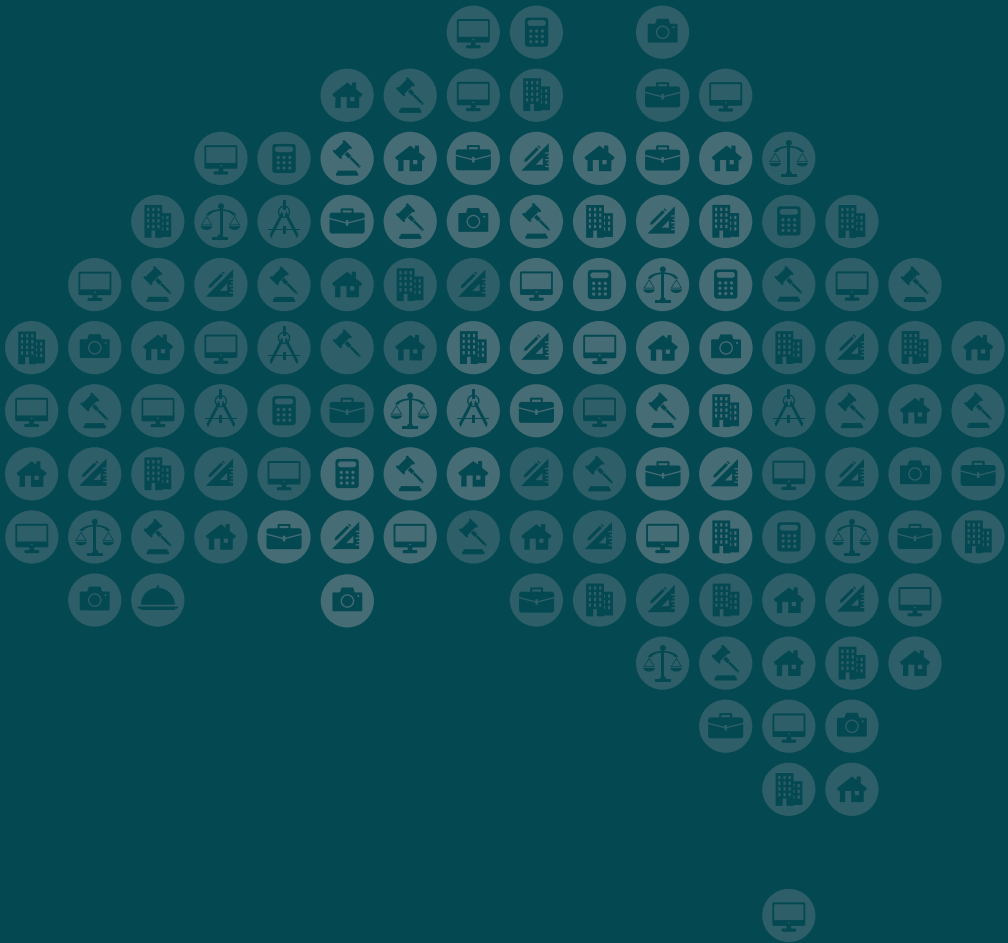
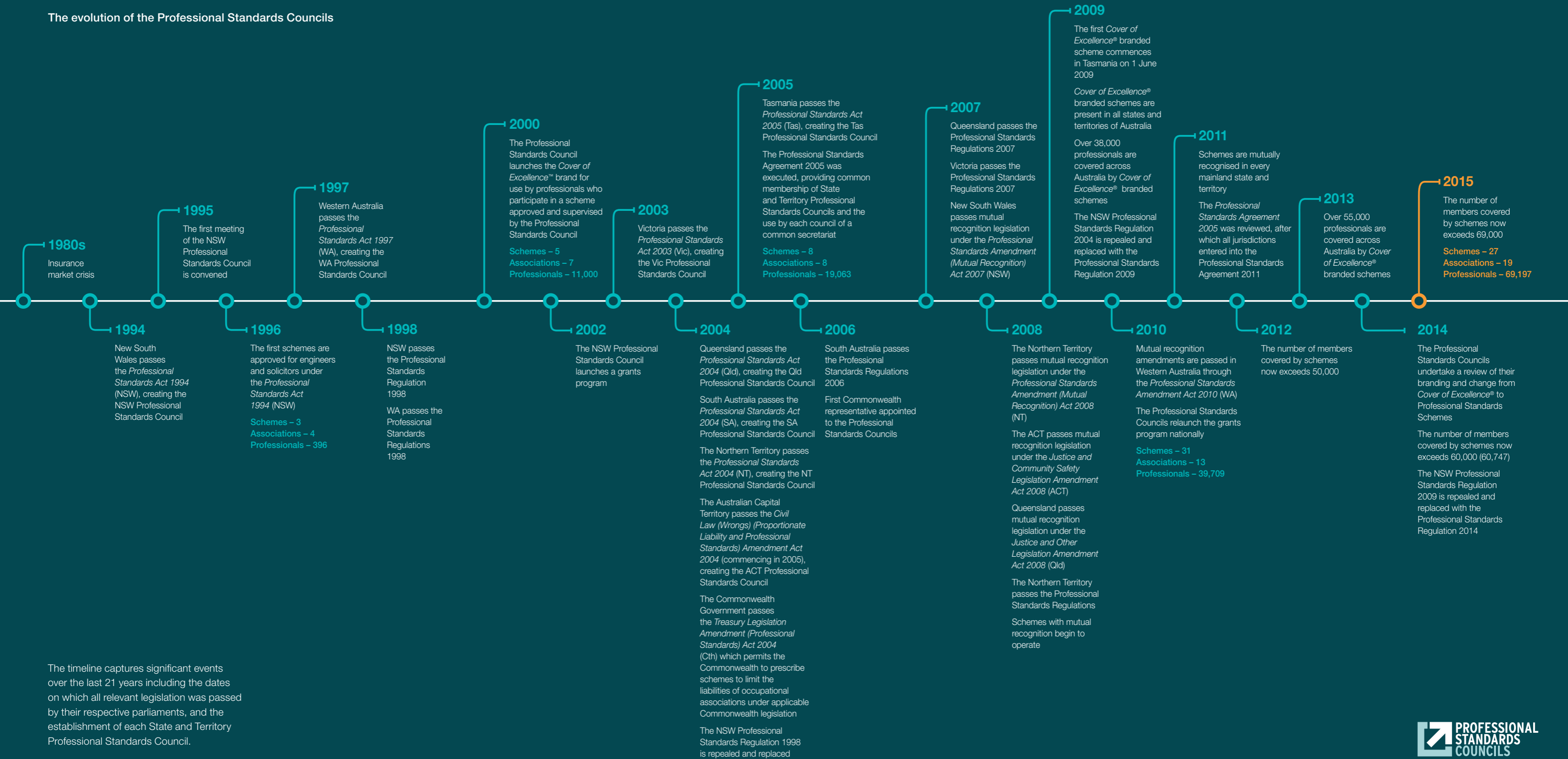


21 years of regulatory innovation through professional standards



The evolution of the Professional Standards Councils



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The Councils' aims

The Professional Standards Councils are independent statutory bodies established in each Australian state and territory under professional standards legislation. The Councils and its agency, the Professional Standards Authority, work to improve professional standards and protect consumers of professional services.

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Welcome



Brian Rayment QC
CHAIRMAN, PROFESSIONAL
STANDARDS COUNCILS

Professional Standards Legislation (PSL) came to life in NSW in 1994 and has since been enacted by every state and territory government. This innovative piece of legislation remains a unique and highly effective regulatory model and it is timely that we acknowledge its history of 21 years and look to its future potential.

The legislation was born out of the vision of those such as the former Attorney-General of NSW, The Hon. John Dowd, AO, QC, who took the Occupational Liability Bill (1990) to the NSW Parliament, and the former Attorney-General of NSW and Minister for Justice, The Hon. John Hannaford, QC, who successfully tabled the Professional Standards Bill (1994).

The vision of the legislation was to strengthen consumer protection and raise standards of professional service delivery while ensuring better access to professional indemnity insurance. That remains the focus of the Professional Standards Councils (PSC).

I am privileged to have chaired the councils over the past 11 years. Technically each state or territory has an independent statutory body appointed by the Attorneys-General and relevant Ministers. However, by agreement between the jurisdictions, all 11 members of each State or Territory Council are the same people.

I would like to acknowledge the very capable individuals, past and present, who have been appointed by the states and territories as members of the PSC. The council members remain dedicated to furthering professional standards in the consumer interest.

On behalf of the PSC, I am delighted to present this book.



Dr Deen Sanders
CEO, PROFESSIONAL
STANDARDS AUTHORITY

Australia's unique regulatory and legislative model, the PSL, is now officially 21 years old. This book marks the occasion and acknowledges 21 years of regulatory leadership by the NSW Government and the PSC.

Here we tell the story of the legislation and councils from their origins in NSW to their adoption and mutual recognition around Australia and the significant milestones along the way. We share the strengths of our current model of meta-regulation and discuss the future potential of this approach.

Models for professionalism and regulation are discussed, and the key issues for the regulation of professions are considered. Our current research program is profiled and we look to developments in the US and the UK.

As part of our exploration, we profile some of the professional associations that respond to PSL, their evolution over the 21 years and their perspectives on the future.

This is followed by opinion pieces from external observers of professions who explore the key drivers of change and the issues professionals are now facing.

In short, this book outlines the journey of professions in Australia and signals a compelling role for them into the future. We trust that those leading professions and influencing regulatory policy will find it insightful and informative.



The professions and regulation

The most frequent question we are asked is – what *really* is a profession.

While the word ‘profession’ means different things to different people, at its core it’s meant to indicate trust and expertise. Given today’s environment in which knowledge and expertise are changing rapidly, it’s generally understood that simply deriving an income from a particular task may make you an ‘expert’ or ‘good at your job’ but being a ‘professional’ should have a broader meaning.

There’s a long history of attempts to clarify this meaning, which typically centre on moral or ethical foundations within the practice of a specific and established expertise.

In government, the interest in professions naturally revolves around the role they play in protecting the public and ensuring the efficient and expert performance of services. With that in mind, a profession may be thought of as an occupational group with specific higher education, expert knowledge and a professional integrity framework that underpins community trust, respect and recognition.

Professions continue to evolve as community expectations evolve. Traditional ideals of professionalism are being challenged with changes in technology and commerce and even in the way new knowledge is constructed between academic and industry environments.¹

Models for regulating professions may also evolve as governments weigh the rising cost of regulation against growing consumer expectations.

The global debate about regulation in the wake of wavering confidence in the ability of corporate regulation to protect consumers emphasises the important role of individual obligation on the part of the professional.

In that evolving space, Professional Standards Legislation (PSL) offers an important way of encouraging individual responsibility and ensuring professions (via professional associations) take their share of responsibility for consumer safety, expert members and public trust seriously.

The value of professions

An important feature of professions is that individual professionals benefit from the respect and community trust in their expertise. However, we believe that the benefits of professions also encompass the following areas:

The community – Consumers face a complex array of professional services choices, from medical and health to business and financial services. Professions play a vital role in providing trusted expertise founded on established standards that are policed to ensure community expectations of good practice and social purpose are met.

As the *Professional Body Sector Review 2014* points out, “widespread support for trustworthy professionalism generated for individual professions can act collectively as a form of social infrastructure for society”.²

The economy – Professions improve consumers’ access to services and support economic activity by encouraging confidence and trust in the services offered by professionals. This is increasingly important in our services-oriented economy where knowledge forms the basis of many transactions.

Regulators – The burden of regulation and supervision by government can be reduced by improving the standards of practice of professionals and the regulatory capacity of professional communities. It has been argued that professionalism represents a distinct form of regulation in itself.³ “Professions create and maintain distinct professional values or moral obligations (e.g. codes of ethics)” according to Julia Evetts.⁴ Indeed, professionalism can be seen as a method of regulating and monitoring the provision of complex services to the public.⁵

Models for regulating professions may also evolve as governments weigh the rising cost of regulation against growing consumer expectations.

Professionals – Professions not only improve employment and career longevity, but can also provide an important community purpose and empowerment, allowing people's careers to contribute to the social good. Professionals enhance their reputations and skills by adhering to the professional standards and requirements of their professional bodies.

Professional recognition

Organisational theorists typically have focused on a set of objective traits to define whether a group is able to call itself a profession. For instance, in 1957, Ernest Greenwood⁶ proposed that a profession required the elements of a:

- body of theory
- authority
- community sanction
- code of ethics
- professional culture.

The Professional Standards Councils (PSC) takes a specific approach to considering whether a profession meets an established set of statutory requirements. The Professional Standards Authority (PSA) takes an even more detailed perspective in working with associations to achieve readiness for that recognition, including how an association:

- implements and responds to legislation and its regulatory obligations
- responds to risks and the changing expectations of the public
- ensures good governance
- meets the financial and staffing requirements to run an effective profession
- promotes and ensures the professional, ethical conduct of members
- develops and provides guidance to members on good practice

- engages with the community and is professionally and practically responsive
- is held to account by its members and the public, and ensures the transparency of professional conduct issues
- ensures the continuing competence of members
- maintains a formal register of professionals.

Regulatory options

Governments have a range of regulatory responses to consumer risk. The UK Better Regulation Taskforce, along with the Organisation for Economic Cooperation and Development (OECD) and Australia's Office of Best Practice Regulation, have common spectrums that tend to range from no regulation to the most interventionist position of prescriptive statutory regulation, as shown in the following table.

No regulation	Self-regulation	Co-regulation	Statutory regulation
There are no explicit controls on an organisation.	Regulations are specified, administered and enforced by the regulated organisations.	Principles-based regulation as a form of self-regulation, where the government identifies the principles but the industry regulates the detail, may begin at this point. Regulations are specified, administered and enforced by a combination of the State and the regulated organisations.	Regulations are specified, administered and enforced by the State.

Source: Bartle & Vass, *Self-regulation and the regulatory state: A survey of policy and practice*, Research Report 17, University of Bath, Centre for the study of Regulated Industries, October 2005.

Professional regulation when done properly relies on an understanding between the profession and the wider society that professionals will act in the public interest.

Frequently, the self-regulation end of the spectrum is the most highly rated in the abstract environment of non-contested policy debate because this reflects the benefits of self-regulation delivering cost, efficiency, market independence and alignment of knowledge and oversight.⁷

Public expectations and media commentary in times of crisis inevitably will be directed towards increased statutory regulation.⁸ However, models of professional self-regulation or shared regulation are of increasing interest to both regulators and professional associations.⁹

This is not only because of the benefits of professions outlined earlier but also because the typical goal of professions and government is to encourage proper conduct across society so that the scarce resources of government can be directed to issues of larger concern to the population.

Professional regulation when done properly relies on an understanding between the profession and the wider society that professionals will act in the public interest.

Despite the spectrum of regulation mentioned previously, it is often seen as shared regulation rather than self-regulation, with governments delegating regulation to professional associations as occurs in Australia under PSL, and also in Canada.

Claude Balthazard, writing in the context of human resources professionals in Canada, argues that the first principle of professional regulation is to protect the public, not to enhance the status of the profession, although this often

happens as a consequence of being properly regulated and delivering better community confidence.¹⁰

Who to regulate and recognise under PSL

Noting that governments have the previously mentioned choices in determining the best regulatory responses, we apply a rigorous methodology to attempt to pinpoint areas of research and regulatory interest before they become a source of substantial detriment.

To assist in this, we use a regulatory prioritisation formula developed in independent research by Dr Deen Sanders¹¹, CEO of the Professional Standards Authority (PSA) – see below.

Regulatory Prioritisation Equation

(Sanders 2010)

$$\frac{C + EN + R}{\text{Trust ES}}$$

C = Complexity

EN = Necessity

R = Risk arising from using non-expert

Trust ES = Trust in existing expert sources as a solution

The regulatory prioritisation formula can be used to highlight the most appropriate groups for increased regulation and/or professionalisation based on:

- the complexity of the market segment
- the necessity for engagement
- risk arising from using a non-expert service provider
- trust in existing sources of expertise.

Of course, the benefits of professionalisation also motivate occupations to undertake that process on their own. As a result, the PSA is dedicated to working with groups that are interested in and have a capacity to participate in the PSL. We consider that encouraging groups to professionalise themselves before consumer risk arises delivers a stronger public benefit.

Future regulatory challenges

Balancing the issues outlined here is a perpetual challenge, made more so with changing technology, the rapidly changing nature of work and even the structures of employment. Notably, an increasing number of professionals are now either employed in or responsible to corporate entities, when the traditional model assumes professionals work as individuals, often in small firms or as sole practitioners, and usually with others from the same profession.

In the 21st century, professionals are increasingly working in multi-disciplinary corporate environments that have a large number of employees. They are also increasingly facing globally connected clients and competitors, and new technology-enabled business models.

This frequently gives rise to professionals having multiple and often competing obligations – to shareholders, the company, their professions and the public. It is a challenge to juggle these obligations while upholding professional obligations in environments where incentives and authority might challenge those loyalties.¹²

It is also a challenge for government and regulatory systems to keep pace with changing work, service and employment models.

We contend that for policymakers to maintain and strengthen consumer protection in the face of these changes, we need to rely on an even more dynamic discourse between regulators and professions.

As David Benton writes, professional regulation is designed to “utilize the expertise of the profession, act to protect the public and simultaneously grant professions the necessary autonomy to act in a manner that avoids political imperatives”.¹³ We believe that

the meta-regulatory model of PSL represents one of our strongest tools to assure obligation and improved standards in a responsive and encouraging way, and we anticipate it will play an even larger role in future regulatory design solutions for government.

It is also a challenge for government and regulatory systems to keep pace with changing work, service and employment models.

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History and evolution

The Professional Standards

Legislation is a unique and progressive regulatory model, now with 21 years of history. It arose through remarkable vision prompted by an emergent gap in consumer protection.

In this section we look back to the origins and motivations for the legislation, and the historical events that led to the adoption and mutual recognition of such legislation around Australia.



The path to a new regulatory model

Australia is the only country to have a statutory scheme that limits the liability of professionals.

This professional standards scheme puts a ceiling on the amount of civil liability a member of an accredited association may face. It is founded on the tenets of the Professional Standards Councils – to protect, improve and help consumers and the professionals offering the services – and has developed over 21 years.

Previously, common law prohibited any recovery for economic loss in the absence of reasonably foreseeable harm to a plaintiff personally. It was considered undesirable to expose defendants to potential liability “in an indeterminate amount for an indeterminate time to an indeterminate class”.¹



Britain's House of Lords

That changed in 1963 when Britain's House of Lords decided negligent advice could cause a breach of duty of care in regards to pure economic loss. The decision had significant implications for occupational groups as it opened the way for clients to sue for professional negligence.

The principle was subsequently applied in Australia and it imposed liability for negligent statements made by a wide range of professionals in a wide variety of circumstances. As a result, statements containing information, advice, opinions and promises all had the potential to generate liability claims.

The lack of an upper limit worked fairly well while the scale of claims was modest because professionals were still able to get insurance cover. The insurance premiums were built into the professional's fee, providing an effective and equitable means of spreading the cost of liability.

However, the damages awarded by courts in professional liability cases gradually began to rise and, as a result, insurance premiums jumped. In some cases, insurance could not be bought at any price. Ultimately, practitioners began abandoning their professions because the costs and risks were becoming unacceptably high.

The fear of being sued made others more conservative, and professional associations warned that members might stop offering some services.

The journey begins

Something needed to be done. Pressure for government action was building and the first concrete response came from the Attorney-General's Department of NSW. In 1989, it issued a discussion paper

entitled *Limitation of Professional Liability for Financial Loss* stating that professional bodies were the ones best able to ensure any proposals were appropriate and functional. The department recognised that giving professional associations a more active role in maintaining standards would encourage greater self-regulation with oversight by an independent body.

In 1990, the then Attorney-General of NSW, John Dowd, AO, QC, introduced the Occupational Liability Bill (1990) NSW (the 1990 Bill) into the NSW Parliament “to allow government approval of schemes for professionals to provide for limited liability; compulsory professional indemnity insurance; risk management; and complaints and disciplinary structures”.² The 1990 Bill proposed a scheme of limited liability while establishing risk-minimisation procedures and review by way of a Standards Council.

The Bill excluded liability for damages arising from death or personal injury, a breach of fiduciary duty, fraud or dishonesty.

It detailed two schemes, neither being compulsory. The first limited liability to a specified amount if insurance against civil liability was held to that amount or if business assets were retained to that amount. “Business assets” were defined as “the property of the person which is able to be taken in proceedings for enforcement of a judgement of a



The Hon. John Dowd, AO, QC, former NSW Attorney-General

court, other than property which is not used in the performance of the person's occupation".

The second scheme limited liability to a multiple of the cost of providing the service from which the liability had arisen. The Bill also proposed an Occupational Liability Council be established to help professionals and others improve their standards and recommend which groups should be included in the Act.

The 1990 Bill remained on the table of the House and was not debated until it was reintroduced into the NSW Legislative Council on 14 September 1994 as the Professional Standards Bill (NSW) 1994 by the then Attorney-General and Minister for Justice, The Hon. John Hannaford, QC.



The Hon. John Hannaford, QC, former NSW Attorney-General and Minister for Justice

“The policy behind this legislation accepts that it is preferable to provide some guarantee of payment for the vast majority of claimants than to have a system of unlimited liability with no certainty of any payment in many instances.”

The Hon. John Hannaford, QC, the then NSW Attorney-General, when introducing the Professional Standards Bill, Hansard, Legislative Council, 14 September 1994, pp 2933-5

The Bill was unique. It meant occupational groups would commit to improving professional standards and be accountable for consumer protection. For most, the “caps on liability” suggestion was the big attraction.

The Bill stipulated that the occupational associations' relationship with the Professional Standards Councils would be entirely voluntary but with the understanding that they would be subject to statutory obligations.

For the first time in history, the legislation created a 'meta-regulator' to work with professional associations on their integrity and

performance and make them accountable to the community. The Bill required all associations with schemes to implement systems to manage and improve the quality, competency and ethical conduct of their members, and to hold them accountable.

As a minimum, the Bill required an association to have adequate qualification requirements for its members, a code of ethics, continuing professional development, and complaints and disciplinary mechanisms.

Although capped liability existed elsewhere (such as for motor accidents and workers' compensation), the quid pro quo – compulsory risk-management strategies to minimise consumer losses caused by professionals and compulsory insurance cover to ensure reasonable compensation – was a significant innovation that one NSW minister described as “epoch-making”.

The *Professional Standards Act 1994* (NSW) was passed on 12 December 1994 and came into force on 1 May 1995. The Professional Standards Council of NSW was formed in the same year.

It took a further three years for Western Australia to introduce similar legislation, passed in 1997. The other states and territories, however, did not rush to implement similar legislation. It took the widespread unavailability and unaffordability of

“While historically professionals have regarded it as axiomatic that they meet the consequences of their own mistakes, the fact is that for many professionals insurance is now unavailable or unaffordable to levels commensurate with their exposure and liability.”

The Hon. John Hannaford
QC MLC, the then Attorney-General and Minister for Justice NSW Legislative Council, Hansard, 14 September 1994, p 2933

professional indemnity insurance following the HIH Insurance collapse in 2001 to spur the rest into action.

The shortage of professional indemnity insurance resulted in professionals pulling out of a number of higher-risk services, causing a public outcry.

The Commonwealth Government subsequently passed legislation allowing occupational liability to be limited under the *Trade Practices Act 1974* (now the *Competition & Consumer Act 2010*), the *Corporations Act 2000* and the

Australian Securities and Investment Commission Act 2001.

As at 30 June 2015, there were 19 associations operating 27 Professional Standards Schemes, collectively covering more than 65,000 professionals in diverse fields. State and territory professional standards Acts (and their associated limited liability schemes) are administered by eight Professional Standards Councils, pursuant to the Intergovernmental Professional Standards Agreement 2005.

Regulatory reform in the 1970s and 1980s

The path to better regulation began in 1978 when the then Federal Minister for Industry and Commerce, Phillip Lynch, commissioned an inter-departmental working group “to conduct an inquiry into the extent of unnecessary paperwork imposed by government in Australia on small business”.³



Phillip Lynch, former federal Minister for Industry and Commerce

The Australian Bureau of Statistics made one of the first significant attempts to estimate paperwork costs, and its working group reported to Parliament in 1979

when the Minister announced that, “all Commonwealth departments and authorities would be reviewing the paperwork requirements on the business community with a view to achieving a reduction in Commonwealth Government paperwork”.⁴

In 1985, the Business Regulations Review Unit (BRRU) was set up in the Department of Industry Science and Technology to examine “all forms of regulation whether in the form of laws, subordinate legislation and executive orders which impact on business”.⁵

In 1989, the BRRU was renamed the Office of Regulation Reform (ORR) and moved to the Industry Commission. The ORR covered developments in regulatory policy at the Commonwealth level, commented on initiatives in the states and territories, and shared information about international developments.

Regulatory reform in the 1990s

In February 1994, the Council of Australian Governments (COAG) Committee on Regulatory Reform reported on key issues relating to setting national standards. It covered the development of national standards; a national standards impact assessment process; monitoring the appropriateness of proposed national standards; and procedures to encourage compliance with national standards.

On 11 April 1995, COAG endorsed the public release of a document entitled *Principles and Guidelines for National Standard Setting and Regulatory Action* (COAG Principles and Guidelines). This provided a framework of principles for Ministerial Councils and other inter-governmental standard-setting bodies that required public consultation on proposed standards and the preparation of regulatory impact statements to ensure net social and economic benefits.

In 1996, the ORR moved to the Productivity Commission but continued as an autonomous unit. That same year, the federal government commissioned a Small Business Deregulation Taskforce

“A ‘regulate first, ask questions later’ culture appears to have developed. Even where regulatory action is clearly justified, options and design principles that could lessen compliance costs or side effects appear to be given little consideration.”

Australian Government, Taskforce on Reducing Regulatory Burdens on Business, *Rethinking Regulation*, January 2006, p ii

comprising of representatives from the business sector to report on measures to reduce the compliance and paperwork burden on small business by 50 per cent.

On 12 October 2005, then Prime Minister John Howard announced the formation of the Taskforce on Reducing Regulatory Burdens on Business, which was to report on areas where regulatory reform could make significant immediate gains.

The government, which provided its final response to the taskforce's report on 15 August 2006, accepted in full or in part 158 of the 178 recommendations. The government also decided that the ORR should be renamed the Office of Best Practice Regulation (OBPR) and oversee all other regulatory quality tools, annual regulatory plans and regulatory performance indicators.

Today the OBPR administers, monitors and reports on the federal government and COAG's regulatory impact analysis (RIA) requirements.

The taskforce's recommendations started a new phase of reform, with an emphasis on improving the institutions that promote good regulation.

Then Prime Minister Kevin Rudd, in a first for government, created a Cabinet portfolio position of Minister for Finance and Deregulation in November 2007 and moved the OBPR from the Productivity Commission to the Department of Finance.

In December 2011, the government announced an independent review into how well the RIA processes met the needs of businesses and the not-for-profit sector. It also looked at how the OPBR administered the government's best-practice regulation requirements.

In 2013, the government committed to boosting productivity, increasing competitiveness, reducing unnecessary regulation and lifting regulatory performance. It declared it would use two repeal days each year to cut unnecessary and costly legislation and regulation.

The first repeal was held on 26 March 2014, the second on 22 October 2014 and a third on 18 March 2015. The total net deregulatory savings to date are more than \$2.1 billion.

On 14 September 2015, the professional standards legislative framework celebrated its 21st anniversary in NSW and it has not only survived, but thrived.

The number of professional associations being granted schemes continues to grow, as does the number applying for them. This comes as no surprise as the professional standards framework meets all the criteria of the best-practice regulation policy.

The Professional Standards Councils

Each state and territory has an independent statutory body, a Professional Standards Council, to

administer the legislation and achieve its objectives. Each council has a chairperson, deputy chairperson and councillors appointed by the Attorneys-General.

All 11 members of each State or Territory Council are the same people. NSW and Victoria nominate two members each, while all other states and territories and the Commonwealth nominate one. Members are appointed for up to three years and can be reappointed at the end of their term.

Appointments are based on an individual's skills, qualifications, experience and ability to contribute to the work of the council. The NSW Attorney-General's Department provided secretariat support to each of the councils until 1 July 2015 when the Professional Standards Authority, the regulatory agency of the PSC, was transferred to the NSW Department of Finance, Services and Innovation. The agency is based in the Sydney CBD.

The councils are not regulators in the usual sense. They are meta-regulatory bodies. That is, they support the self-regulation of occupational groups by their representative bodies. The councils' statutory functions generally include approving schemes; monitoring occupational standards and risk management; and encouraging and helping improve self-regulation and occupational standards.

The PSC is a prime example of a meta-regulator that benefits its stakeholders. Members of occupational associations that create endorsed schemes receive a cap on the cost of their insurance. The community benefits from better protection and the government gets a meta-regulator that provides occupational associations with a path to professionalism that removes the need for individual legislation.

“There will be considerable benefit to consumers from choosing to deal with a professional who is part of a scheme under the legislation.”

Chris Hartcher, the then NSW Minister for the Environment, second reading speech, Hansard, Legislative Council, 14 September 1994, pp 3636–7

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Present day

Capable associations are central to professionalism and effective regulation. The professional associations connected with the Professional Standards Councils (PSC) have evolved and developed over the past 21 years, maintaining professional standards and responding to change and opportunity. Three association CEOs were asked to reflect on that history and the outlook for professional standards and regulation.

The views expressed in this chapter are those of the contributors and are not intended to represent the views of the PSC or its agency.



New accounting rules for the global economy

An interview with **Lee White**, CEO, Chartered Accountants Australia and New Zealand



Lee White

Lee White is CEO of Chartered Accountants Australia and New Zealand, which is made up of around 115,000 diverse, talented and financially astute professionals who use their skills every day to make a difference for businesses the world over.

“Regulation can always be improved through better communication, which means the regulators need to make sure the outcomes they seek are spelt out to avoid misunderstanding and fragmentation.”

Chartered accountancy has come a long way as a profession over the past 21 years, according to Lee White, CEO of Chartered Accountants Australia and New Zealand.

The Australian profession has moved to international accounting standards, adapted to stronger regulations, forged a connection with New Zealand, widened its educational options and embraced more technological changes.

International standards arrive

One major change for the profession was to ensure Australia was well equipped to adopt international accounting standards in 2005.

“We worked hard to prepare our members,” Mr White says. “We were early adopters and we were proud of that.”

Closer to home, national regulator, the Australian Securities and Investments Commission (ASIC) was given greater powers, particularly in how it related to auditors.

“We believe those powers now have reached the right balance, so that there is a strong co-regulatory model of our profession,” Mr White adds.

Hands across the water

Most recently, the association has been able to bring Australian and New Zealand members together to share experiences and collectively speak for the public interest.

“There has been growth in education and changes in the way it is delivered and that’s an important part of maintaining our relevance to our members,” Mr White says. “Our members are also starting to specialise, so it’s necessary for us to equip them with the tools they need to be relevant in the services they deliver, now and in the future.”

Mr White says the changes over the 21-year existence of the Professional Standards Schemes can be broken into four main categories. The first is the impact of technology and its increased use in the delivery of services.

“Technology has allowed business to operate without borders – therefore we need to help our members engage with business and their clients in ways they previously haven’t been able to,” he says.

“Technology allows a greater connectivity not only among our members in 104 countries but also between professions. Professionals want information quickly, and technology can do that, but we as a member organisation play a fundamental role in helping our members connect with business.”

Education becomes more flexible

The second change is in education. “We are an educator and the speed at which our members are looking to enhance their levels of understanding has changed rapidly in that period,” he says.

Education is available in much more flexible ways than through the traditional streams and this is bringing diversity and inclusiveness to the profession, Mr White says.

He says there is a need for life-long learning options to allow members to get much greater detail in areas of specialisation.

“More people are also switching careers to accounting and we are looking at ways we can recognise what they have already achieved in order to bring them into the profession,” he says.

The world comes calling

The third change is the globalisation of business. The association needs to be able to help members provide services across borders.

“We have also seen the impact of challenges at a global level affecting policy and regulation in Australia, and a lot of the focus of the profession is around international tax and in particular whether there is erosion of the tax base in Australia by multinational companies,” he says.

“As our profession becomes a global profession, the synergies that come from joining up with others is obvious.”

Finally, there has been a big change in the demographics of the accounting profession in terms of gender, age and ethnic backgrounds, so the focus has been on being inclusive to all.

“With each of these changes we have needed to ensure we remain relevant and contemporary for our members,” Mr White says.

“Importantly, we must also ensure there is a focus on ethical behaviour and when it is not up to the standards expected, take appropriate action to ensure the overall brand of chartered accounting maintains its integrity and quality.”

Focus on regulation

Regulation remains a big challenge for any professional association and is an area in which Mr White has a great deal of experience, having been the chief accountant for ASIC.

“I would look to improve regulation by considering the leadership role Australia and New Zealand have in the region and ultimately globally,” he says.

“When you have many different structures of regulation, I think it is important that there is a level of mutual recognition and ultimately mutual reliance between different forms of regulation.

“Professional Standards Legislation is a unique regulatory instrument and a positive part of that structure of regulation, and there is strong opportunity to profile it globally.

“Balancing business and regulation can be a huge challenge but as business is now borderless, regulation has to move at a pace consistent with how business is moving.

“There are also opportunities to tailor a scheme to reflect changes in the way businesses and accountants interact.

“Regulation can always be improved through better communication, which means the regulators need to make sure the outcomes they seek are spelt out, to avoid misunderstanding and fragmentation.”

He says schemes ensure the public is protected, and that engenders trust in the accounting profession.

Legal sector faces fundamental changes

An interview with **Nerida Wallace**, CEO, Law Institute of Victoria



Nerida Wallace

Nerida Wallace is CEO of the Law Institute of Victoria, which represents approximately 19,000 lawyers and people working in the law in Victoria, interstate and overseas.

“Good regulation can be an advantage. For instance, the Professional Standards Scheme has proved a great marketing tool for lawyers as they can point out to clients that they are protected by a further framework of compensation assurance.”

Technology is commoditising the law and allowing more competition into the market via the internet, which is a huge challenge for the legal profession, Law Institute of Victoria CEO Nerida Wallace says.

“The traditional model was one lawyer, one matter, one client, with the lawyer there for the entire life of that matter,” she says.

“So ostensibly, a highly qualified, highly paid person applied their attention to all of the detail. You don’t need that. You need that level of attention applied only where it is required.”

The solution has been to “unbundle” functions into different groups of expertise and cost, applying the more expensive resources to the more difficult functions and commoditising the rest. Often the commoditising is done elsewhere.

That change will help lawyers as the sector becomes more competitive, particularly with overseas groups moving in that operate entirely online.

Increasing competition

Ms Wallace sees key emerging issues for the legal profession as the increasing impact of technology, the introduction of a new uniform law regulating legal work, and interaction with Asia.

“The legal profession is a services industry and that means you are only as good as your last job,”

Ms Wallace says. “Implementing new regulation is a cost only balanced as a potential benefit if all states in Australia join the uniform law.

“That’s the real threat to the legal profession. We have to keep up. We have no option. We have to compete and bring innovation and high professional standards to engagement with Asia and to new technology.”

Good regulation can be an advantage. For instance, the Professional Standards Scheme has proved a great marketing tool for lawyers as Ms Wallace says they can point out to clients that they are protected by a further framework of compensation assurance.

“People are very happy to have that because it gives them a degree of comfort, particularly on very complex matters and very large matters,” she says.

Uniform law joins states

The Law Institute of Victoria and the legal profession generally have faced many changes over the 21 years of the Professional Standards Scheme.

The biggest recent development has been the introduction of the uniform law, which is intended to cover all lawyers but so far has only been adopted by Victoria and NSW.

The uniform law was introduced on 1 July 2015 with the objective of creating a common legal services market nationally.

It governs matters such as practising certificate types and conditions, maintaining and auditing of trust accounts, continuing professional development requirements, complaints handling processes, billing arrangements and professional discipline issues.

In other changes, the Victorian Government separated the complaints handling mechanism from the state's Law Institute in 1994, which until that date had been a purely self-regulating body. The Law Institute of Victoria (LIV) now provides regulatory services to the regulating body, the Legal Services Board, which is a separate entity under the auspices of the government.

In moves to combat 'bill shock', the governing legislation, the *Legal Practices Act*, was altered in 2004 to improve disclosure on the cost of litigation and what was likely to happen in that action. These changes were extended in 2015 with a simplified process for matters under \$3,000 and more disclosure required with every change in a matter. If mistakes are made, the consequences for lawyers are much greater but for consumers, costs disputes can now be decided by the Legal Services Commissioner up to \$100,000.

Education options broaden

Other fundamental changes have come about as people have become more informed about how the

legal system works, including the courts. As a result, there has been a recognition that the courts also need to start educating self-represented litigants.

In fact, education generally has become a big issue, highlighted by publicity about the large number of law graduates and concerns about the job market that will greet them.

"There has been an increase in the number of law schools, and the Chief Justice has expressed concerns about that," Ms Wallace says.

"What's being taught in law schools has also changed. In 2010, the committees that manage what is taught in law schools and afterwards in order to work as a lawyer looked at the subjects, with the end result that more of the 'soft' skills – dealing with clients, mediating disputes and managing legal practices – are now in the curricula."

Institute moves into new areas

The LIV has also gone from being a regulator to being closer to a professional representative association and that transition has not yet fully matured.

It is a not-for-profit organisation and assists the government in reforming the law through 1,300 volunteer experts and 72 committees. It still represents 19,000 lawyers, although its 100 per cent coverage has dropped to just under 70 per cent because of deregulation

and because the association lost the capacity to manage practising certificates in 2013.

"In future, lawyers will have to work in multidisciplinary networks to deal with complex problems. They may not be working with a firm, but they will be in a network that will be managed by a project manager or in a labour hire firm model that will be both exciting and challenging. They will need to know how to obtain the right data.

"We can also see the emergence of a new group of paralegals, or non-lawyers, who will engage with the client and bring in lawyers much as a GP would bring in specialists."

Some things won't change

Nevertheless, some things will stay the same.

"People will always get into trouble," Ms Wallace says. "People will always need a trusted adviser to take them through a process.

"People will always want someone to effectively guide them through a change in circumstance or to move from 'A' to 'B' in a commercial situation.

"On the back of that there may even be a growing role for the Professional Standards Council as people will more than ever need to be able to recognise those who are known to take responsibility for the outcomes, and that's a differentiating factor between a professional and a non-professional."

Engineers take a stand

An interview with **Stephen Durkin**, CEO, Engineers Australia



Stephen Durkin

Stephen Durkin is CEO of Engineers Australia, the peak professional body for the engineering profession in Australia, which represents some 105,000 members.

“We have broadened the standards and skills of a chartered engineer to embrace softer skills such as communication, teamwork and leadership.”

Having a register of members is an important obligation for a profession, and an expectation of the PSC. A register has greater effect if supported by licensing arms of government. Engineers Australia (EA) had trouble convincing successive federal governments to support a national register of members of the profession, so it has decided to go it alone.

“Being the peak body and the custodian of professional standards, we felt a profound obligation to develop a public register of properly qualified engineers to identify people who subscribed to our code of ethics and demonstrated an ongoing commitment to professional development,” says EA CEO Stephen Durkin.

The result is a public register to help users of engineering services check whether the engineers they want to use are qualified, suitably trained and up-to-date professionals.

“We want to reframe the public perception of engineers from a trade image to one of trusted, competent, qualified professionals,” says Mr Durkin.

He says engineering has changed a lot over the 21-year history of the Professional Standards Schemes, with one of the biggest challenges being the globalisation of the profession and its increasing international orientation.

One in two engineers comes from overseas

“There are many more engineers coming into Australia as skilled migrants from all parts of the world,” Mr Durkin says.

“There would have been demand for about 150,000 engineers in Australia over the past 21 years, yet our education system produced only about half of those. Almost one in two engineers has come from overseas.

“At the same time, somewhat ironically, more and more Australian engineers have been moving to work on the world stage. We expect both of those trends to continue in the near future.”

The shift to private enterprise

According to Mr Durkin, there has been a major shift in the sectors in which EA members are employed, with a lot of work traditionally done in the government sector moving to private enterprise.

“For example, 25 years ago there were 100,000 engineers working in all forms of government – state, federal and local – and that figure today is less than 20,000,” he says.

“There’s also been a broader reshaping of the understanding of the value of an engineer. For example, there are more than 100,000 engineers working in sectors other than traditional engineering – working in banks, management consulting firms –

on account of the unique skills engineers have in terms of analysing problems and managing businesses and operations.

Broadening the definition of 'engineer'

"We have broadened the standards and skills of a chartered professional engineer to embrace softer skills such as communication, teamwork and leadership.

"In fact, we have just initiated a new college of engineering leadership and management to further the leadership skills that will help Australia move to a high-tech, high-value, knowledge-based economy."

Growth has come with the changes. Twenty five years ago, EA had 65,000 members; today there are almost 105,000 and many of those are in other parts of the world.

Bridging the gap between education and industry

Mr Durkin says to ensure EA is helping set the standards that define an engineer's role – not just in Australia but anywhere around the globe – the association has focused on its role as a learned society, with a heavy emphasis on education. He says EA is playing a significant role as a bridge between tertiary education providers and industry.

"There has been multi-faceted effort between government, industry and the association to really support the development of maths and science

skills in high schools so ultimately we can have more engineers trained in Australia."

Becoming the trusted voice of the profession

Mr Durkin says the focus has been on modernising EA over the past few years to have a more influential public voice and to connect more effectively with industry and employers.

He says the association's media profile has increased tenfold in a couple of years.

"We have created a new vision statement for Engineers Australia that has a number of key components – one being the trusted voice of the profession." Mr Durkin says.

"Second, we are emphasising the leadership role of engineering in rethinking infrastructure and transitioning to a high-tech, high-value, knowledge-based economy.

"Finally we are taking a more international orientation."

Our members understand the benefit of being a member of a profession recognised by the PSC, but there is more we want to do to increase participation and help them understand why it's important in their daily practice.

"Certainly we are aware of the significant uptake of the Profession Standards Scheme by the legal and accounting professions. It's

something we are looking to learn from and something we can embed into our organisation in a way that provides greater protection for consumers and credibility to engineers," Mr Durkin says.


Public interest and the Professional Standards Legislation

When things go wrong with the advisers we hope are looking after our interest, media and public attention often turns to concerns about professionalism, standards and ethics.

For professions given special status by the community or the government, there is often a questioning of that status and the rights of that group to self-regulation.

The media attention sometimes magnifies community concerns and creates additional pressure for regulatory reform.

The following cases are drawn broadly from the fields of influence of the PSC and still only represent a snapshot of occupational sectors.



Abbott government innovation policy on right track for start-ups

Layers of rules

Clearly not every public-policy problem should be solved with legislation or government action.

In fact, the propensity of successive governments to add layers of rules has reached a point where reducing unnecessary regulations has become a high priority on the national political agenda.

The federal government is cutting regulation and red tape through the *Industry Innovation and Competitiveness Agenda* it announced in October 2014 in which it promised a lower-cost, business-friendly environment. The government wants to drive cultural change to force compliance costs down by better monitoring the performance of regulators and their engagement with business.

Two “repeal days” a year were introduced to “cut unnecessary and costly legislation and regulation”. These initiatives aim to save more than \$700 million a year.



BREAKING NEWS
Auditors for failed Westpoint venture sidelined

Auditors put under pressure

Auditors have also come under closer scrutiny as part of the wider response to improving consumer protection.

In the case against Westpoint property group in 2009, three auditors agreed to enforceable undertakings not to practise for up to two years. The liquidation process resulted in a \$67.5 million settlement in early 2011 as a result of a failure to comply with Australian Auditing Standards.

The auditor for Allico Finance Group, which collapsed under the weight of more than \$1 billion of debt, agreed in late 2010 to an enforceable undertaking not to practise for nine months and paid a fine of \$10,000 for failing to comply with Australian Auditing Standards.

Legislation followed these failures in 2012 requiring auditors to file yearly transparency reports to increase the focus on audit quality. The accepted belief is that the better the financial reports, the more confident and informed investors become, and the fairer and more efficient the markets become.

Financial system inquiry means friction between safety, innovation, regulators

Consumers bear the brunt

The high-profile failures between 2005 and 2010 in the financial services sector brought the issue of controls into sharp focus and elevated the concept of professionalism to the reform agenda.

A series of collapses featuring financial advisers – Westpoint in 2006 and Opes Prime and Storm Financial in 2008 – and the subsequent huge losses experienced by retail investors led to a series of federal government inquiries focused primarily on ways to improve consumer protection.

The government also announced the Future of Financial Advice reforms in 2010 to “tackle conflicts of interest that threatened the quality of financial advice” and “the inappropriate selling of financial products”.

More inquiries started in 2013 – the Financial System Inquiry, which looked at the financial system as a whole, and the PJC (Parliamentary Joint Committee) Inquiry, which considered proposals to lift professional, ethical and education standards in the financial services industry, with a focus on the competency of financial advisers.

The PJC Inquiry proposed that the existing meta-regulatory function of the Professional Standards Councils (PSC) be used to help regulate professional associations and financial advisers. It suggested that the PSC should be the formal base for association recognition in the sector. This reflects a growing interest from governments in the PSC model of professionalisation and meta-regulation.

ASIC should fight online fraud faster – report

A crackdown on crime

Criminal and unethical behaviour was the focus of a joint parliamentary committee on law enforcement into finance-related crime that ended in September 2015.

“We need to constantly ensure our regulation, law enforcement and education methods are contemporary enough to help protect Australian consumers,” deputy chairwoman of the committee Senator Lisa Singh said.

The committee’s report says the Australian Securities and Investments Commission needs to respond to online financial crimes more quickly and recommends more federal funding for identity-fraud victims and for financial literacy education for Indigenous communities, which are particularly vulnerable to financial crimes.

A report by global financial services firm EY confirms that unethical behaviour in highly regulated industries such as financial services is rising dramatically worldwide.

EY’s Fraud Investigation & Dispute Services surveyed 3,800 employees of large companies in 38 countries. Its *Top Fraud and Corruption Trends for 2015* report concludes that: “Regulators are working together across borders like never before to hold companies and their executives to account. Now is the time to reinforce the commitment to driving ethical growth.”

Victorian training college contracts terminated amid fraud and misconduct revelations

Corruption in the training sector

Three training colleges in Victoria had their contracts terminated in 2015 and another four lost state government funding after a crackdown uncovered serious fraud and misconduct.

The Age newspaper revealed that some training colleges had been taking kickbacks in exchange for helping overseas students win Australian visas using fake qualifications.

An Education Department investigation identified fraudulent claims for training that never occurred and unauthorised subcontracting of training delivery, *The Age* reported.

A further 17 training organisations were placed under close watch and their funding withheld.

The crackdown was the result of a government-commissioned review by Deloitte that identified substandard training, rorting, exploitative marketing practices, poor auditing and unsuitably short courses. The report found almost 10 per cent of providers had high levels of risk.

States have 'less excuse' to snub Uniform Law: NSW A-G

Uniform law changes national landscape

In the legal profession, the uniform law was introduced on 1 July 2015 to create a national legal services market. Initially it covers just NSW and Victoria.

It governs matters such as practising certificate types and conditions, maintaining and auditing of trust accounts, continuing professional development requirements, complaints handling processes, billing arrangements and professional discipline issues.

"The days of lawyers, businesses and consumers wading through rivers of red tape to access or deliver legal services are over," NSW Attorney-General Gabrielle Upton said.

Victorian Attorney-General, Martin Pakula, added that the "reforms offer the prospect of significantly reduced interstate barriers, while improving consumer protections and safeguarding an independent legal profession."

Building a blitz on dodgy private building certifiers

Building sector looks for changes

A draft report into the NSW *Building Professionals Act 2005* released in August 2015 says the key need in the building industry is to ensure proper accountability and responsibility.

As such, it recommended developing certification as a profession, with its own code, values and culture. "Unlike builders and other building practitioners, certifiers have a regulatory role and need to act in the public interest," the report says. "This can be assisted by creating the ethos and culture of a profession."

A report by the Architects Accreditation Council of Australia in February 2015 entitled *Regulation of the Architect Profession within Australia – An Overview* highlights the issue of multiple regulations.

It says the architecture profession is regulated by eight states and territories, with each jurisdiction having its own architects Act and regulations. The report details the similarities and differences without making any recommendations.

Fragmentation, inconsistency and lack of harmony in regulations, and a variance in risk profiles is common across the built environment professions.

Time for a global discussion

By **Dr Deen Sanders**, CEO, Professional Standards Authority

There is growing international interest in the way professions are regulated and many governments are reconsidering their models and the regulatory architecture they use.

In the UK, the Professional Standards Authority (a meta-regulatory government agency that oversees nine health regulatory bodies) has released a report entitled *Rethinking Regulation*, which questions the current model and encourages a new 'right touch' approach to regulating health services and social care.

The paper challenges many contemporary assumptions and adds that the current approach is likely to lead to a vastly complicated and incoherent regulatory system in which the costs and benefits are unquantified and unclear.

In the US, the White House has released an executive report on licensing and regulation as it estimates that 28 per cent of all American workers are now licensed and regulated by a board dedicated to their occupation. This represents a five fold growth in regulation since the 1950s.

At a global level it is time for a much-needed debate on the costs and benefits of different models of regulation, and the benefits of globally developed best-practice standards to deal with the growing trend for borderless professional services.

Australia should be an active participant in this conversation and our model of Professional Standards Legislation and meta-regulation may well offer a great deal to the policy environment.

In the following pages, two of our international colleagues provide first-hand perspectives on the regulation of professions in their jurisdictions and more detailed accounts of the issues we've touched on.

“Australia should be an active participant in this conversation and our model of Professional Standards Legislation and meta-regulation may well offer a great deal to the policy environment.”

The UK landscape is changing

By **Professor Andy Friedman**, CEO, PARN



Professor Andy Friedman

Professor Andy Friedman is the CEO of PARN (Professional Associations Research Network), which he founded in 1998 in Bristol. He is also Professor Emeritus of Management and Economics in the Department of Management at the University of Bristol, where he has taught since 1974.

Through PARN, Professor Friedman has carried out research projects and written books on continuing professional development, governance, member services, ethical codes and routes to membership.

Professor Friedman has been widely published in academic journals, with more than 400 citations of his work listed.

The professional regulation landscape in the UK is complex. In part, this reflects the long history of the largely autonomous development of the professional body sector. It also reflects substantial changes in response to pressure for professions to take, and be seen to take, more responsibility for public protection in cases of professional misconduct and incompetence.

Regulation by statute has long been in force for some professions. The first statutes for the registration of professionals date from 1729 for solicitors, and from the 19th century for pharmacists, medical practitioners, dentists, veterinary surgeons and patent agents. Others were added in the 20th century, including for midwives and nurses, architects, opticians and various other health professions.

Focus turns to financial advisers

Financial sector regulation focused primarily on firms until 2012 when independent financial advisers came under the statute-created Financial Conduct Authority. This acts as a meta-regulator to accredit professional associations that, in turn, help independent financial advisers attain and maintain the requirements for a Statement of Professional Standing.

Regulation for other professions, such as engineering, is done through Royal Charters and there also are chartered professional associations

in science and for various management functions. The Privy Council, which grants the charter, is the formal regulator, although it does not monitor how individual professionals are regulated.

Many other professional associations self-regulate without a charter. About half the professional associations are subject to the light meta-regulation of the Charities Commission, which is confined to granting charitable status with no ongoing monitoring.

Public protection becomes more visible

Regulation of professionals has become visibly more focused on public protection since the late 20th century. Geoffrey Millerson found only 21 ethical codes from the 160 qualifying professional associations he identified in 1964 in his book *The Qualifying Associations: A Study in Professionalization*. He said written codes were considered unnecessary or even counterproductive at that time. "We can still pride ourselves upon knowing instinctively what is 'done' or 'not done'; what is 'cricket' or 'not cricket'," he wrote (p 160). Now almost all professional associations have their own codes or require members to adhere to the code of another professional body.

The content of professional codes has changed significantly. In the 1960s, codes were concerned most commonly with restricting advertising and with members poaching clients

from each other. I, and others, did not find restrictions of that nature in 2005. Codes now focus more on honesty, integrity and trustworthiness in dealing with clients as well as general social obligations, such as those relating to safety and the environment.

The sea change in codes is now being matched by an enhanced transparency in disciplinary procedures. Millerson referred to a lack of publicity given to findings. "Frequently, associations merely publish a brief passing reference to the occurrence in the journal, almost hidden away in a corner ... no association is anxious to expose a grave matter to a wide audience," he wrote in *The Qualifying Associations* (p 175).

Now findings are made public through websites. In some cases the progress of disciplinary cases is made public as well as the rationale for the findings, PARN found in 2014. Many associations also hold their hearings in public. Both professional associations and regulatory bodies have become more transparent.

Government policies swing

The picture is complicated further by 21st century changes to government policies towards professional regulation. Labour governments between 1997 and 2010 enacted legislation to set up independent regulatory bodies. The Architects Registration Board was set up by

an Act of parliament of 1997 and the General Teaching Council for England by an Act of 1998.

Others include the General Social Care Council (2000); Nursing and Midwifery Council (2001); Health Professions Council (2002); Council for Healthcare Regulatory Excellence (a meta-regulator for healthcare regulatory bodies, 2002); Solicitors Regulation Authority and the Legal Services Board (2007); and the General Pharmaceutical Council, which was separated from the Royal Pharmaceutical Society of Great Britain (2008).

However, the coalition government of 2010 withdrew substantially from regulatory activities as part of general cutbacks as well as being more sympathetic to self-regulation. The General Teaching Council for England was abolished in 2012. Funding for other regulatory bodies has been cut.

PARN's professional body financial benchmarking surveys show a dramatic fall in government funding and grants from more than 50 per cent on average in 2009 to only 33 per cent in 2014. This has been recovered mostly by a rise in income from research and consultancy, business development and special projects, as well as from publications.

Regulatory bodies are becoming more commercial in their activities and their income sources are

coming to resemble that of professional associations. In this they are beginning to compete with professional associations, particularly over continuing professional development support services. The current conservative government seems set to continue moving away from the Labour government's policies, which may lead regulatory bodies to resemble professional associations further in future.

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The US looks to reform its licensing system

Despite projecting images of being the land of the free, the actual picture of professional regulation in the US is complex and often onerous.

There are nearly as many different licensing systems across the 50 states for each occupation, with a myriad of licensing and regulatory boards overseeing each occupation and affecting the portability of professionals across the country.

The issue is coming to a head, with the US Government recently releasing a report that advocates reform of occupational licensing to a system that better balances public welfare and economic growth.

The 2015 report, prepared by the Department of the Treasury Office of Economic Policy, the Council of Economic Advisers, and the Department of Labor – entitled *Occupational Licensing: A framework for policymakers* – recognises the benefits to workers and consumers of a properly designed and implemented occupational licensing regime.

More than one-quarter of US workers now require a license to do their jobs, with most licensed by the states, the report says. The share of workers licensed at the state level has risen fivefold since the 1950s.

About two-thirds of this change stems from an increase in the number of professions that require a licence, with the remaining growth coming from the changing composition of the workforce.

“By one estimate, licensing restrictions cost millions of jobs nationwide and raise consumer expenses by more than US\$100 billion,” the report says.

“The stakes involved are high, and to help our economy grow to its full potential we need to create a 21st century regulatory system – one that protects public health and welfare while promoting economic growth, innovation, competition, and job creation.”

A framework for reform

The report, released for discussion in July 2015, examines the costs and benefits of licensing, discusses the growth of licensing and the evolving marketplace, and provides a framework for reform.

It cautions policymakers to “protect consumers without placing unnecessary restrictions on employment, innovation, or access to important goods and services”.

“For the economy to successfully continue to innovate and grow, we must ensure that we are able to take

full advantage of all of America’s talented labour,” it says.

“When designed and implemented carefully, occupational licensing can offer important health and safety protections to consumers, as well as benefits to workers.”

Differences between states

The report also includes input from the Council on Licensure, Enforcement and Regulation (CLEAR), which promotes regulatory excellence through networking, publications, and research services for those involved with, or affected by, professional and occupational regulation.

“The most recent CLEAR estimates suggest that fewer than 60 occupations are licensed, certified, or registered in all states, compared with 1,100 occupations regulated overall, which shows substantial differences in which occupations states choose to regulate,” says CLEAR Executive Director Adam Parfitt.

“The likely factors contributing to expansion of licensing across fields include a general trend towards professionalisation and greater training, the political influence of organised constituencies and the fact that licensing boards are often revenue-neutral or even revenue-generating,” Mr Parfitt says.

“The most recent CLEAR estimates suggest that fewer than 60 occupations are licensed, certified, or registered in all states, compared with 1,100 occupations regulated overall, which shows substantial differences in which occupations states choose to regulate.”

Adam Parfitt
EXECUTIVE DIRECTOR, CLEAR

The share of licensed workers varies widely state by state, ranging from a low of 12 per cent in South Carolina to a high of 33 per cent in Iowa. Most of these differences are due to state policies, not differences in occupation mixes.

States also have very different licensing requirements in the details of required coursework, requirements for continuing education, the extent of reciprocity, and the treatment of prior behaviour such as justice system interactions and loan repayment.

More regulatory hurdles

That’s not the only regulatory hurdle. Licensed workers sometimes are unable to use distance or online education to fulfil continuing education requirements, as some states do not automatically accept accreditation from good schools based in other states.

Similarly, workers are able to work remotely in many licensed fields, including legal occupations (70 per cent), social service (45 per cent), and education and health (both nearly 20 per cent). But licensing restrictions on cross-state practice inhibit the potential for remote work.

“Licensing entails benefits and costs to the general population that should be weighed carefully,” according to Mr Parfitt.

“On the plus side, it communicates to potential customers that there is quality of service and protects public health and safety.

“For workers, the professionalisation that accompanies licensing can provide a quality career path and encourage continuing education.

“But it can also increase the costs of services. In nine of the 11 studies we reviewed, stricter licensing led to higher prices, with effects ranging from 3 per cent to 16 per cent.”

Best results for all

The *Occupational Licensing* report says licensing can help ensure high-quality services, safeguard against serious harms, and offer workers clear guidelines around professional development and training.

It says best practices in licensing can allow states, working together or individually, to safeguard the wellbeing of consumers while maintaining a modernised regulatory system that meets the needs of workers and businesses.

Some of the best practices the report highlights include:

- Limiting licensing requirements to those that address legitimate public health and safety concerns to ease the burden of licensing on workers

- Applying the results of comprehensive cost–benefit assessments of licensing laws to reduce the number of unnecessary or overly restrictive licences
- Harmonising regulatory requirements within groups of states as much as possible, and, where appropriate, entering into interstate compacts that recognise licences from other states to increase the mobility of skilled workers
- Allowing practitioners to offer services to the full extent of their current competency to ensure all qualified workers are able to offer services.

“Instituting a more rational approach to occupational regulation would improve economic opportunity and allow American workers to take advantage of new developments in today’s economy,” the *Occupational Licensing* report concludes.

Future outlook

Professions have adapted through cycles of economic, social and technological change while regulation has evolved in response to community needs and policy priorities. In this section, three noted observers of professions were asked to gauge the current drivers of change and offer their thoughts on the future.

The views expressed in this chapter are those of the contributors and are not intended to represent the views of the Professional Standards Councils or their agency.



Professions will always have a role

By **Dr Simon Longstaff**, Executive Director, The Ethics Centre



Dr Simon Longstaff, AO

EXECUTIVE DIRECTOR,
THE ETHICS CENTRE

Simon's distinguished career includes being named among the AFR Boss True Leaders for the 21st century, with businesswoman Carol Schwartz noting "... I don't know one CEO or chairman in corporate Australia who has not worked with Simon Longstaff". Simon has a PhD in Philosophy from Cambridge.

Prior to becoming the inaugural Executive Director of The Ethics Centre in 1991, he worked in the Northern Territory in the Safety Department of BHP subsidiary, GEMCO, lectured at Cambridge University and consulted to the Cambridge Commonwealth and Overseas Trusts.

Simon was inaugural President of The Australian Association for Professional & Applied Ethics and is a Fellow of the World Economic Forum. He is Chairman of the International Advisory Board of the Genographic Project and Deputy Chairman of the Global Reporting Initiative Board. He also serves on a number of Boards and Committees across a broad spectrum of activities in Australia.

The professions have always been distinguished from other occupational associations, such as guilds, by their conscious rejection of two fundamental tenets of 'the market'.

First, while market participants are encouraged to pursue self-interest (in the belief that an 'invisible hand' will ensure an increase in the stock of common good), members of the professions are required to subordinate self-interest in favour of discharging duties owed to others.

Second, while market participants need do no more than satisfy the wants of their customers, professionals are bound to identify and serve the interests of their clients and the public good.

In theory, these ethical restraints should impose a material burden on professionals. However, recognising the social good that communities derive from people who take up professional commitments, 'social compacts' have been instituted to compensate professionals for setting aside their pursuit of self-interest.

For example, traditionally society has reserved certain areas of work exclusively for members of each profession – and often has accorded high status to those with the knowledge, skills and disposition to take up a life of professional service.

Or so it used to be ...

Creeping commercialisation

The compelling logic that led to the establishment of the professions is now being challenged at its roots, partly by a progressive movement to 'commercialise' all aspects of society, including the professions. This is a long-established tendency.

I recall the moment, when discussing professional obligations with a group of lawyers some 20 years ago, that they declared that rather than be bound by such obligations they instead would run a 'business in the law'. That is, they would offer legal services as a commodity just as a plumber might offer plumbing services, or an IT consultant IT services.

I pointed out that such a move would lead society to withdraw whatever privileges remained for lawyers. They thought this would be no great loss compared with the commercial advantages on offer.

Since then, I have seen the same tendency at work in other professions, where it is now not uncommon to find people running a 'business in accountancy', a 'business in engineering', and so on.

The rise of expert systems

The other great change to the professions arises from the development of 'expert systems' – most notably through the use of artificial intelligence capable of interrogating vast datasets.

“The ethical foundations of the professions were sound when originally developed. I believe there are good reasons to preserve them today – and for the future.”

Dr Simon Longstaff, AO

EXECUTIVE DIRECTOR,
THE ETHICS CENTRE

We tend to think that technological disruption will mostly affect low-skilled workers. However, it looks likely that computers will displace the technical abilities of many skilled professionals. For example, machines can analyse samples, review the findings against databases of confirmed results and make diagnoses.

Similarly, expert systems will be able to maintain an up-to-date knowledge of the law and provide real-time validation of data on which financial and sustainability accounting depends.

Of course, there will still be a place for the human interface – someone to offer counsel and support – however, expertise is likely to move away from the professional to the system. Inevitably, this will alter the status of those who choose to belong to a profession.

Ethics a key differentiator

The one area in which members of the professions may have an indisputable advantage is ethics. Machines are unlikely ever to have a true ethical sense – in part because ethical dilemmas, in principle, are unresolvable (at least when values and principles of equal weight are in conflict). In such cases, judgement based on perceptive understanding is demanded – and this only comes with experience.

I think members of the professions will secure their future by developing a profile that is equivalent to that of artisans. This may seem an odd comparison but it is notable that in the face of competition from low-cost, mass production, many people are carving out lucrative jobs producing high-value, hand-made items for which people will pay a premium.

The equivalent of this, in the professions, will be the individual (often in partnership with others) who brings a distinctive human touch to their practice. The desirable attributes will include creativity, a capacity for empathy and compassion, and perhaps most importantly, practical wisdom.

I'm not suggesting that members of the professions will all need to be saintly characters. That is not a requirement of ethics. What will be needed is people who operate as 'reflective practitioners' and who offer something not provided by the 'algorithms of the market'. Which brings me back to where I began.

The ethical foundations of the professions were sound when originally developed. I believe there are good reasons to preserve them today – and for the future.

Dr Simon Longstaff, AO, is Executive Director of The Ethics Centre – www.ethics.org.au. He was a founding member of the PSC.

Skill shock: The critical role of professional associations

By **Dr Marcus Bowles**, Chair, The Institute For Working Futures Pty Ltd



Dr Marcus Bowles

CHAIR, THE INSTITUTE FOR WORKING FUTURES PTY LTD

Marcus researches and consults on the future of work and learning; the design of agile organisations; leadership capabilities; rethinking development and recognition of professional standards and experience; and using technology to promote innovative development.

Marcus mixes consultancy with academic expertise, drawing on corporate engagements, professor-level appointments and as an entrepreneur who has won international awards (full CV at <http://marcbowles.com>).

“Associations will need to co-operate to deliver and nationally recognise the soft skills that enhance how all professionals transfer their expertise to new, complex and uncertain operating environments.”

Dr Marcus Bowles

CHAIR, THE INSTITUTE FOR WORKING FUTURES PTY LTD

Professions are in a better position than most occupations to confront the impending skills shock. The increasing emphasis on new skills to complement technical expertise provides agile and adaptable professionals with better employment opportunities. In the absence of coordinated structural reforms to address a future skills shock, professional associations, with their expertise and specialist skills, are well positioned to reinforce their importance as accreditation bodies and to play a vital role in helping their members adapt to the challenges of changing workplaces.

Jobs will evolve

The impact of what economists term ‘structural reform’ is best seen in the loss of unskilled and non-specialist manufacturing jobs. Unlike previous eras of boom and bust, the demand for these jobs hasn’t been elastic. Once they disappear, usually they do not return.

But professions have had relatively strong career opportunities bolstered by population and economic growth, and been buffered from downturns because they perform high-value activities required by many industries (for example, nearly 60 per cent of ICT workers are employed outside the ICT industry).

In addition, those with specialist skills or high value-adding knowledge work using intensive ‘fly-in, fly-out’ modes or they telecommute thanks to improved

global transport networks and broadband infrastructure. However, the professions will experience the greatest disruptions as different skill mixes and the impending surge of ‘machine learning’ and automated knowledge services materialise.

Importance of associations

The challenge of responding to the skills shock and the reskilling task will prove the critical importance of professional associations. Twenty years of data on the restructuring of work and skills in S&P/ASX 50 organisations clearly shows that the ability of public and private organisations to be agile and competitive in a global marketplace relies on their access to professional skills. But the mix of skills they demand has evolved.

Compared with professional jobs at the same levels just five years ago, the most noteworthy, common changes to skills profiles include more complex roles and responsibilities at all levels; an increase in the cognitive skills professionals need to climb the career ladder; and the growing value sophisticated employers place on emotional judgement, identity and behavioural and other intangible attributes. The mix of professional and technical skills in post-trade (diploma and above) job profiles will be pushed below 50 per cent – which has already happened in transformational organisations.

Skills will be mixed

The shift reflects professionals' capacity to use their expertise in more complex and uncertain contexts. Job profiles increasingly demand technological, leadership, and transferable skills, or so-called soft skills, that transcend any one profession (for example, problem solving, critical thinking, teamwork, communication, ethics, emotional judgement). What constitutes a 'skills mix' is also changing. For example:

Short term – for a fixed, context-specific purpose or a project-based use-by date (for example, a merger relationship financial auditor)

Amalgamated – drawing together and consolidating distinct skills into a new job (for example, a Six Sigma process engineer and distribution manager into a distribution centre re-engineering manager)

Hybridised – meshing of distinct skills and expertise to form a new professional category (for example, a personal finance advocate in which online customer service and financial adviser roles are combined to personalise outcomes)

Grafted – in which expertise from emerging bodies of knowledge or areas outside the organisation are 'grafted' onto a more traditional role (for example, expertise in nanotechnologies is grafted onto a traditional medical diagnostic and treatment job to create a medical biotech diagnostic technician).

Keeping credentials high

Counter-intuitively this re-emphasises the importance of professional associations. As formal educational providers supply large, 'chunky' qualifications that emphasise knowledge transfer and have only limited capacity to teach applied experience, so the professionals, employers and governments will demand new models, bringing disruption.

As demand expands, professional associations will have to supply and recognise experience-based continuing professional development (CPD) programs that target broad or specialist skills while seamlessly enhancing the soft skills a professional needs to be effective.

The associations are able to design and recognise 'micro-credentials' and 'stackable' credentials tied to 'bite-sized' CPD programs that will create the skills to meet short-term needs or that a professional needs to have amalgamated with, hybridised within, or grafted onto their expertise.

Associations will need to co-operate to deliver and nationally recognise the soft skills that enhance how all professionals transfer their expertise to new, complex and uncertain operating environments.

New professional associations will emerge, or form through consolidation, in fields in which disruption has obliterated traditional

occupational boundaries. Some incumbent associations will grow rapidly as they embrace disruption and respond to demand. Most will have to embrace the very technology that is driving change.

Associations inevitably will need to use technology to meet expectations as professionals seek to access the right skills from anywhere in the world in time-sensitive, continually updated small packages.

The changing landscape

Workplaces are changing rapidly as new technologies and radical business models are developed. Digital technologies are also disrupting how professionals sell and supply labour. Associations will use disruptive and innovative ways to develop and recognise the skills of professionals and young people seeking professional careers as employers demand more contextual relevance and cross-disciplinary mixes than the education system can supply.

Digital disruption in professional services delivery

By **Dr George Beaton**, Beaton Research + Consulting



George Beaton, MBBCh, MA, PhD
BEATON RESEARCH + CONSULTING

Dr George Beaton has held senior academic positions in the medical, business and law faculties of the University of the Witwatersrand, South Africa, and the University of Melbourne, Australia. He is regarded as a leading independent authority on professional services industries and their firms.

His research interest is in the imperative for law firms to remake their business models, a subject he covered in his books *NewLaw New Rules* in 2013, and *Remaking Law Firms – Why and How*, which he co-authored with Dr Imme Kaschner and which will be published by the American Bar Association in early 2016.

George is a partner at Beaton Capital and Chairman of Beaton Research + Consulting, where he consults to professional services firms in Australia, Asia, the UK, the US and Canada.

Will digital technologies replace or enhance the work of professional practitioners? From this threshold question and the range of possible answers flow others.

If the trend is to *replacement*, at what rate will this occur? Who will own the substitutes – registered professionals or others? How will the substitutes be regulated, if at all? How will the remaining (surviving?) traditional practitioners organise themselves and price their services? How will these practitioners cope with the ensuing loss of jobs to technological alternatives (technological unemployment)? How are educators, regulators and professional associations preparing?

On the other hand, if the trend is (to continue) to *enhance* the productivity of practitioners, will the regulatory environment continue to try to 'enclose' (i.e. protect) the professions and maintain their regulated monopolies? Will society permit this? How will the enclosed professions (and their regulators) withstand the digital revolution, particularly cognitive computing, and the online elimination of boundaries, other than through notional jurisdictional restrictions?

Looking through the kaleidoscope

Contemporary authorities and commentators agree that the answer to the threshold question is unknowable. They also agree that

the probable future will encompass both replacement and enhancement. I have termed this scenario of constant change and unpredictable movement the 'kaleidoscope'.

The professions and their institutions are not well prepared for the challenges and benefits of what's now rapidly becoming reality in the delivery of services.

On balance, the exponential accretion of knowledge and its application through technology are better for clients and the public interest than the traditional ways of operating and this progress should not be blocked by the interests of professions.

Combinations of design thinking, systems engineering, negotiation theory, artificial intelligence, visualisation, and professional knowledge and skills (to name a few disciplines) are being blended into 'new-to-the-world' ways of meeting clients' needs in better, faster and cheaper ways.

Technology replacing practitioners

Online dispute resolution without any human agency, pioneered by eBay, is being expanded in many ways. Xero and other software developers are providing fully automated tax returns. IBM's Watson is delivering medical diagnoses that in some cases are superior to those of teams of leading physicians.

“The professions have an opportunity, indeed a duty, to adapt and take leadership positions in both responding to and shaping the future of the sociological, technological and philosophical ways in which professional services are delivered.”

George Beaton
 MBBCh, MA, PhD
 BEATON RESEARCH +
 CONSULTING

Lex Machina contributes to greater accuracy in predicting success in patent litigation at a fraction of the cost and time of lawyers doing the same tasks. Drones are used for geotechnical surveys, and some invasive medical procedures by robots may prove in time to deliver better results than surgeons.

No regulated profession is immune from parts of its work being replaced by machines.

The consequences include technological unemployment and an abundance of new roles, careers and professions. Perhaps latent demand will increase the (redefined?) professions' share of the work created by previously undetected and unmet needs. But will the 'innovator's dilemma' of a choice between adding features or maintaining a product to improve it, prevent traditional professions grasping the opportunity?

The full impact of the replacement aspect will be incremental rather than transformational and abrupt. Perhaps it will take 10 to 20 years. Therefore, it is more important for students, educators and regulators than for established practitioners. Or is it? The iPhone had a huge impact on whole industries apparently unrelated to the telephone, to say nothing of the millions of jobs created in new areas, such as app development.

Technology enhancing productivity

Technology that enhances the productivity of professionals has been used for decades: word processors, email, document management, computer-aided design, automated measurement of bodily functions, and spreadsheets, for example.

A shrinking range of work will accompany technological enhancement for traditional professionals. As technology works better, faster and more cheaply, fewer professionals will be needed for the same output and they will be able to work anywhere, at any time, with enriched intellectual challenges and better results for their clients.

This has profound implications for the organisations several professions have built, some of which are multinational and much larger than many of their clients. Professional enterprises will get larger through further consolidation, though the new technologies also allow fragmentation and a return to cottage industries.

The public good will benefit

The only option is to prepare for a world involving replacement and enhancement. In many ways this world is already here – it's just not very evenly distributed, as novelist William Gibson is reputed to have put it.

This is a challenge for all professions, practitioners and enterprises that have been shielded from full market forces. Visionary leadership is required from professional associations, educational institutions, regulators and, not least, the practitioners themselves. Where enclosure is no more than veiled self-interest, it must be left behind. Deep change based on the benefits of the digital revolution must and can be embraced.

The professions have an opportunity, indeed a duty, to adapt and take leadership positions in both responding to and shaping the future of the sociological, technological and philosophical ways in which professional services are delivered. Adding a profession's cognitive, affective, manual and moral capabilities to the abilities of machines will benefit clients and the public greatly.

In the final analysis, this is a moral issue about access and equity for individuals and the public good. Enclosure – albeit originally well-intentioned – has characterised the professions from their beginnings. Now technology is challenging this, and enclosure may well be eliminated, or at the very least much reduced, in the next decade.

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The future looks bright

By **Dr Deen Sanders**, CEO, Professional Standards Authority



Dr Deen Sanders

CEO, PROFESSIONAL STANDARDS AUTHORITY

Dr Sanders is a specialist in the field of professions, with a background in regulation, financial services, law and education. He has had extensive experience with association leadership and professionalisation projects, and implementing large-scale, regulatory-led industry change programs.

Dr Sanders has a global and domestic profile in academic leadership on professionalisation and has advised on global regulatory task forces for professional standards. His academic and professional interests are now focused on the nature of regulation for improved consumer protection and how professions can play a positive role in bettering society.

A general pessimism has appeared over the past several decades about the capacity of and interest among professions to act as self-regulatory communities with a focus on consumer protection.

This also reflects a shift in the way government responds to community and consumer risk and, subsequently, the way consumer protection is designed. ‘Regulation’, as it is currently framed, is typically seen as a tool of compliance designed to punish or discourage poor behaviour. In this context, when things go wrong for consumers or the community, the government response is protective – regulate more and require higher standards, more education or more controls. These approaches typically translate to a greater compliance burden.

The first version of Professional Standards Legislation (PSL) was enacted 21 years ago at a time when policymakers wanted to protect consumers by improving professional standards, and maintain strong professional governance that would ensure compensation if things went wrong. It was a model of meta-regulatory legislation designed to measure and oversee an occupational association’s (a profession’s) capacity for self-regulation.

Most would argue that the promise of independent self-regulation has not been delivered and is not yet

deserved. A range of complex attitudes on social, market, technological, ethical, government, regulatory and even personal issues has affected the progress of professionalism over the past 21 years. It is certainly reasonable to conclude that genuine self-regulation requires both community and government trust in institutions that has not emerged naturally.

While that might indicate a flaw in the design of PSL, I believe it instead encourages optimism about the possibility of achieving that goal. With changing community and government attitudes about the social, financial and technological aspects of regulation and a recognition that ‘more regulation’ does not automatically translate to improved consumer outcomes, there is also a clear change in the expectations we have of professionals, experts and the institutions in which we want to place our trust. It may yet prove

“This is clearly a global as well as domestic conversation and a source of pride that Australia has led with a policy framework and legislative solution.”

possible that new commitments to professional behaviour will emerge to deliver protection and benefit to consumers.

As Australia's expert regulatory agency in professional standards, the Professional Standards Authority (PSA) is also a research and innovation agency that provides support to government, industry and professionalising occupations.

In fact, the research and policy formulation expertise of the PSA is recognised internationally. In 2014, it was awarded the lead agency role in a multi-research team (including Harvard University, the University of NSW, Griffith University and the University of Technology, Sydney) that administers an Australian Research Council grant to investigate professions and professional standards as a model of regulation.

There is growing interest in better professional regulation across the globe, with wide government interest in encouraging higher obligations on individuals who engage with consumers. This applies to all occupations and is a growing trend across domestic and international governments.

We are acutely aware that the challenge for government is to create regulatory systems that protect consumers, improve the behaviour of professionals and encourage growth rather than stifling it.

We think there is an opportunity to initiate a new policy conversation about the role and design of regulation that could lead to new concepts of partnerships between regulators and the regulated – a platform of better regulation.

In our view, better regulation is about using regulatory design elements to encourage participants to respond to obligations using tools that focus on quality and professional identity, rather than traditional elements of control and government engines of compliance.

The program

At this stage, our future work program in this area includes a planned series of discussion papers and potentially conferences that will act as central launch points for the policy programs underway in a number of government areas.

The future looks bright

While this publication looks back and celebrates 21 years of PSL, the future looks just as bright because there is growing interest in how the model of meta-regulation may be applied to other environments and occupational and industry settings to encourage better community-aligned outcomes.

This is clearly a global as well as domestic conversation and a source of pride that Australia has led with a policy framework and legislative solution.

“There is growing interest in better professional regulation across the globe, with wide government interest in encouraging higher obligations on individuals who engage with consumers.”

We look forward to seeing the PSL act as a catalyst for improvements in regulatory design, to better align the resources of government with those of the professions and deliver economic, community, personal and consumer protection benefits.

The next 21 years look even more exciting than the last.

Grants program encourages new thinking

The Professional Standards Councils (PSC) take a three-pronged approach to thought leadership. They foster theoretical and principle-driven research into professional standards and regulation. They encourage efforts to implement research at a practical level, and they support programs to assist professionals. Here we profile two key programs in this strategy – a major Australian Research Council Linkage project, which provides government support for research, and the councils' grants program.

The PSC foster research into improving professional standards and self-regulatory capacity of occupational associations. Since 2011 we have done this through a comprehensive grants program made available to regulated associations that has now awarded more than \$1 million to support improvements in standards.

The PSC offer two types of grant programs – professional standards grants and research grants. To date, 12 projects have been completed, 10 funded by professional standards grants and two by research grants.

Support for associations

Professional standards grants (formerly 'star grants') have been offered since 2010 to associations participating in Professional Standards Schemes. The Councils consider grant applications in the areas of ethics, codes of practice, risk management, complaints and discipline, professional development and quality assurance.

Favoured projects are those that are practical, can improve professional standards, involve collaboration between associations and can apply across professions.

Successful applicants will meet an identified professional standards need, improve consumer protection or facilitate improvements in occupational standards. Funded

projects have included the development of small-practice quality and risk management tools, professional assessment systems and practical tools to address risks of practitioner stress and personal issues affecting professional service.

A total of \$182,000 was awarded in professional standards grants during 2014–15 for three new projects.

Support for essential research

The research grants program started in 2013 with the aim of encouraging and rewarding innovative research that develops community confidence and trust in professions in Australia.

It offers funding for academic and professional services researchers to undertake evidence-based studies into improving and advancing professional standards.

Research may be directed to areas such as regulatory design and ethics through to professional integrity systems and competency frameworks. A total of \$136,700 was awarded in research grants during 2014–15 for two new projects.

Building trust in professions

The councils aim to work with associations to identify and address shortcomings in areas in which consumers may be vulnerable. For example, sole practitioners and small practices may have particular needs for support, and issues such as practitioner mental health and

wellbeing may have a particular impact on the consumers of professional services.

A profession needs to identify and address its vulnerabilities to maintain the confidence of policymakers and the public.

The councils help associations to implement research and develop tools through the grants program to encourage the continuous improvement of professional standards.

Professional Standards Grants*

Awarded	Project	Association	Description of project	Funding awarded
2011	Professional Credentialising for Indictable Crime	The Victorian Bar	Provide a CPD training program for junior criminal law barristers.	\$38,000
2011	Public Policy Quality Assurance	Institute of Public Accountants	Migrate quality assurance questionnaires from paper to online format.	\$70,000
2011	Prevention of Elder Abuse	Law Institute of Victoria – Medico-Legal Training Australia	Develop a CPD training program for lawyers in regional Victoria.	\$42,830
2011	Risk Management for Accountants	Independent Professional – member of CPA	Develop a risk management resource for accountants.	\$5,000
2012	Public Policy Quality Assurance	Institute of Public Accountants	Expand online questionnaire to include SMSF auditors and financial planners.	\$70,000
2012	Practice Health Check	Queensland Law Society	Develop an online tool to help members assess practice management.	\$31,000
2012	Online Training for Non-professional Field Assistants	Professional Surveyors Occupational Association	Train non-professional staff in support roles to overcome critical shortage of surveyors.	\$25,000
2012	Risk Management Tool for small to medium accounting practices	Institute of Chartered Accountants (now Chartered Accountants Australia New Zealand)	A tool to assist members of small to mid-sized practices implement a risk framework in line with a new professional standard set by APESB.	\$80,000
2013	Practice Resilience and Wellbeing	Queensland Law Society	Practical tools to assist Qld solicitors improve wellbeing and reduce the number of claims and complaints.	\$20,000
2013	Practice Review for small law firms	Law Society of South Australia	Assist small legal firms in SA with risk management.	\$61,800

Research Grants*

Awarded	Project	Grant Recipient	Description of project	Funding awarded
2013	Professional Standards for Complaints Managers and Handlers	Monash University & SOCAP	Developed a competency and ethical framework for complaint professionals in Australia, and a complaints toolkit to assist complaint managers and handlers.	\$55,000
2013	Assessing Australia's approach to professions: a creative solution to a persistent problem	Creative Consequences	Examines the history of Professional Standards Legislation, and evaluates PSL as a regulatory regime.	\$40,000

*Completed projects only. Does not include projects that are ongoing or have been withdrawn.

Professions in the age of regulation

By **Professor Dimity Kingsford Smith**, Professor, UNSW Law



Professor Dimity Kingsford Smith
UNSW LAW

Dimity Kingsford Smith teaches and researches in the areas of regulatory theory and policy, corporations and securities regulation, and corporate governance. She has had research grants in the areas of superannuation regulation, online investing and concepts of fairness that she has applied to financial regulation. She is a member of the External Advisory Panel of ASIC and of the Code Committee of the New Zealand Financial Markets Authority. She was the inaugural independent Chair of the Conduct Review Commission, a professional disciplinary panel in the financial services industry, from 2007 to 2014. She is also the Customer Advocate in NAB Wealth's customer remediation program for financial advisory customers.

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² Merton, R., 'The Machine, the Worker and the Engineer', *Science*, 105, 1949, 79, 80.

³ Allsop, J., 'Professionalism and Commercialism: Conflict or Harmony in Modern Legal Practice?', *Australian Law Journal*, 84, 2010.

The current mood suggests that business requires, or seems to require, a boost of professionalism¹ to respond to a perceived malaise in client care and trust. This mistrust gives rise to a central question: how can professionalising an occupation raise standards of conduct, competence and ethics?

Professions and aspiring professions are set in regimes that mix professional or associational regulation (or self-regulation) and legislation, exemplified by the Professional Standards Councils (PSC) and its schemes.

Current research

A number of projects that focus on professions are under way as part of an Australian Research Council grant funded by the Commonwealth government and the PSC. Led by the University of NSW, one maps professional regulation models across the globe and incorporates the approach taken by the PSC and another examines the challenges facing professions – and the PSC in supervising schemes – such as employment, remuneration and globalisation.

A further project explores professional indemnity insurance as an effective regulatory mechanism and also considers whether the exam is an appropriate marker of professional competence, especially over the course of a career.

In addition, we are researching indicators of the value of professionalising that may help identify ways to improve professional standards and protect consumers. Finally, researchers are working with the PSC on a handbook for existing and aspiring professions that will be an information source and practical guide to professionalism and its continuous improvement.

Challenges to professions

Our first project asks what are the 21st century challenges to professions? Professionals working in large firms find their values challenged when the 'client first' demand may be justified by managerial efficiency, not by fidelity or care. Stellar remuneration and professional values detached from their local context because of globalisation also present challenges. We offer practical responses to these challenges, informed by wider research. The aim is to provide strategies to respond to Robert Merton's finding that many professionals observe 'an ethical sense of limited responsibility'.²

Regulation models

The second project analyses professional regulation models, including Australia's PSC, and considers the roles of individual professional obligation, professional associations and government regulators in the mix. The models are evaluated to identify the characteristics of the most effective

regulatory environments, the benefits of consumer protection, and the public interest arising from professions.

Training benefits

The next project considers the training of professionals and the best strategies for assuring the public of professional competence. It considers whether a national exam (taking the example of financial advisers) is a panacea for concerns about competency or whether it is a useful part of a wider professional integrity system. The research also considers ethics training, continuing education for professions and life-long learning.

Role of insurance

Another project seeks to understand the role of professional indemnity insurance (PII) in imposing internal and external controls on professional behaviour. These controls are part of the general governance in qualifying professions for a scheme under the PSC legislation. This research asks how PII might complement the regulatory objectives of the PSC of raising professional standards and protecting consumers who use the services of professionals.

Improvement is the aim

These projects and others, such as the indicators of the value of professionalising and the handbook, aim to identify strategies and tools to improve the regulation of professions, professional conduct and consumer protection.

After identifying professional challenges, we argue that it is a mistake to pit professionalism against commercialism and managerial efficiency rather than trying to understand how they may co-exist ethically.³

We argue for greater attention to professional formation, such as teaching new professionals to recognise, talk about and internalise their knowledge, especially for better ethical decision-making.

We find reasons for optimism in life-long learning and in the greater understanding that helping professionals flourish also helps their clients.

Likewise, testing indicators of the value of professions is important in discharging a statutory mandate (such as that of the PSC) to see what works, in which contexts, and whether and how conduct standards are improving.

Our purpose as researchers is to use our findings to develop practical strategies for regulatory improvement and to make these available to the PSC, their professional associations and their practising members. The handbook will be important in the practical delivery of this objective. Above all, the aim of the research project is to help the PSC to advance their statutory purposes to improve occupational standards and consumer protection by boosting professionalism through the quality of its supporting regulation.

The PSC is a major partner in a three-year Australian Research Council Linkage project about professions, professional obligation and regulation in the 21st century. ARC Linkage grants seek to develop research alliances between universities and other organisations to encourage innovation and a link between research and practice.

Researchers from three Australian universities: UNSW, Griffith University and UTS, and three international universities: Harvard University, University College Dublin, and University of Leeds, are collaborating with four partner organisations: the law firms Allens and Corrs, the Investment Industry Association of Canada, and the PSC. The project began in March 2015 and is led by UNSW.

In the context of the challenges faced by professions in the 21st century, the research project explores professionalisation, professional obligation and how it is exercised in practice, and mechanisms for professional regulation.

The Councils' high-value approach

The vision of the Professional Standards Legislation (PSL) is to strengthen consumer protection and raise standards of professional service delivery while ensuring better access to professional indemnity insurance. The Professional Standards Councils (PSC) are the custodians of this vision and uphold the interests of consumers on behalf of State and Territory governments.

“The Professional Standards Schemes have benefits for both consumers and the professional and occupational members.”

Esther Alter,
Deputy Chairperson, PSC

The PSC came into being first in New South Wales in 1995 and then progressively in all other states and territories. More on the history of the Councils can be found in History and evolution.

Here we detail the role of the Councils, the Professional Standards Authority (PSA) and the professional associations in enacting Professional Standards Schemes under the legislation.

Formation of the Councils

The business sector went through turbulent times in the late 1980s in reaction to events overseas that eventually led to the Australian share market crash in 1987. As a result, many businesses faced closure, including the insurance providers that traditionally underwrote commercial risks.

The NSW Government recognised that this would leave consumers vulnerable and proposed a solution that would raise the standards of professionals while limiting their liabilities and ensuring they held sufficient insurance. The aim was to support consumers with a wide choice of suppliers and to encourage competition while maintaining or raising standards of professional competence and service.



1996 Professional Standards Councils
Pat Griffin, Julie Owen, Warwick Wilkinson

The NSW Government formed the Professional Standards Council of NSW in 1995 after the *Professional Standards Act 1994* (NSW) was passed. This ground-breaking model was picked up by the other states and territories, which constituted their own Professional Standards Councils gradually over the next 10 years.

Set up as independent statutory bodies, the Councils were given powers to assess and approve applications from professional associations for capped liability schemes under the professional standards legislation for each state and territory.

The reach of professional standards legislation was extended in 2001 after corporate giant HIH Insurance collapsed, affecting thousands of people. This financial disaster highlighted the importance of maintaining stringent corporate governance and liability practices to protect consumers.

Subsequently the Commonwealth Government enacted complementary legislation that allowed occupational liability to be limited under the *Trade Practices Act 1974* (now the *Competition and Consumer Act 2010*), the *Corporations Act 2001* and the *Australian Securities and Investments Commission Act 2001*.

Each Council has a chairperson, deputy chairperson and Councillors appointed by the State and Territory Attorneys-General. Under an innovative structure brought about by Ministerial agreement across the country, all 11 members of each State and Territory Council are the same people. NSW and Victoria nominate two members each, while all other states or territories and the Commonwealth nominate one. Members are appointed for up to

three years and can be reappointed at the end of their term.

Appointments are based on an individual's skills, qualifications, experience and ability to contribute to the work of the Councils.



2015 Professional Standards Councils
Robert Beaton, Iain Summers, Terry Evans



2015 Professional Standards Councils
Tom Karp, Esther Alter, Rachel Webber

Role of the Councils

The PSC play a key role in promoting the objectives of professional standards legislation, which is to improve professional standards, protect consumers who use the services of professionals, and develop schemes that limit the civil liability of professionals whose associations meet professional standards and risk management requirements.

The Councils are not regulators in the usual sense. They are meta-regulatory bodies. That is, they support the self-regulation of occupational groups by their representative bodies. The

Councils' statutory functions include approving schemes; monitoring occupational standards and risk management; and encouraging and helping improve self-regulation and occupational standards.

In taking this step, an association commits to upholding standards across a profession, managing consumer risks and subjecting its professional integrity systems to external review.

A scheme requires occupational associations to improve the professional standards of their members by implementing risk management strategies and codes of ethics and conduct.

“Having a Professional Standards Scheme maintains the focus of the professional association on the core aspects of professionalism that are so important to maintaining consumer protection.”

Rachel Webber,
Councillor, PSC

Association members who come under a scheme commit to a high degree of professionalism, to maintaining competence, to managing client risk and to subjecting themselves to assessment and audit.

Professional Standards Schemes are unique to the Australian professional business community and limit the occupational liability of association members who have an insurance policy and/or business assets equal to the limitation of liability amount.

Each association requires its members to meet a minimum insurance standard and each scheme has a maximum lifespan of five years, after which time the association must apply for a new scheme, although they can also apply for a one-year extension. This helps ensure robust mechanisms protect consumers and meet evolving professional standards.

Some associations – such as the College of Investigative and Remedial Consulting Engineers, the Law Society of NSW and the Professional Surveyors Occupational Association – have had schemes since 1998.

The Councils review the associations' schemes annually to ensure the associations meet the required professional standards.

The Councils also play a key role in improving professional standards and protecting consumers by:

- providing governments with advice regarding the professional standards of members of professional associations, including the operation of Professional Standards Schemes
- encouraging and promoting the self-regulation of professional associations

- overseeing the strategy for research, education and thought leadership in professional standards and regulation
- awarding research grants and professional standards grants.

Approving schemes for occupational associations

A growing number of associations and their members are making significant efforts to improve their professional standards.

“About 65,000 professionals have been brought into the national framework to improve professionalism and Professional Standards Legislation has been a catalyst for strengthening the culture of professional associations.”

Robert Beaton,
Councillor, PSC

When an occupational association applies for a Professional Standards Scheme, it indicates the jurisdictions to be covered by the scheme, which may include all states and territories. As members of professional associations may work across Australian state borders, the

PSC have supported amendments to professional standards legislation that allow Professional Standards Schemes to be recognised across multiple jurisdictions.

State and Territory governments have cooperated to build a framework for consistency and mobility of professionals across Australia.

The PSC review each application for a Professional Standards Scheme in accordance with the PSL. If they approve it, they recommend the scheme to the relevant state or territory minister for publication in the *Government Gazette*. A scheme comes into force after it has been gazetted.

Before approving a scheme, the Councils must consider:

- all comments and submissions about the scheme
- who the consumers are and how they will be affected
- the nature and level of claims relating to occupational liability made against members of the association
- the association's risk management strategies and how they will be implemented
- the cost and availability of insurance, and the association's standards in relation to insurance policies
- the strategies in place to protect consumers.

Before recommending the scheme to the relevant state or territory minister, the Councils post a public notice of the draft scheme in a major daily newspaper in each jurisdiction in which the scheme applies, to allow for comment. Once gazetted and in force, the scheme limits the occupational liability of the association's members.

As well as assessing and approving Professional Standards Schemes, the PSC monitor associations' statutory compliance obligations, including how they implement and monitor their risk management strategies.

“The Professional Standards Legislation has really helped the occupational associations and members of the professional schemes focus on the importance of risk management.”

Iain Summers,
Councillor, PSC

Risk management reports make up a significant part of the associations' statutory annual compliance reporting, which they must provide for the life of the scheme.

The professional standards legislation has created a framework to improve the rigour with which associations analyse and address public risks and provide assurance to consumers.

Professional Standards Schemes also give association members the capacity to maintain adequate insurance, rather than risk being under-insured or having insufficient assets to cover their liabilities.

This gives consumers confidence because the members of the association have to be insured at least to the limit of their liabilities.

Determining limited liability

'Liability' is a legal obligation that one person might owe to another because the first person acted in a way that caused a loss for the second person, or failed to act in a way that would avoid a loss. Most individual businesses have professional indemnity insurance to cover their occupational liability.

The cost of professional indemnity insurance is affected by the level of risk associated with the work, the history of claims in that area and against the business, and developments in the insurance market.

Professional Standards Schemes can limit civil liability by capping the amount that can be awarded in a civil action related to a participating member's performance, with some exceptions.

The PSC determine the limitations of liability for professional and other associations, though limited liability is available only to members of associations with a Professional Standards Scheme.

When determining limited liability, the Councils must consider the nature and level of claims made against members of the association and the need to adequately protect consumers.

The Councils obtain independent actuarial advice when deciding on the appropriate caps for members of a particular occupational association. These caps are set high enough to cover all consumer claims and most corporate claims for economic loss.

By diminishing the risk of catastrophic claims, the PSC can help ensure that professional indemnity insurance remains readily available and affordable.

Professional Standards Authority

The PSC has its agency in the Professional Standards Authority (PSA).

The PSA is the national regulatory agency with a core purpose of protecting Australian consumers by improving professional standards. It has 25 staff members, made up of expert legal, regulatory and professional standards personnel with experience across professions, government and the commercial sector.

As an expert regulatory and research agency, the PSA supports wider strategies on regulatory reform and professionalisation in the service economy. The PSA provides advice where there is an identified consumer risk that would benefit from professional standards.

This agency is supported by the NSW Department of Finance, Services and Innovation. It has service agreements between the PSC in every state and territory and their respective Department of Attorney-General and acts as the key agent for the Australian Government's combined PSC.

Ministers in all states and territories signed the Professional Standards Agreement in 2005, providing a national system of professional standards regulation. It was reviewed and re-signed by all jurisdictions in 2011.

This agreement allows common membership of all State and Territory Professional Standards Councils and ensures common services and support are provided through the NSW Department of Finance, Services and Innovation.

Two further agreements – the Professional Standards Council Interdepartmental Service Agreement, and the Professional Standards Councils and Departmental Procurement of Services Agreement – formalise how the PSA, within the NSW Department, provides advice and services to all the Councils. These agreements also govern how the departments procure these services using fees and other revenue received by the Councils under PSL.

The PSA's strategic focus is to protect consumers by improving the practices and conduct of professional communities covered by PSL. It does this by helping the eight PSC apply, administer and regulate professional standards legislation in their jurisdictions, acting as an agent of the Councils.

The organisation delivers a variety of services to a large and diverse range of stakeholders, including commercial and professional communities.

The PSA executes the Councils' thought leadership strategy by conducting research, promoting debate and developing educational resources about regulation, professional standards and professionalisation.

Over 2014–15 it administered 27 schemes from 19 occupational associations across Australia, covering more than 69,000 accountants, valuers, computer professionals, engineers, lawyers and barristers.

The PSA's core business functions are regulatory assurance and scheme management. However, it also provides services, information and advice to occupational associations and consumers about Professional Standards Scheme applications on behalf of the eight Councils.

Regulatory assurance refers to monitoring associations for compliance with the legislation, analysing their annual performance, providing feedback, supervising the application of integrity systems and helping them make improvements.

Scheme management includes assessing new scheme applications, analysing claims data and the professional integrity systems of associations. It also involves liaising with associations, providing information to Councils for scheme approval, and administrative functions such as public gazettal of scheme applications.

Help for consumers

After 21 years, the PSC are becoming even more relevant, and support for what we do is growing.

Visit www.psc.gov.au for lists of associations covered by PSL and Professional Standards Schemes in each state and territory, notifications of new associations applying for a Professional Standards Scheme and information on how to contact the relevant associations.

Professional Standards Councils 1994 to 2015

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Brian Rayment QC, Chairman
 Esther Alter, Deputy Chairperson
 Robert Beaton
 Julie Cameron
 Terry Evans
 Tom Karp
 Jo Metcalfe
 Tiina-Liisa Sexton
 Iain Summers
 Rachel Webber

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 Naomi Steer
 Michael Veysey (alt)
 John Westlake (alt)
 Warwick Wilkinson, AM (Chairman)
 Edward Williams (alt)

The Councils' aims



Protect consumers

The goal of the Professional Standards Councils is to protect consumers by demanding high professional standards and practices from those who participate in Professional Standards Schemes. Associations within the regulated communities are expected to ensure their members uphold these standards through education and guidance, monitoring and enforcement, and other measures.



Improve professional standards

A growing number of associations and their members are making significant efforts to improve their professional standards. The Professional Standards Councils work with associations to help them develop effective self-regulation and to improve their professional standards by implementing risk management strategies and professional integrity systems.

The Councils conduct research, develop policies and guidelines, and organise events to promote debate and change in the areas of professional standards, codes of ethics and conduct, and risk management.



Help associations

The Professional Standards Councils' role is to strengthen and improve professionalism within occupational associations and promote self-regulation while protecting consumers. The Councils decide whether to approve applications for Professional Standards Schemes under professional standards legislation, and monitor and enforce associations' administration of schemes. Once approved, civil liability is limited for professionals who are members of an association covered by a scheme.

21 years of regulatory innovation through professional standards

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