide the information requested.

Term	Meaning
must	An action or response is required by law or policy. We will generally consider an application incomplete if it does not respond to these requirements, except in special circumstances.
should	We strongly encourage an action or response.
should preferably	We will regard an action or response favourably in our overall assessment of the application.
may	The applicant can choose to perform an action or response, but it is not required. (Note that legislation uses 'may' differently.)



When providing evidence, focus on and clearly communicate its consumer protection and standards improvement aspects. Your application should also refer to the specific legislation for the jurisdiction or jurisdictions where your scheme will operate. Most modules include a table of references to the relevant sections of each Act, while some refer only to the NSW legislation as an example. In most cases, the legislation is nationally harmonised.

## How are applications assessed?

After you submit your application and scheme instrument, it passes through the following steps.

Who	What
The Authority	<ul style="list-style-type: none"><li>• Reviews the application and contacts the applicant if more information is needed.</li><li>• Engages an actuary to advise on the proposed limit of liability and approved insurance standards.</li><li>• Seeks independent legal advice on the statutory compliance of the proposed scheme.</li><li>• Prepares a submission about the application for the Councils to consider, including the legal and actuarial advice.</li></ul>
The Councils	<ul style="list-style-type: none"><li>• Consider the application, according to their statutory considerations (see below) and ask for more information if needed.</li><li>• May proceed to public notification of the proposed scheme and publish it on both the Councils' and the applicant's websites.</li><li>• Consider comments and submissions received, which may recommend revisions to the scheme instrument.</li><li>• Consider the application again with any revisions.</li><li>• If the revisions are accepted, the Councils may approve the scheme.</li></ul>

When reviewing applications, the Councils look for evidence that the association has robust systems in place to support its self-regulatory capacity and meet the legislative aims of a scheme.

The Councils must consider:

- comments and submissions from public notification
- the position of those affected by limiting liability
- claims made against association members
- the association's risk management strategies
- how the risk management strategies will be implemented
- the cost and availability of professional indemnity insurance
- the association's insurance standards
- complaints and disciplinary measures.

In the Australian Capital Territory, Northern Territory, South Australia, Tasmania, and Victoria the Councils must also consider the scheme's provision for making and deciding complaints and enforcing disciplinary measures. In Queensland, the Council must consider the scheme's disciplinary measures.

A scheme intended to operate in any or all of these jurisdictions must meet these requirements. See the following sections of the legislation:



ACT	NSW	NT	QLD	SA	TAS	VIC	WA
schedule 4 section 4.7	section 10	section 10	section 12	section 11	section 11	section 11	section 23

## What happens when a scheme is approved?

If your scheme is approved, we will hold a post-application workshop with you to discuss your ongoing compliance obligations (covered in [Module 6: Annual Professional Standards Report](#)).

The Councils provide advice to each appropriate responsible Minister of the approval of your scheme, for the Minister to publish a notice of the scheme in their jurisdiction, your scheme will start from the date specified in the notice (or as legally required).

Payment is required from your association of \$50 per member that the scheme applies to in accordance with the professional standards regulation in your jurisdiction.

## Applying for the first time

### What do I need to do?

We ask new applicants to complete [Module 1: Readiness to operate a professional standards scheme](#) before attempting to respond to the rest of the framework. This is a critical first step.

The module uses risk-based information to help you understand whether your association is eligible and ready to prepare a scheme. You will complete a template to help you determine whether you have systems in place to address common risks associated with operating a scheme.

After you submit Module 1, but *before* you complete submodules, 1.1, 1.2, 1.3 and 1.4, you arrange and attend a pre-application workshop with us, where we will:

- review your responses to the template
- discuss your application and confirm the requirements
- answer any questions you have.

If you meet the Module 1 requirements, you can complete submodules 1.1, 1.2, 1.3 and 1.4 after the workshop and then continue with your application.

The following table summarises what first-time applicants need to do, and when.

When	What
Before you apply	<ul style="list-style-type: none"> <li>• Visit our online <a href="#">Research Library</a> to learn more about the concepts and context of professional standards and regulation.</li> </ul>
When you start your application	<ul style="list-style-type: none"> <li>• Complete and submit the Module 1 template.</li> <li>• Organise and attend a pre-application workshop with us to discuss your responses and the rest of your application.</li> <li>• If we agree, you can complete and submit submodules 1.1, 1.2, 1.3 and 1.4.</li> <li>• You can then complete modules 2 to 6.</li> </ul>





When	What
When completing Module 2 and its submodules	<ul style="list-style-type: none"><li>• We recommend that you seek legal advice to ensure your draft scheme instrument complies with professional standards legislation and any other relevant laws and achieves its intended purpose.</li><li>• We also recommend that you seek actuarial advice, as this could be useful supporting evidence for your proposed monetary ceiling(s).</li></ul>
While you are applying	<ul style="list-style-type: none"><li>• Contact us if, after reading the guidance, you need more help or clarification. We are here to support and encourage you with your application and can meet with you if needed.</li></ul>
Before you submit your application	<ul style="list-style-type: none"><li>• Include a table of contents, body and attachments for each module and submodule.</li><li>• Avoid cross-referencing other modules and submodules, where possible, so we can assess each as a discrete submission.</li><li>• Have all the information you will provide reviewed and approved by your governing body or a senior manager nominated by your CEO (or equivalent).</li><li>• Submit all application materials electronically.</li></ul>
After you apply	<ul style="list-style-type: none"><li>• Submit any extra information we may request.</li></ul>

## Do I need to submit all the modules at once?

The information we request is freestanding – you can complete and submit each module on its own or alongside some, or all, of the other modules and submodules. First-time applicants must complete Module 1 first but can then complete and submit all the remaining modules in any order.

## How much does it cost?

For New South Wales applicants, the cost is \$5,000 per jurisdiction in which the scheme is intended to operate. If you apply in any other jurisdiction of Australia, the total cost is \$5,000. We take payment by EFT. If your scheme is approved, \$50 per eligible member is required at the commencement of your scheme.

## How long does it take?

Applying for a scheme is a process that takes most associations around 12 months. You must submit your complete, final, governance-body-approved application at least 10 months before your proposed scheme's intended start date to allow time for all necessary statutory processes to be completed.

## Applying to remake a scheme

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### What do I need to do?

If you are applying to replace your current scheme (a scheme remake) or you have previously operated a scheme, contact us before you begin to confirm the requirements.

The following table summarises what associations remaking an existing scheme need to do, and when.



When	What
Before you apply	<ul style="list-style-type: none"><li>• Confirm the requirements for your remake application with us.</li></ul>
While you are applying	<ul style="list-style-type: none"><li>• If a module or submodule requests information that you provided previously (in a scheme application, annual association report or other report), you can simply refer to or attach that information and clearly identify and explain any improvements or changes you have made since providing it.</li><li>• Contact us if, after reading the guidance, you need more help or clarification. We are here to support and encourage you with your application, even if you have applied before. We can meet with you if needed.</li></ul>
Before you submit your application	<ul style="list-style-type: none"><li>• Include a table of contents, body and attachments for each module and submodule.</li><li>• Avoid cross-referencing other modules and submodules, where possible, so we can assess each as a discrete submission.</li><li>• Have all the information you will provide reviewed and approved by your governing body or a senior manager nominated by your CEO.</li><li>• Submit all application materials electronically.</li></ul>

## Do I need to complete all the modules?

For continuity between schemes, you need to complete the following modules and submodules:

- 2: Cover letter and attachments
- 2.1: Scheme instrument
- 2.2: Insurance standards
- 2.3: Public consultation.

If there are **no substantive differences** between your current scheme and the proposed scheme, you will also typically need to provide:

- the final version of the previous scheme application (as tabled for approval)
- updated data to reflect changes over the life of the current scheme, including claims data, risk management data, complaints and disciplinary data and insurance data.

If there are **substantive changes** between the schemes, you will also need to provide:

- 1 marked up and 1 clean copy of the proposed scheme, clearly showing any changes to the instrument
- a response to any relevant modules that support the proposed changes
- a detailed discussion of consumer harms, consumer protection and persons affected by the scheme.

We can advise which modules are relevant once we have compared the proposed scheme to the current scheme. We can also explain what supporting evidence you need to provide.

You can complete and submit each module on its own or alongside some, or all, of the other required modules and submodules.

## How much does it cost?

For New South Wales applicants, the cost is \$5,000 per jurisdiction in which the scheme is intended to operate. If you apply in any other jurisdiction of Australia, the total cost is \$5,000. We take payment by



EFT. If your scheme is approved, \$50 per eligible member is required at the commencement of your scheme.

Note that once your scheme is in force, there is an annual fee to be paid, calculated at \$50 for each person to whom the scheme applies who is a member of the association at any time during the relevant annual fee period.

## How long does it take?

We recommend that you submit your completed, governance-body-approved application at least 10 months before your current scheme expires to:

- reduce the risk of a gap between your current scheme expiring and your new scheme starting
- ensure continuous consumer protection.

Applying to remake a scheme can be a shorter process if material you submitted with the previous scheme has not changed and does not need to be submitted again.

However, there is no provision in the legislation to ‘roll over’ or continue a scheme. When assessing an application for a scheme remake, the Councils consider all the mandatory matters as if it were a new application and must be satisfied that they have fulfilled their statutory obligations before approving it. The application must also progress through all statutory requirements, including public consultation and notification.

## Applying to amend a scheme

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### What do I need to do?

If you are applying to amend your current scheme instrument, contact us before you begin to confirm the requirements. Note that you cannot amend an approved scheme to extend the period for which it is in force.

The following table summarises what associations amending a scheme need to do, and when.

When	What
Before you apply	<ul style="list-style-type: none"> <li>• Confirm the requirements for your amendment application with us.</li> </ul>
While you are applying	<ul style="list-style-type: none"> <li>• If a module or submodule requests information that you provided previously (in a scheme application, annual association report or other report), you can refer to or attach that information and clearly identify and advise on improvements or changes you have made since providing it.</li> <li>• Contact us if, after reading the guidance, you need more help or clarification. We are here to support and encourage you with your application, even if you have applied before. We can meet with you if needed.</li> </ul>
Before you submit	<ul style="list-style-type: none"> <li>• Have all the information you will provide reviewed and approved by your governing body or a senior manager nominated by your CEO.</li> <li>• Submit all application materials electronically.</li> </ul>



## Do I need to complete any modules?

Depending on the proposed amendment, you may not need to submit any of the application modules.

However, if you are proposing a substantive change, such as to the monetary ceiling specified in the scheme, you will need to provide relevant supporting evidence, such as Module 5: Members' claims data.

In any case, you will need to provide:

- a cover letter asking the relevant Council to approve the amending instrument (and the scheme, as amended)
- an instrument amending the scheme
- an explanation of why the scheme should be amended
- the final version of the previous scheme application (as tabled for approval)
- a response to any relevant modules that support the amendments
- a detailed discussion of consumer harms, consumer protection and persons affected by the scheme.

As with a scheme remake, the Councils will use some information you provided in your previous scheme application or Annual Professional Standards Report.

See the following sections of the professional standards legislation for the provisions for amending a scheme:

ACT	NSW	NT	QLD	SA	TAS	VIC	WA
Schedule 4 section 4.14	section 16A	section 17	section 18	section 18	section 18	section 18	section 29A

## How much does it cost?

For New South Wales applicants, the cost is \$5,000 per jurisdiction in which the scheme is intended to operate. If you apply in any other jurisdiction of Australia, the total cost is \$5,000. We take payment by EFT. If your scheme is approved, \$50 per eligible member is required at the commencement of your scheme.

## How long does it take?

Depending on the nature of the amendment, approval of an instrument amending a scheme is typically a shorter process than application for, and approval of, a scheme. However, the statutory processes for consideration and approval of a scheme still apply.



## Copyright and document control

<b>Document version</b>	1.0
<b>Last endorsed</b>	New document
<b>Next review</b>	1 year after the application framework pilot program begins, then every 3 years
<b>Written by</b>	Director Professional Standards Regulation
<b>Approved by</b>	Chief Executive Officer, Professional Standards Councils

## Revision history

<b>Version</b>	<b>Approved by</b>	<b>Approval date</b>	<b>Effective date</b>	<b>Sections modified</b>
1.0	PSC	18 June 2021	1 July 2021	This is new guidance

## Disclaimer

This guidance applies only to an occupational association preparing a scheme for approval under professional standards legislation. It is not legal or other professional advice and should not be relied on as such. An occupational association 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. Go to [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au) to access NSW legislation.

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