

## Guidance

# Members' claims data

## Using this guidance

This guidance will help you to understand and provide the information needed for [Module 5 – Members' claims data](#).

This guidance explains:

- why we ask for this information
- how we use it to assess your application
- how you can gather and provide the required data.

## Understanding the requirements for this module

When assessing your application for a professional standards scheme, we must consider:

- the claims made against your members
- your association's oversight of these claims
- your association's ability to propose a limit of occupational liability
- the potential of the scheme to protect consumers and improve professional standards.

We also consider the need to adequately protect consumers before determining the final limit of liability for you to specify in the scheme. If insurance is unavailable to cover liability at the level of the highest claim, we may set the limitation of liability lower than the highest claim if that would protect consumers adequately.

## Legislative obligations

Professional standards legislation in all jurisdictions requires us to consider a history of occupational liability claims made against association members. See, for example, the Professional Standards Act (NSW) 1994, sections 10 and 26.

The legislation (section 35 of the same Act, for example) also requires that associations monitor and analyse claims made against members by either:

- establishing a claims monitoring committee
- having a committee with these responsibilities.

You must submit this information to us with your application for a professional standards scheme. This is in line with the relevant legislation in each state or territory:

ACT	NSW	NT	Qld	SA	Tas	Vic	WA
Schedule 4, sections 4.7 and 4.22	sections 10 and 26	sections 10 and 27	sections 12 and 27	sections 11 and 28	sections 11 and 29	sections 11 and 28	sections 23 and 39



## Gathering and providing the data

This section explains the questions in the Members' data [template](#) and how you can gather the data needed for your application.

### Questions on the nature and level of claims

**Questions 1 and 2** ask you to provide data about the nature and level of occupational liability claims made against your members.

The required data period varies depending on your application type, as follows:

Application type	Data period
First-time application	All claims reported within 7 years of your application
Scheme remake application	All claims reported within 5 years of your application

The information you provide will be relevant for justifying the proposed monetary limit for your association and how you determined it. If you have different levels of monetary limits, you need to provide claims data to justify them.

You can gather and provide access to this data through:

- an electronic claims database (our preferred option)
- other methods, including member surveys, legal database searches and other research, with a supporting actuarial report.

Categorise the data by the cause of action. This will help us to determine the relevant limits of liability and help you to focus your association's risk management strategies on high-risk areas.

### Electronic claims database

Provide an electronic claims database through the relevant insurer or broker if your association uses:

- the one mandatory insurer for your profession
- several insurers, but places most of its professional indemnity insurance through one broker.

The database should include:

- key dates (date of action or omission giving rise to each claim, date of notification of the claim and dates of each payment arising from the claim)
- the type and the amount of each payment (such as defence costs or payment to claimant)
- the type and amount of reserve or estimate of future payments
- relevant codes for identifying the types of work or advice giving rise to each claim.

You can provide this data to us directly or give permission for us to request it from your insurer or broker. In either case, we will limit database access to relevant staff within Councils' actuarial advisors. They will prepare summary reports for us to consider.

### Other methods

You can use **member surveys** to gather claims data, but you need to ensure that the data you collect comes from a statistically significant sample of your members. For voluntary surveys, this may mean targeting a larger number of members than you would otherwise.



The survey should also target some members that you know or consider may be likely to have had claims of \$500,000 or more made against them.

Even if you have done a member survey, a **legal database search** can help you identify claims against those outside the surveyed group. You do not need to search each member's name – instead, use generic terms, such as the name of the occupational group and words such as 'negligence', 'negligent', 'damages', 'judgement', 'liable' and 'breach of contract'.

You can also use **industry databases** (such as APRA's [NCPD](#)), **court and legal research** and **internet and media research** to gather this data.

If you provide your claims data using these other methods, you should also provide an **actuarial report** summarising key findings and addressing:

- the quality and completeness of the data
- any major gaps in the data
- whether the data is likely to be representative of claims made against members
- whether most claims are below the proposed monetary limit
- the trends in the data over time, including the reasons for any patterns in the data.

## Questions on the claims monitoring committee

**Questions 3 and 4** ask about whether you have a claims monitoring committee, or whether you are willing to establish one.

This committee should aim to minimise claims for occupational liability and mitigate occupational risks. It can consist of association members, with industry experts, insurers, brokers and underwriters to provide advice.

The committee's terms of reference could include:

- To record the number of notifications and claims of \$500,000 or more (this is the amount below which a scheme can't limit liability, in line with professional standards legislation).
- To record the size of claims of \$500,000 or more.
- To investigate the root cause of these claims.

## Copyright and document control

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

## Revision history

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



## Disclaimer

This guidance applies only to an occupational association preparing a scheme for approval under professional standards legislation. It is not legal or other professional advice and should not be relied on as such. An occupational association should seek its own legal/professional advice to find out how the professional standards legislation and other relevant laws and regulations may apply to it. Go to [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au) to access NSW legislation.

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