

Guidance

Scheme instrument

Using this guidance

This guidance will help you to complete Submodule 2.1 and the Scheme instrument [template](#). It includes the legal and policy reasons for each clause, as well as the relevant sections from the Professional Standards Act 1994 (NSW) (the Act).

This document is in 3 sections:

1. Using this guidance, which is this overview
2. [Understanding the requirements for this submodule](#), which include the purpose of the scheme then how to complete the instrument preamble and main body
3. [Submitting this submodule](#), with advice on how to submit the instrument to us and what you need to consider before doing so.

If you cannot complete this submodule or need more information on any aspect of the template or this guidance, please contact us. Advising, helping and encouraging associations to improve their occupational standards and member regulation is one of our statutory functions.

Understanding the requirements for this submodule

Scheme instrument purpose

The preamble sets out the initial and ongoing commitments that your association makes to its members, consumers of your members' services, and us. It is important as it:

- provides context for the operative clauses, which start at clause 1
- provides guidance to a court
- speaks to the regulatory relationships that scheme approval creates
- provides information to consumers.

The scheme clauses then set out the obligations the scheme creates for the people and associations it applies to.

The information in the scheme instrument is the minimum needed to ensure public accountability. Approved schemes will be publicly available on our website, the website of relevant occupational associations and in Government Gazettes. Further, those covered by the scheme must give a copy to a client, or prospective client, on request everywhere except NSW and WA.

The preamble section guidance

- A. The [\[name of occupational association\]](#) ([\[acronym of occupational association\]](#)) is an occupational association for the purposes of the [\[name of Act under which instrument is prepared\]](#) (the Act).



This paragraph is essential, because we can only approve applications from associations that meet the definition of an occupational association. This is covered in Submodule 1.1.

The relevant sections from the Act are:

[Section 7 – Preparation and approval of schemes](#)

- (1) An occupational association may prepare a scheme.
- (2) The Council may, on the application of an occupational association, prepare a scheme.
- (3) The Council may, on the application of an occupational association, approve a scheme prepared under this section.
- (4) A scheme prepared under this section may indicate an intention to operate as a scheme of this jurisdiction only, or of both this jurisdiction and another jurisdiction.

[Section 4 – Definitions](#)

occupational association means a body corporate:

- (a) which represents the interests of persons who are members of the same occupational group or related occupational groups, and
- (b) the membership of which is limited principally to members of that occupational group or those occupational groups.

B. The scheme is prepared by the [acronym of occupational association] for the purposes of limiting occupational liability to the extent to which such liability may be limited under the Act.

The relevant sections from the Act are:

[Section 28 – Limit of occupational liability by schemes](#)

- (1) To the extent provided by this Act and the provisions of the scheme, a scheme limits the occupational liability, in respect of a cause of action founded on an act or omission occurring during the period when the scheme is in force, of any person to whom the scheme applied at the time when the act or omission occurred.
- (2) The applicable limitation of liability is the limitation specified by the scheme as in force at the time at which the act or omission giving rise to the cause of action concerned occurred.
- (3) A limitation of liability that, in accordance with this section, applies in respect of an act or omission continues to apply to every cause of action founded on it, irrespective of when the cause arises or proceedings are instituted in respect of it, and even if the scheme has been amended or has, in accordance with section 32, ceased to be in force.
- (4) A person to whom a scheme applies cannot choose not to be subject to the scheme, except in accordance with provisions included in the scheme under section 17 (2).

C. The scheme applies to [describe class or classes of members of the association to whom the scheme applies].

Professional standards legislation is based on a model of meta-regulation, where a Council regulates an occupational association, which in turn regulates its members.

The Councils have approved schemes for occupational associations whose members are individual practitioners and schemes with a combination of corporations and people. The term 'person' in the legislation can include corporations as well as natural people.



If an association's members are all corporate entities, this introduces an extra regulatory layer – the Council regulates the association, the association regulates its members, members regulate individual people. In this case, the association must both:

- show how its members (firms) will drive codes of ethics and conduct, risk management practices and so on down to individual practitioners
- persuade Councils that the scheme will improve occupational standards and consumer protection.

The relevant sections from the Act are:

[Section 17 – Persons to whom scheme applies](#)

- (1) A scheme may provide that it applies to all persons within an occupational association or to a specified class or classes of persons within an occupational association.
- (2) A scheme may provide that the occupational association concerned may, on application by a person, exempt the person from the scheme.
- (3) A scheme ceases to apply to a person exempted from the scheme as referred to in subsection (2) on and from the date on which the exemption is granted or on and from a later date specified in the exemption.
- (4) Subsection (2) does not apply to a person to whom a scheme applies by virtue of section 18, 19 or 20.

D. The scheme will have force in [jurisdiction in which the scheme is made and, if relevant, the other jurisdictions in which the scheme will apply under the provisions for mutual recognition contained in the Act]. [If the scheme is multijurisdictional, add: To the extent that the scheme applies to limit liability in the other jurisdictions, it is subject to the professional standards legislation of those jurisdictions.]

The relevant sections from the Act are:

[Section 7 – Preparation and approval of schemes](#)

- (4) A scheme prepared under this section may indicate an intention to operate as a scheme of this jurisdiction only, or of both this jurisdiction and another jurisdiction.

E. The [acronym of occupational association] has furnished the Council with a detailed list of the risk management strategies to be implemented in respect of its members, and the means by which those strategies are to be implemented.

The relevant sections from the Act are:

[Section 36 – Risk management strategies](#)

- (1) If an occupational association seeks the approval of the Council under section 7 to a scheme, it must furnish the Council with:
 - (a) a detailed list of the risk management strategies intended to be implemented in respect of its members, and
 - (b) the means by which those strategies are intended to be implemented.
- (2) The means of implementation may be imposed as a condition of membership or otherwise.
- (3) The strategies are to apply in addition to other statutory requirements and must not be inconsistent with them.

F. [Where the scheme limits liability by reference to insurance arrangements, add:] The [acronym of occupational association] has furnished the Council with details of its insurance standards and professional indemnity insurance claims monitoring process. The [acronym of occupational association] will not amend these insurance standards while the scheme is in force without prior approval of the Council.



We must consider your association's insurance standards when deciding whether to approve a scheme. There is no statutory requirement for us to consider and approve these separately.

However, if you propose any changes to these while a scheme is in force, statutory provisions apply in several jurisdictions, as shown in the table below. These may affect both your proposed changes and our powers to approve or refuse them.

Jurisdiction	Legislation	Reference
Northern Territory	Professional Standards Act 2004	section 16(4) and section 28(2)–(4)
Queensland	Professional Standards Act 2004	section 28
South Australia	Professional Standards Act 2004	section 17(4) and section 29(2)–(4)
Tasmania	Professional Standards Act 2005	section 17(4) and section 30(2)
Victoria	Professional Standards Act 2003	section 17(4) and section 29(2)–(4)

In rare cases, a scheme might not need to compel its members to insure. For example, an association might not need to set insurance standards if it proposes to limit liability using business assets.

In this case, the association would not need to submit details of its insurance standards to us. This also applies to paragraph G and clause 4.2.

The relevant sections from the Act are:

[Section 10 – Consideration of comments, submissions and other matters](#)

- (1) Before approving a scheme, the Council must consider the following:
 - ...
 - (f) the cost and availability of insurance against occupational liability for members of the occupational association concerned,
 - (g) the standards (referred to in section 27) determined by the occupational association concerned in relation to insurance policies.

[Section 27 – Insurance to be of requisite standard](#)

For the purposes of a scheme, an insurance policy must be a policy, or a policy of a kind, which complies with standards determined by the occupational association whose members may be insured under such a policy, or a policy of such a kind.

[Section 34 – Occupational association may compel its members to insure](#)

- (1) An occupational association may require its members to hold insurance against occupational liability.
- (2) Such a requirement may be imposed as a condition of membership or otherwise.
- (3) The occupational association may set the standards with which the insurance must comply (for example, as to the amount of the insurance).
- (4) The occupational association may specify different standards of insurance for different classes of members or for different kinds of work or on the basis of any other differing circumstances that it considers relevant.

G. [Where the scheme limits liability by reference to insurance arrangements, add:] The [acronym of occupational association] has advised its members to whom the scheme applies that they must have the benefit of a professional indemnity policy that complies with the association's insurance standards and that they remain liable for the amount of any



difference between the amount payable to a plaintiff under the policy and the monetary ceiling specified in the scheme.

The relevant sections of the Act are:

[Section 26A – Liability in damages not reduced to below relevant limit](#)

The liability in damages of a person to whom a scheme applies is not reduced below the relevant limitation imposed by a scheme in force under this Act because the amount available to be paid to the claimant under the insurance policy required for the purposes of this Act in respect of that liability is less than the relevant limitation.

Note: Section 4 (1A) permits a defence costs inclusive policy for the purposes of this Act, which may reduce the amount available to be paid to a client in respect of occupational liability covered by the policy. Section 26A makes it clear that this does not reduce the cap on the liability of the scheme participant to the client, and accordingly the scheme participant will continue to be liable to the client for the amount of any difference between the amount payable to the client under the policy and the amount of the cap.

H. The [acronym of occupational association] has furnished the Council with details of its complaints system and discipline system.

The relevant sections from the Act are:

[Section 38 – Occupational Associations \(Complaints and Discipline\) Code](#)

- (1) A scheme may adopt the provisions of the Model Code set out in Schedule 1 with such additions, omissions or other modifications (if any) as may be approved by the Council.
- (2) The modifications may include provisions relating to the making and determination of complaints and the imposition and enforcement of disciplinary measures against members of an occupational association, including (but not limited to) the following:
 - (a) the establishment of committees for the purpose of implementing the Model Code or any of its provisions,
 - (b) the procedure at meetings of any such committee,
 - (c) whether any such committee may administer an oath,
 - (d) the application or exclusion of the rules of and practice as to evidence,
 - (e) the grounds on which a complaint may be made,
 - (f) the verification of complaints by statutory declaration,
 - (g) the suspension of members from membership or from practice,
 - (h) the imposition of fines,
 - (i) the making of appeals,
 - (j) the exchanging of information with other occupational associations (within or outside New South Wales).

I. The [acronym of occupational association] and its members to whom the scheme applies have undertaken to comply with all reporting obligations associated with the scheme, in furtherance of the statutory objects of improvement of the occupational standards of its members, and protection of the consumers of such members' services.

The relevant sections from the Act are:

[Section 37 – Reporting](#)

- (1) An occupational association must provide information to the Council concerning its risk management strategies if requested to do so by the Council.



- (2) An occupational association must provide an annual report to the Council as to the implementation and monitoring of its risk management strategies, the effect of those strategies and any changes made or proposed to be made to them.
- (3) The occupational association's annual report is to be incorporated into the Council's annual report in such form as the Council determines.

Section 44 – Requirement to provide information

- (1) The Council may, by notice in writing, require an occupational association whose members are subject to a scheme in force under this Act or which seeks the approval of the Council under section 7 to a scheme, or an amendment to or revocation of a scheme, to furnish information to it which it may reasonably require in order to exercise its functions.
- (2) An occupational association which does not comply with a notice under this section is guilty of an offence.
Maximum penalty: 5 penalty units.

J. The [acronym of occupational association] has undertaken to remit all fees payable under [the professional standards regulations for the jurisdiction in which the scheme is made] to the Council as and when these become due.

The relevant sections from the Act are:

Section 53 – Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1), the regulations may make provision concerning the following:
 - (a) the fees for applications for the Council's approval, under Division 1 of Part 2, of a scheme, or an amendment to or revocation of a scheme,
 - (b) the annual fee to be paid to the Council by an occupational association whose members are subject to a scheme in force under this Act.
- (3) A regulation may create an offence punishable by a penalty not exceeding 50 penalty units.

K. The scheme is intended to commence on [insert date] and remain in force for [specify number of years' duration, being 5 or less] years from its commencement unless, prior to that time, it is revoked, its operation ceases, or it is extended.

The relevant sections from the Act are:

Section 32 – Duration of scheme

- (1) A scheme must specify the period (not exceeding 5 years) for which it is to remain in force after its commencement.
- (1A) Subject to subsection (2), a scheme (other than an interstate scheme) remains in force until:
 - (a) the period specified under subsection (1) ends, or
 - (b) the scheme is revoked, or
 - (c) the scheme's operation ceases because of the operation of another Act, or
 - (d) the scheme is declared void, either by an order made by the Supreme Court under section 15 or by an order made by the Supreme Court of another jurisdiction under the corresponding law of that jurisdiction, or
 - (e) the scheme is disallowed under section 41 of the [Interpretation Act 1987](#).
- (1B) Subject to subsection (2), an interstate scheme remains in force in this jurisdiction until:
 - (a) the period specified under subsection (1) ends, or



- (b) the scheme's operation in relation to this jurisdiction is terminated under section 16C, or
 - (c) the scheme ceases to have effect in the jurisdiction in which it was prepared, or
 - (d) the scheme is disallowed under section 41 of the [Interpretation Act 1987](#).
- (2) The Minister may, by notice published in the Gazette, extend the period for which a scheme is in force. The notice must be published on or before the day when the original period ends.
- (3) Only one extension may be effected under subsection (2) in respect of any particular scheme, and the maximum period of such an extension is 12 months.

L. Sections 12GNA(2) of the Australian Securities and Investments Commission Act 2001 (Cth), 137(2) of the Competition and Consumer Act 2010 (Cth), and 1044B(2) of the Corporations Act 2001 (Cth) provide for limited liability where a professional standards scheme is prescribed in the relevant regulation. The scheme does not apply to limit any liability under a Commonwealth law unless it has been prescribed under regulations by the Commonwealth.

The Commonwealth Treasury Legislation Amendment (Professional Standards) Act 2004 complements each state and territory's professional standards legislation. It allows professional standards schemes to cap liability for misleading or deceptive conduct in certain cases under the:

- Australian Consumer Law (schedule 2 to the Competition and Consumer Act 2010), section 18
- Corporations Act 2001, section 1041H
- Australian Securities and Investments Commission Act 2001, section 12DA.

The Commonwealth Act does not impose the limitation of liability. Rather, state and territory professional standards legislation only applies if Commonwealth regulations have prescribed that an approved scheme will limit liability for misleading or deceptive conduct.

The Treasury Laws Amendment (Professional Standards Schemes) Regulation (for a particular year) amends the following regulations to prescribe approved schemes:

- Corporations Regulations 2001
- Competition and Consumer Regulations 2010
- Australian Securities and Investments Commission Regulations 2001.

These amendments are usually published twice a year.

If an occupational association wants its approved scheme prescribed under Commonwealth law, it can ask the Council its scheme falls under to pursue prescription for it, or can negotiate directly with the Commonwealth Treasury.

The scheme section guidance

1. Occupational association

1.1 The [name of occupational association] Professional Standards Scheme (the scheme) is a scheme under the [Name of Act under which the instrument is prepared] (the Act) prepared by the [name of occupational association] ([acronym of occupational association]) whose business address is: [insert business address].

The relevant sections from the Act are:



Section 7 – Preparation and approval of schemes

- (1) An occupational association may prepare a scheme.
- (2) The Council may, on the application of an occupational association, prepare a scheme.
- (3) The Council may, on the application of an occupational association, approve a scheme prepared under this section.
- (4) A scheme prepared under this section may indicate an intention to operate as a scheme of this jurisdiction only, or of both this jurisdiction and another jurisdiction.



[Section 4 – Definitions](#)

occupational association means a body corporate:

- (a) which represents the interests of persons who are members of the same occupational group or related occupational groups, and
- (b) the membership of which is limited principally to members of that occupational group or those occupational groups.

2. Persons to whom the scheme applies

2.1 The scheme applies to all members of the [acronym of occupational association] who are [state whether it is all members or a class, or classes, of members].

2.2 [Where the scheme makes provision for exemption, add:] A person referred to in clause 2.1 may, on application, be exempted from participation in the scheme by the [acronym of occupational association] with effect from the date specified by the [acronym of occupational association].

The relevant sections from the Act are:

[Section 17 – Persons to whom scheme applies](#)

- (1) A scheme may provide that it applies to all persons within an occupational association or to a specified class or classes of persons within an occupational association.
- (2) A scheme may provide that the occupational association concerned may, on application by a person, exempt the person from the scheme.
- (3) A scheme ceases to apply to a person exempted from the scheme as referred to in subsection (2) on and from the date on which the exemption is granted or on and from a later date specified in the exemption.
- (4) Subsection (2) does not apply to a person to whom a scheme applies by virtue of section 18, 19 or 20.

3. Jurisdiction

3.1 The scheme applies in [jurisdiction in which the scheme is made].

3.2 [Only include this provision if relevant] In addition to [jurisdiction listed in 3.1], the scheme is intended to operate in [insert the other jurisdictions in which the scheme will apply under the provisions for mutual recognition contained in the Act] in accordance with the professional standards legislation of those states and territories and subject to the requirements of that legislation (“the corresponding laws”), so that references to a provision of the Act, the application of the scheme to a liability, the limit of a liability under the Act, or what constitutes occupational liability, are intended to pick up the relevant provisions of the corresponding laws, applied mutatis mutandis, to the extent that is necessary for the application of the scheme in any of those jurisdictions.

The relevant section from the Act is:

[Section 7 – Preparation and approval of schemes](#)

- (4) A scheme prepared under this section may indicate an intention to operate as a scheme of this jurisdiction only, or of both this jurisdiction and another jurisdiction.



4. Limitation of liability

4.1 This scheme only affects the liability for damages arising from a single cause of action to the extent to which the liability results in damages exceeding [specify amount below which liability cannot be limited by the scheme, in any case no less than \$500,000].

The relevant sections from the Act are:

[Section 26 – Liability that cannot be limited by a scheme](#)

- (1) A scheme can only affect the liability for damages arising from a single cause of action to the extent to which the liability results in damages exceeding such amount (but not less than \$500,000) as is determined for the purposes of the scheme by the Council and specified in the scheme.
- (2) In making a determination, the Council must have regard to:
 - (a) the number and amounts of claims made against persons within the occupational association concerned, and
 - (b) the need to adequately protect consumers.
- (3) A Council determination:
 - (a) takes effect when an amendment providing for its specification in the scheme takes effect, and
 - (b) applies only to a cause of action that arises after the determination takes effect.

4.2 [Where the scheme limits liability by reference to insurance arrangements, add:] If a person who is, or was, at the time of the act or omission giving rise to occupational liability, a person to whom the scheme applies, or applied, and against whom a proceeding relating to occupational liability is brought, is able to satisfy the court that such person has the benefit of an insurance policy:

- a) of a kind which complies with the standards determined by the [acronym of occupational association],
- b) insuring such person against the occupational liability to which the cause of action relates, and
- c) under which the amount payable in respect of that occupational liability is not less than the applicable monetary ceiling specified in clause 4.3 of this scheme,

then that person is not liable in damages in relation to that cause of action above the monetary ceiling specified in clause 4.3 of this scheme.

The relevant sections from the Act are:

[Section 21 – Limitation of liability by insurance arrangements](#)

A scheme may provide that if a person to whom the scheme applies and against whom a proceeding relating to occupational liability is brought is able to satisfy the court that:

- (a) the person has the benefit of an insurance policy insuring the person against the occupational liability to which the cause of action relates, and
- (b) the amount payable under the policy in respect of that occupational liability is not less than the amount of the monetary ceiling specified in the scheme in relation to the class of person and the kind of work to which the cause of action relates,

the person is not liable in damages in relation to that cause of action above the amount of that monetary ceiling.



4.3 The monetary ceiling is \$[insert amount, or insert table if more than one monetary ceiling applies to specific classes of members].

The relevant sections from the Act are:

[Section 24 – Specification of limits of liability and multiples](#)

- (1) A scheme may:
 - (a) specify the same maximum amount of liability in relation to all cases to which the scheme applies or different maximum amounts of liability for different cases or classes of case or for the same case or class of case for different purposes ...

4.4 Clause 4.2 does not limit the amount of damages to which a person to whom the scheme applies is liable if the amount is less than the amount specified for the purpose in this scheme in relation to a person to whom the scheme applies.

4.5 This scheme limits the occupational liability in respect of a cause of action founded on an act or omission occurring during the period when the scheme was in force of any person to whom the scheme applied at the time the act or omission occurred.

The relevant sections from the Act are:

[Section 28 – Limit of occupational liability by schemes](#)

- (1) To the extent provided by this Act and the provisions of the scheme, a scheme limits the occupational liability, in respect of a cause of action founded on an act or omission occurring during the period when the scheme is in force, of any person to whom the scheme applied at the time when the act or omission occurred.
- (2) The applicable limitation of liability is the limitation specified by the scheme as in force at the time at which the act or omission giving rise to the cause of action concerned occurred.
- (3) A limitation of liability that, in accordance with this section, applies in respect of an act or omission continues to apply to every cause of action founded on it, irrespective of when the cause arises or proceedings are instituted in respect of it, and even if the scheme has been amended or has, in accordance with section 32, ceased to be in force.
- (4) A person to whom a scheme applies cannot choose not to be subject to the scheme, except in accordance with provisions included in the scheme under section 17 (2).

4.6 Notwithstanding anything to the contrary contained in this scheme if, in particular circumstances giving rise to occupational liability, the liability of any person who is subject to this scheme is capped both by this scheme and also by any other scheme under professional standards legislation (whether of this jurisdiction or under the law of any other Australian state or territory) and, if the amount of such caps should differ, then the cap on the liability of such person arising from such circumstances which is higher shall be the applicable cap.

Having different liability caps in different schemes that could apply to the same defendant, particularly for multi-jurisdictional entities, may cause uncertainty. This clause aims to reduce this uncertainty for consumers, particularly if the dispute has an intra-jurisdictional aspect.



5. Conferral of discretionary authority

5.1 The [acronym of occupational association] has discretionary authority, on application by a person referred to in clause 2.1, to specify in relation to that person a higher maximum amount of liability than would otherwise apply under the scheme, in all cases or in any specified case or class of case.

The relevant sections from the Act are:

Section 24 – Specification of limits of liability and multiples

(1) A scheme may:

- (a)
- (b) confer a discretionary authority on an occupational association, on application by a person to whom the scheme applies, to specify in relation to the person a higher maximum amount of liability than would otherwise apply under the scheme in relation to the person either in all cases or in any specified case or class of case.

6. Commencement and duration

6.1 The scheme will commence [following subclauses to be modified if scheme is not multijurisdictional, as appropriate]:

- 6.1.1 in New South Wales, the Northern Territory, Tasmania, Western Australia, Victoria, and Queensland, on [date month year]; and
- 6.1.2 in the Australian Capital Territory and in South Australia, on this same date, or such other later date, provided the date is specified in the relevant Minister's notice in relation to the scheme; or
- 6.1.3 in all other cases, subject to the statutory provisions of each applicable jurisdiction.

In NSW, Tas, NT, Qld and WA, a scheme published in the Gazette with the minister's authorisation starts on the date stated in the scheme. In SA and the ACT, the minister may specify the start date by notice. In Vic, a scheme begins 2 months or more after it is published in the Gazette with the minister's authorisation, as stated in the scheme.

In all jurisdictions, a scheme begins 2 months after its date of publication and notification if:

- the scheme does not specify a start date
- the minister does not specify that date in the notice (in SA or the ACT)
- the scheme is not notified in time for the association to meet its intended start date.

Please see the following sections of the professional standards legislation for your state or territory:

Jurisdiction	Legislation	Reference
Australian Capital Territory	Civil Law (Wrongs) Act 2002	Schedule 4 section 4.11
New South Wales	Professional Standards Act 1994	section 14
Northern Territory	Professional Standards Act 2004	section 14
Queensland	Professional Standards Act 2004	section 15



Jurisdiction	Legislation	Reference
South Australia	Professional Standards Act 2004	section 15
Tasmania	Professional Standards Act 2005	section 15
Victoria	Professional Standards Act 2003	section 15
Western Australia	Professional Standards Act 1997	section 27

The relevant sections from the Act are:

[Section 14 – Commencement of schemes](#)

- (1) A scheme published in the Gazette with the authorisation of the Minister commences:
 - (a) on such day subsequent to the date of its publication as may be specified in the scheme, or
 - (b) if no such day is specified – 2 months after the date of its publication.
- (2) This section is subject to any order made by the Supreme Court under section 15 and any order made by the Supreme Court of another jurisdiction under the corresponding law of that jurisdiction.
- (3) In this section, a reference to a scheme includes, in the case of an interstate scheme, a reference to an instrument amending that scheme.

6.2 The scheme will be in force in all applicable jurisdictions for [specify number of years' duration, being 5 or less] years from the date of its commencement in [jurisdiction in which the scheme was made]

6.3 Clause 6.2 is subject to the provisions of each jurisdiction in relation to the revocation, extension, or cessation of a scheme.

The relevant sections from the Act are:

[Section 32 – Duration of scheme](#)

- (1) A scheme must specify the period (not exceeding 5 years) for which it is to remain in force after its commencement.
- (1A) Subject to subsection (2), a scheme (other than an interstate scheme) remains in force until:
 - (a) the period specified under subsection (1) ends, or
 - (b) the scheme is revoked, or
 - (c) the scheme's operation ceases because of the operation of another Act, or
 - (d) the scheme is declared void, either by an order made by the Supreme Court under section 15 or by an order made by the Supreme Court of another jurisdiction under the corresponding law of that jurisdiction, or
 - (e) the scheme is disallowed under section 41 of the [Interpretation Act 1987](#).
- (1B) Subject to subsection (2), an interstate scheme remains in force in this jurisdiction until:
 - (a) the period specified under subsection (1) ends, or
 - (b) the scheme's operation in relation to this jurisdiction is terminated under section 16C, or
 - (c) the scheme ceases to have effect in the jurisdiction in which it was prepared, or
 - (d) the scheme is disallowed under section 41 of the [Interpretation Act 1987](#).
- (2) The Minister may, by notice published in the Gazette, extend the period for which a scheme is in force. The notice must be published on or before the day when the original period ends.



- (3) Only one extension may be effected under subsection (2) in respect of any particular scheme, and the maximum period of such an extension is 12 months.

Submitting this submodule

Submission

To complete Submodule 2.1, you need to submit both:

- the draft scheme instrument, reviewed by your association's governing body
- your cover letter, signed by the governing body.

You can complete this submodule on its own, or with some or all of the other application modules and submodules.

To ensure we can assess this submodule on its own, please:

- include a table of contents, body and attachments with your submission
- avoid cross-referencing other application modules your association has prepared.

Please note that we cannot accept a cover letter without a draft scheme instrument unless you have asked us to prepare a scheme for you. In this case, you still need to submit the required supporting evidence and we will complete our mandatory considerations before we can approve the scheme. A scheme instrument cannot be co-written. See, for example, the Professional Standards Act 1994 (NSW) section 7(2).

Multijurisdictional schemes

If you intend your scheme to operate in more than one jurisdiction, you must ensure it complies with professional standards legislation in all those jurisdictions before you submit it.

The Council considering it will consider matters that Councils in those jurisdictions would consider. This is in line with the Act's corresponding laws provisions. We will not approve a scheme that does not meet the statutory requirements of all states and territories it will operate in.

If your scheme does not comply with all the required legislation, a person affected by the scheme can ask the Supreme Court to order it void for noncompliance. This means that, if a defendant pleads a scheme to limit their civil liability, the plaintiff could challenge the scheme's legality.

For this to apply, the scheme must be approved and the relevant minister must have completed the proper notification process. The person challenging the scheme can be in the scheme jurisdiction or another jurisdiction where the scheme also operates.



Copyright and document control

Document version	1.0
Last endorsed	New document
Next review	1 year after the application framework pilot program begins, then every 3 years
Written by	Director, Professional Standards Regulation
Approved by	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 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 to access NSW legislation.

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