

## Guidance

# Governance, conflicts of interest and financial arrangements

## Using this guidance

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This guidance will help you to complete [Submodule 1.2](#) and submit the required information.

We must consider a range of requirements before approving a professional standards scheme, with a particular emphasis on an association's risk management strategies. See the Professional Standards Act 1994 (NSW), section 10 for more.

We may not approve a scheme if we doubt an association's capacity to:

- supervise its risk management strategies
- oversee disciplinary arrangements
- represent its members' interests.

An association's capacity may be affected by its **governance** arrangements, the ways it manages actual or perceived **conflicts of interest** and its **financial** resources. This is why we consider these matters when assessing your application.

All information you submit with your application is classified as 'Councils-in-confidence'. We may not release any information you provide, including any financial information, to third parties without your consent. See the Professional Standards Act 1994 (NSW), section 50A for more information.

## Understanding the requirements for this submodule

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The questions in this submodule are largely modelled on [Module 4 – Professional risk management strategies](#), with the aim of integrating risk management into scheme operations. You can use your association's response to Module 4 to inform your submission for this submodule.

This guidance explains the information you will need to provide in the Governance, conflicts of interest and financial arrangements [template](#), which includes 26 questions.

## Governance

Governance is the systems that direct and control or govern an association. In the context of the legislation, governance is about how your association interacts with other entities or related parties.

Generally, governance covers an association's accountability mechanisms, its transparency and its collaboration. Importantly, if your association is constituted as a public company limited by guarantee, it must conduct general meetings of the members. A public company, including a 'small company limited by guarantee', must hold its annual general meeting within 5 months of the end of the financial year (Corporations Act 2001 (Cth), section 250N).



Base your response in this section on relevant documents and materials you provide about your association's governance mechanisms.

## Conflicts of interest

Managing conflicts of interest is important for an association because the public rightly expect that an association employee, official or member, or their close connections and associates, should never be in a position to obtain an undue personal benefit as a result of their public or professional duties in administering a professional standards scheme. A conflict of interest exists when a reasonable person might perceive that the personal interest(s) of an association employee, official or member could be favoured and therefore conflict with their ability to impartially perform their public or professional duties. Conflicts of interest can be actual, perceived or potential.

Your association needs to effectively manage any and all conflicts that may arise between regulating members, pursuing commercial business and lobbying industry or similar activities.

We examine conflicts of interest to ensure associations are properly set up to look after members' interests. The legal definition of an occupational association requires that its body corporate represents the interests of either:

- members of the same occupational group (in the Australian Capital Territory, South Australia or Victoria)
- members of the same or related occupational groups (in other jurisdictions).

In extreme cases, poorly managed conflicts of interest or duties can mean that the association does not characteristically represent members' interests. As representing members' interests is central to the definition of an occupational association under the Act, this could make the association ineligible to operate a scheme.

You will need to demonstrate your association's procedures for controlling the risks posed by conflicts of interest including a conflict of interests policy, disclosure of personal interests, monitoring of conflicts of interest, and action to deal with breaches.

## Financial arrangements

### Association structure and resources

You will need to show that your association has appropriate available resources and funds to regulate its members. If we are concerned about your association's ongoing solvency, we may request cash flow forecasting for a longer period.

You also need to provide your association's organisational structure. This should show:

- any associated companies, including parent or subsidiary entities
- the financial or commercial arrangements between them
- where they share directors.

You should also show that your association has the resources to administer a scheme over the scheme life cycle (typically 5 years). This includes meeting the requirements for compliance monitoring in the Annual Professional Standards Report (APSR).

The strength of an occupational association's financial position generally also determines its ability to implement risk management strategies and oversee disciplinary arrangements. An association needs the



financial, human and technological resources to monitor improvements in professional standards and consumer protection. See the Australian Securities and Investments Commission (ASIC) Regulatory Guidance 269: Approval and oversight of compliance schemes for financial advisers, 28 September 2018, p 25 for more.

## Financial statements

We may ask to review your association's financial statements for the last 5 financial years. We accept the following statement types, listed in order of preference:

1. general purpose financial statements (audited and signed by the directors)
2. special purpose financial statements (audited and signed by the directors)
3. financial statements provided to a regulator, such as the Australian Securities and Investments Commission (ASIC), the state or territory association regulator or relevant minister
4. financial statements provided to a general meeting of the members, such as an AGM
5. management accounts (signed, dated and authenticated as true and correct by 2 directors, or 1 director and 1 company secretary) if your application date is more than 6 months before the financial year ends.

Any financial information you provide must have been audited independently by a qualified auditor, in line with both:

- Auditing and Assurance Standards Board (AUASB) Auditing Standard ASA 700 Forming an Opinion and Reporting on a Financial Report
- Accounting Professional and Ethical Standards Board APES 110 Code of Ethics for Professional Accountants (including Independence Standards).

For an example of what is required, see [AUASB Auditing Standard ASA 805 Special considerations – Audits of Single Financial Statements and Specific Elements, Accounts or Items of a Financial Statement](#), pages 20–30.

## Solvency

Solvency is another important consideration. We use the ASIC indicators of potential insolvency to assess an association's financial position (see [ASIC Regulatory Guidance 217 – Duty to prevent insolvent trading: Guide for directors](#), 28 August 2020, p 21). If any of these indicators are present, we may find that the association does not have the resources to operate a scheme effectively.

The indicators for entities include:

- a history of continuing trading losses or cash flow difficulties
- difficulties selling stock or collecting debts owed
- creditors not being paid on agreed trading terms, placing the company on cash-on-delivery terms or requiring special payments on existing debts before supplying goods or services
- not paying taxes when due
- outstanding debts resulting in threatened or actual legal action or judgements against it
- not being able to access further finance to fund operations
- not being able to produce accurate, timely financial information to show its trading performance and financial position or to prepare reliable financial forecasts
- directors resigning due to concerns about its financial position or ability to produce accurate financial information on its affairs
- company auditor qualifying their audit opinion due to uncertainty that the entity can continue as a going concern



- defaulting, or being likely to default, on agreements with its financier
- employees, or its bookkeeper, accountant, or financial controller, raising concerns about its ability to meet its financial obligations
- uncertainty that assets can be sold relatively quickly to provide funds for debts owed without affecting its ongoing ability for profitable trading.

## Completing related modules

Continuous improvement of your association's governance, conflicts of interest and financial arrangements is also linked to our annual reporting process. See [Module 6](#) for details.

We will assess other governance-related processes in the following modules and submodules:

- [2.4 – Scheme compliance plan](#)
- [4 – Professional risk management strategies](#)
- [4.1 – Codes of ethics and practice](#)
- [4.2 – Consumer complaints system](#)
- [4.3 – Disciplinary system](#)

The post-approval workshop, which is part of [Module 6 – Annual Professional Standards Report](#), covers notification of limitation of liability (disclosure of the scheme by members).

## Copyright and document control

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<b>Last endorsed</b>	New document
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<b>Written by</b>	Director, Professional Standards Regulation
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## Revision history

Version	Approved by	Approval date	Effective date	Sections modified
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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