

## Guidance

# Readiness to operate a professional standards scheme

## Using this guidance

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This guidance will help you to complete the first module of the professional standards scheme application framework. We have developed it to help you understand and respond to the module's terminology and application requirements.

[Module 1](#) is central to the framework and helps you to gather key information for your application. We ask new applicants to complete this first, before attempting to respond to the rest of the framework.

The module includes 4 submodules:

[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.](#)

Before you begin the submodules, you should:

- complete the Readiness to operate a professional standards scheme [template](#)
- arrange a meeting (the pre-application workshop) with us to discuss your responses.

The workshop is also an opportunity to ask us any questions about the application process.

## Understanding the requirements for this module

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The Readiness to operate a professional standards scheme [template](#) includes 27 statements of risks for your association to consider. These are divided into 7 categories: membership, governance, occupational group, political risk or conflict of interest, prior performance, resourcing and administrative.

Your responses will help you decide whether your association is eligible and ready to apply for a professional standards scheme. The following table includes some example responses and mitigation actions. Note that this is a guide only.



## Membership of the association

Statement of risk	Example indicators for the association	Example association mitigation actions
<p>1. The association cannot compel members to provide data.</p> <p><i>Associations require data to develop risk management strategies.</i></p>	<p>Member survey results of 50% or less.</p> <p>No clauses in membership contract or forms compelling members to respond to association questions.</p>	<p>Supplement surveys with, for example, member focus groups, audits.</p> <p>Revise membership forms and obligations.</p>
<p>2. The association cannot compel members to hold professional indemnity insurance.</p> <p><i>Professional indemnity insurance is a mandatory requirement of a scheme, alternatively a business assets value may be considered</i></p>	<p>Professional indemnity insurance pricing as a ratio to turnover.</p> <p>Member opinions on whether professional indemnity insurance is necessary.</p> <p>Other statutory requirements.</p>	<p>Constitutional amendment for a requirement to members or impose <a href="#">a condition</a> of membership</p>
<p>3. The association cannot compel members to improve occupational standards.</p> <p><i>Continuing professional development is a mandatory requirement of a scheme</i></p>	<p>Lack of member engagement with the association (links to inability to compel members to provide data).</p> <p>No mandatory professional development requirements</p>	<p>Develop standards and programs. Utilise material on the Councils website.</p> <p>Impose a condition of membership.</p>
<p>4. The association's proposed scheme only includes a small part of its overall membership.</p> <p><i>A scheme is designed to represent the occupation (majority)</i></p>	<p>The scheme will exclude over 70% of the association's total membership (based on the classes of membership included).</p>	<p>Discuss including additional classes of membership in the scheme with us.</p> <p>Educate members that scheme participation correlates with increased consumer protection.</p>
<p>5. The association does not have a sufficient number of members to represent the occupational group.</p>	<p>Benchmark of 500 members, where 250 members participate in the scheme.</p> <p>Less than 50% of the occupational group.</p>	<p>Analysis of occupational group demographics and current/future membership coverage and representation.</p> <p>Membership growth plan.</p>
<p>6. The association has mainly corporate members.</p> <p><i>The association needs to be able to regulate its members directly who are providing the services to consumers relevant to the scheme</i></p>	<p>Corporate members are identified, along with individual members.</p>	<p>Maintain a membership register for the entity and the individual</p> <p>Mechanisms for the professional employees of the corporate member to also be members of the association if they are conducting work applicable to the scheme.</p> <p>Demonstrate a robust regulatory relationship with the corporate</p>



		members, including effective devolvement of regulatory responsibilities from the association to the corporate members in respect of their employees.
<p>7. The association does not have robust and independent systems for resolving consumer complaints and disciplining members.</p> <p><i>Complaints and discipline systems are mandatory for a scheme</i></p>	<p>Members are unwilling to submit to the system.</p> <p>Members do not empower the system.</p> <p>Complaints and discipline aspects of the system are not separated.</p>	<p>Self-assesses your systems.</p> <p>Develop best practice systems.</p> <p>Consult and develop systems aligned to the Model code within professional standards legislation</p>

### Governance of the association

Statement of risk	Example indicators	Example mitigation actions
<p>8. The association is not a corporate body or cannot maintain its statutory responsibilities as an incorporated entity.</p> <p><i>Requirement of the definition of an occupational association within the legislation</i></p>	<p>Breaches or noncompliance with the <i>Corporations Act 2001</i> (Cth).</p> <p>Noncompliant operation of the incorporated entity.</p>	<p>Provide evidence of your occupational association status.</p> <p>Obtain legal advice to understand the elements required to be met.</p> <p>Demonstrate robust governance and compliance arrangements.</p>
<p>9. The association's constitution does not enable a scheme to be created and approved.</p>	<p>Clauses within the constitution that clash with legal requirements for a scheme.</p> <p>Draft governance documents that have not been approved at the time of submission.</p>	<p>Seek legal advice on whether the constitution is compatible with the proposed scheme.</p> <p>Review your governance documents as a pre-application check.</p>
<p>10. The association is part of a complex corporate structure.</p> <p><i>The association must be able to operate the scheme in its own right</i></p>	<p>Numerous funding avenues.</p> <p>Numerous service companies.</p> <p>Vague service-level agreements or memoranda of understanding.</p> <p>Parent or grandparent companies (including overseas).</p>	<p>The association must be setup to directly influence the occupational standards and provide evidence that it has access to the resources to operate the scheme.</p>
<p>11. The association appears to operate as an industrial association (lobbying in the interest of employers) or as a commercial association (sales for the interest of shareholders).</p>	<p>Sources and uses of funds.</p> <p>Website materials do not project or represent the interests of the occupational group.</p>	<p>Review purpose, aims and values of the association in the constitution.</p>



<p><i>The association must be capable of representing the interests of the occupational group and manage any conflicts of interests.</i></p>		
<p>12. The association has no volunteer or member committees.</p> <p><i>The association must be capable of identifying and responding to the interests of members</i></p>	<p>Constitution clauses and by-laws on governing body composition.</p> <p>Governing body current structure.</p>	<p>Analyse your governance documents to ensure appropriate member representation.</p>
<p>13. The association has no member representatives on the governing body.</p> <p><i>The association must be capable of identifying and responding to the interests of members</i></p>	<p>Constitution clauses and by-laws on governing body composition.</p> <p>Governing body current structure.</p>	<p>Analyse your governance documents to ensure appropriate member representation.</p>
<p>14. The association is a proprietary limited (Pty Ltd) company structure (company limited by shares).</p> <p><i>Membership is limited principally to members of the occupational group</i></p>	<p>Corporate structure as registered with ASIC.</p>	<p>Provide search results from the ASIC register.</p> <p>Obtain your own legal advice on the definition of an occupational association.</p>
<p>15. The association is a national association with state-based entities that are not strategically aligned.</p> <p><i>The association must be able to regulate consistently</i></p>	<p>Variation between national and state attitudes towards the application.</p>	<p>Discuss the application with national and state-based entities to ensure alignment.</p>
<p>16. The turnover of governing body members is excessively high or low.</p> <p><i>The association must be capable of identifying and responding to the interests of members</i></p>	<p>High turnover (less than 2 years).</p> <p>Low turnover (more than 8 years).</p> <p>Chair is not turned over regularly.</p>	<p>Ensure appropriate policies, and procedures are in place for governing body election processes.</p>

**Occupational group**

Statement of risk	Example indicators	Example mitigation actions
<p>17. The association operates in a high-risk occupational environment, such as financial services or the built environment.</p> <p><i>Associations require risk awareness in contemporary practice</i></p>	<p>Media monitoring.</p> <p>Royal Commissions or public inquiries.</p>	<p>Provide an environment risk assessment of the risks to the provision of your services to consumers.</p>
<p>18. The association's occupational group does not require professional indemnity insurance.</p> <p><i>The scheme is oriented to consumer protection against professional negligence</i></p>	<p>Environmental scanning of PI insurance requirements.</p>	<p>Provide an environment risk assessment of the risks to the provision of your services to consumers.</p> <p>Provide a business assets test to the level of the proposed limitation of liability.</p>
<p>19. The association cannot identify consumers of its members' services or the potential harms against those consumers.</p> <p><i>The scheme is oriented to consumer protection in the delivery of professional services</i></p>	<p>Association produces a poor understanding of consumers and potential consumer harms during the application module.</p>	<p>Conduct an additional assessment of the risks to consumers from the provision of your services.</p>
<p>20. The association represents a small proportion of the entire occupational group.</p> <p><i>The association must be capable of representing the interests of the occupational group and manage any conflicts of interests.</i></p>		<p>Discuss occupational group representation and correlation with consumer protection with us.</p>

**Political risk or conflict of interest**

Statement of risk	Example indicators	Example mitigation actions
<p>21. The association has connections or conflicts of interest with key decision-makers (political, media or administrative).</p>	<p>Members of the governing body have public connections to decision-makers.</p>	<p>Document the interests, how they may give rise to conflict, and how they will be managed. Provide the analysis and register to us.</p>



*The association must be capable of representing the interests of the occupational group and manage any conflicts of interests.*

### Prior performance

Statement of risk	Example indicators	Example mitigation actions
<p>22. The association expects a scheme remake (or replacement scheme), despite poor annual reporting scores or previous non-compliance.</p> <p><i>The national system requires continuous improvement</i></p>	<p>Consistent poor annual compliance reporting performance over 2 years.</p>	<p>We identify annual compliance reporting (APSR) performance trends and whether your association has improved non-compliant actions.</p> <p>Provide evidence of the steps undertaken, or to be undertaken, to improve the actions identified over the life of the scheme.</p>

### Resourcing

Statement of risk	Example indicators	Example mitigation actions
<p>23. The association has no visibility over claims and professional indemnity insurance.</p> <p><i>Risk management requires data analysis and treatment of root causes.</i></p>	<p>No claims monitoring committee. No monitoring systems.</p>	<p>Understand and establish monitoring committees, policies, and/or procedures.</p>
<p>24. The association's application will be largely drafted by an external consultant.</p> <p><i>Associations must be capable of driving its regulatory posture and approach.</i></p>	<p>Over 50% of the application is created substantially by an external consultant (excluding advice and technical expertise).</p> <p>Association's actual resources vary from the quality of the application.</p> <p>Quality of the association's APSR reports varies from the quality of the application.</p>	<p>Demonstrate mechanisms for embedding knowledge and systems in the association for operating the scheme over its life-cycle.</p>



25. The association does not have enough resources to submit an application or operate the scheme over its life cycle.

*Consumers and associations members are not subject to scheme failure.*

Shows an indicator of potential insolvency (as per ASIC Regulatory Guide 217).

Cannot show positive net equity.

Cannot show positive earning between 3 and 5 years of operating.

Self-identify using the indicators of insolvency.

Document and evidence the association's ability to operate the scheme including in financial affairs, strategic plans and organisation structure.

**Administrative**

Statement of risk	Example indicators	Example mitigation actions
<p>26. The association is submitting an application for a scheme remake with less than 10 months until the current scheme expires.</p> <p><i>Risk of a hiatus between the current and new scheme resulting in loss of consumer protection and limitation of liability</i></p>	<p>The scheme is not able to be extended and will expire before a new scheme is in place.</p>	<p>Commence developing the new scheme application 12 months before the expiry of the current scheme.</p> <p>Consider requesting the Minister to extend the scheme for 12 months (can only occur once per scheme).</p>
<p>27. The association's governing body has not considered or approved its application before submission.</p> <p><i>Risk of scheme failure for lack of leadership and an authorising environment.</i></p>	<p>No covering letter signed by the governing body.</p> <p>No minutes approving the application from a meeting of the governing body.</p>	<p>When lodging the application, include a letter signed by the Board of the association approving this lodgement.</p>





## 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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