

APPLICATION GUIDELINES

These guidelines are for occupational associations to assist in the preparation of an application to the Professional Standards Council(s) for the approval of a Scheme in accordance with professional standards legislation. This document discusses and refers to legislation in all jurisdictions. An occupational association need only refer to the sections of legislation in the relevant jurisdiction/s effecting its application.

Applications can be delivered to:

**Office of the Professional Standards Councils
Level 2, 160 Marsden St
Parramatta
NSW 2150**

Applications can be sent to:

**Office of the Professional Standards Councils
Locked bag 5111
Parramatta
NSW 2124**

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Professional Standards Councils: Application Guidelines for approval of a Scheme

A national system of professional standards legislation

Each state and territory has passed legislation that enables the establishment of Professional Standards Council.

Professional standards legislation is state-based legislation, thus there are eight Professional Standards Councils. Each state and territory has appointed the same 11 members to its Professional Standards Council. Each state and territory, and the Commonwealth, nominate one member to the Councils, with the exception of New South Wales and Victoria, which nominate two members each.

The NSW Attorney General's Department provides Secretariat support to each of the Professional Standards Councils. The Secretariat is based in the Office of the Professional Standards Councils (OPSC), at Parramatta NSW.

Why these guidelines are in this format

The guidelines have been developed in this format:

1. To ensure that occupational associations understand:
 - a. the relevant statutory requirements for associations when applying for a Scheme and, on an annual basis, and during the term of a Scheme;
 - b. the relevant statutory requirements for the Council(s) when approving a Scheme and, on an annual basis, and during the term of a Scheme;
 - c. the ongoing statutory functions of the Council(s); and
 - d. the objects of the legislation for each relevant jurisdiction when applying for a Scheme.
2. To ensure that occupational associations provide the Council(s) with the information to enable the Council(s) to fulfil its/their statutory obligations when determining the limits on liability, and when considering whether to approve a Scheme.
3. To ensure that the information provided to the Council(s) is presented in a clear and accessible format, which will enable the efficient processing of the application.
4. To ensure that all relevant material is included in one document which can be forwarded by the Council(s) to the Commonwealth Treasury for it to consider whether to prescribe the Scheme under relevant Commonwealth legislation.

What must be provided to the Professional Standards Council(s) when applying for approval of a Scheme

An initial application to the Council(s) for approval of a Scheme must include:

1. A covering letter outlining the list of the Professional Standards Councils to which the occupational association is applying for approval of a Scheme.
2. Three copies of the draft application with relevant supporting documentation.
3. Three copies of the Scheme drafted for each of the relevant jurisdictions.
4. Three copies of a two-page summary of the Scheme and the risk management strategies of the occupational association, outlining its proposed measures to improve professional standards and protect consumers.
5. A cheque for \$5000 made out to each of the Professional Standards Councils to which the occupational association is applying for approval of a Scheme.

It is also recommended that the association nominate one of its officers (the Scheme Administrator) as a single point of contact within its organisation. The Office of the Professional Standards Councils will generally assign a single policy officer to be responsible for the initial analysis of the application. The processing of the application will be facilitated if this officer has an identified point of contact within the occupational association to liaise with.

Statutory framework

An application for approval of a Scheme must be understood within the framework of the relevant professional standards legislation. This statutory framework is the foundation for development of these guidelines.

Throughout these guidelines, several important parts of legislation have been referred to in general terms, to provide associations with legislative examples. However, each state and territory has its own legislation concerning professional standards. It will be necessary for occupational associations applying for a Scheme in one or more jurisdiction to refer to the relevant legislation concerning its application.

Legislation can be accessed via:

- the following hyperlinks for each jurisdiction;
 - **New South Wales:** *Professional Standards Act 1994* (NSW);
 - **Australian Capital Territory:** *Civil Law (Wrongs) Act 2002* (ACT);
 - **Northern Territory:** *Professional Standards Act 2004* (NT);
 - **Queensland:** *Professional Standards Act 2004* (Qld);
 - **South Australia:** *Professional Standards Act 2004* (SA);
 - **Tasmania:** *Professional Standards Act 2005* (Tas);
 - **Victoria:** *Professional Standards Act 2003* (Vic);
 - **Western Australia:** *Professional Standards Act 1997* (WA);

- the direct links available on the Professional Standards Councils' website: <http://www.psc.gov.au/>; and
- the Australasian Legal Information Institute's website: <http://www.austlii.edu.au/>.

Note:

References made to specific sections of legislation throughout this document and attachments to this document were current at the time of publication.

Neither this document nor any attachment to this document should be relied upon as legal advice or instruction. This document and its attachments serve as guidelines and tools to assist in the preparation of an application to the Professional Standards Councils for the implementation of a professional standards scheme only.

Objects of Professional Standards legislation

The Professional Standards Councils are constituted by the relevant professional standards legislation in each jurisdiction. In keeping with the spirit of the legislation, the objects of the professional standards statutes are generally as follows:

- to enable the creation of schemes to limit the civil liability of professionals and others,
- to facilitate the improvement of occupational standards of professionals and others,
- to protect the consumers of the services provided by professionals and others,
- to constitute the Professional Standards Council to supervise the preparation and application of schemes and to assist in the improvement of occupational standards and protection of consumers.

NSW	ACT	NT	Qld	SA	Tas	Vic	WA
s.3	Sch.4 s. 4.1	s.3	s.4	s.3	s.3	s.3	s.3

Please click here for further explanation of these sections of legislation

Functions of the Professional Standards Council(s)

The Council(s) has/have many functions, only some of which are concerned with considering applications for approval of a Scheme. The functions of the Council(s) is/are generally as follows:

- (1) The Council has the following functions:
 - (a) to give advice to the Minister concerning:
 - (i) the publication in the Gazette of a scheme, or of an amendment to a scheme, submitted by it to the Minister, or of notice of the revocation of such a scheme,
 - (ii) the operation of this Act,
 - (iii) any other matter relating to the occupational liability of members of occupational associations,
 - (b) to give advice to occupational associations concerning policies of insurance,
 - (c) to encourage and assist in the improvement of occupational standards of members of occupational associations,
 - (d) to encourage and assist in the development of self-regulation of occupational associations, including the giving of advice and assistance concerning the following:
 - (i) codes of ethics,
 - (ii) codes of practice,
 - (iii) quality management,
 - (iv) risk management,
 - (v) resolution of complaints by clients,
 - (vi) voluntary mediation services,
 - (vii) membership requirements,
 - (viii) discipline of members,
 - (ix) continuing occupational education,
 - (e) to monitor the occupational standards of persons to whom the Act applies,
 - (f) to monitor the compliance by an occupational association with its risk management strategies,
 - (g) to publish advice and information concerning the above matters,
 - (h) to conduct forums on issues of interest to members of occupational groups,
 - (i) to collect, analyse and provide the Minister with information on issues and policies concerning the standards of occupational groups,
 - (j) to institute proceedings in its own name for the prosecution of an offence against the Act or the regulations that comes to its notice or for injunctive or other relief in respect of such offences.
- (2) The Council is not empowered to give advice concerning occupational standards contained in any other Act or statutory instrument.
- (3) Any advice given to the Minister by the Council may be given either at the request of the Minister or without any such request.
- (4) The Council has such other functions as are conferred or imposed on it by or under this or any other Act.
- (5) The Council is taken to have locus standi for the purpose of pursuing any injunctive or other relief in accordance with subsection (1) (j), and is not to be required to give any undertaking as to damages in connection with the grant of any interlocutory relief.

Refer to the relevant sections of legislation below for specific detail concerning each jurisdiction:

NSW	ACT	NT	Qld	SA	Tas	Vic	WA
s. 43	Sch 4 s. 4.37	s. 45	s. 43	s. 46	s. 47	s. 46	s. 12

Please click here for further explanation of these sections of legislation

The Council's/Councils' mandatory obligations before approving a Scheme

Each statute prescribes the matters the Council(s) must consider before approving a Scheme. In general terms, the Council(s) must consider the following:

- (a) all comments and submissions made to it,
- (b) the position of persons who may be affected by limiting the occupational liability of members of the occupational association concerned,
- (c) the nature and level of claims relating to occupational liability made against members of the occupational association concerned,
- (d) the risk management strategies of the occupational association concerned,
- (e) the means by which those strategies are intended to be implemented,
- (f) the cost and availability of insurance against occupational liability for members of the occupational association concerned,
- (g) the standards determined by the occupational association concerned in relation to insurance policies,
- (h) the provisions contained in the proposed scheme for making and determining complaints and imposing and enforcing disciplinary measures against members of the occupational association concerned.

Refer to the relevant sections of legislation below for specific detail concerning each jurisdiction:

NSW	ACT	NT	Qld	SA	Tas	Vic	WA
s. 10	Sch 4 s. 4.7	s. 10	s. 12	s. 11	s. 11	s. 11	s. 23

Please click here for further explanation of these sections of legislation

There are further issues, which the Council(s) must consider when determining any limit of liability to be specified in a Scheme. Throughout the legislation these issues are often referred to as liability that cannot be limited by a Scheme. In general terms, the legislation provides the following:

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

Refer to the relevant sections of legislation below for specific detail concerning each jurisdiction:

NSW	ACT	NT	Qld	SA	Tas	Vic	WA
s. 26	Sch 4 S 4.22	s. 27	s. 27	s. 28	s. 29	s. 28	s. 39

Please click here for further explanation of these sections of legislation

The Council(s) must comply with all of its/their mandatory obligations (as noted in this section of the guidelines) when approving a Scheme.

Mandatory requirements imposed on occupational associations when applying for a Scheme

In each jurisdiction, the legislation sets out mandatory obligations for **occupational associations** applying for a Scheme. These mandatory obligations include risk management strategies, which, in keeping with the spirit of the legislation, are generally framed in the following manner:

- (1) If an occupational association seeks the approval of a Council for a scheme, it must furnish the Council with:
 - (a) a detailed list of the risk management strategies intended to be implemented in respect of its members, and

- (b) the means by which those strategies are intended to be implemented.
- (2) The means of implementation may be imposed as a condition of membership or otherwise.
- (3) The strategies are to apply in addition to other statutory requirements and must not be inconsistent with them.

Each jurisdiction may differ slightly in its requirements, please refer to the legislation below:

NSW	ACT	NT	Qld	SA	Tas	Vic	WA
s. 36	Sch 4 S 4.32	s. 37	s. 37	s. 38	s. 39	s. 38	s. 48

Please click here for further explanation of these sections of legislation

Assisting the Council(s) and occupational associations to comply with statutory requirements

To fulfil the Council's/Councils' expectation/s in providing relevant material and fulfilling statutory obligations, an occupational association may refer to the Explanatory Notes to the Compulsory Headings stated below.

The Council's/Councils' discretionary authority

Generally, the Council(s) expect/s that any application for a Scheme will contain information in a format that conforms to these guidelines. However, these guidelines are not prescriptive in nature and the Council(s) retain/s the power to approve a Scheme where the application does not conform to these guidelines; nevertheless, "good reason" will need to be shown. In deciding what may be considered to be "good reason", the Council(s) will consider a range of relevant matters including those specified in the above legislation and pertaining to each jurisdiction that an application relates.

What these guidelines require

1. **Draft applications:** The initial submission of an application should be called the "draft application". After the draft application together with the appropriate application fee has been received by the OPSC, the following process applies:
 - a. the Secretariat and Council(s) will comment on the draft;
 - b. the occupational association is to consider these comments and make appropriate amendments to its draft application;
 - c. the occupational association re-submits its draft application (it is advisable that the association submit a clean copy and a marked-up copy of the draft application for ease and speed of review); and

- d. only when a final draft has been approved by the Council(s) will that document be referred to as “the application”. This application will then be forwarded to the Minister(s) for Gazettal and the Commonwealth, for the purposes of prescription of the Scheme under Commonwealth law.

Note:

- Occupational associations are encouraged not to spend money on expensive printing of draft applications.
- The Council(s) cannot accept amendments to a draft application in a piecemeal fashion. ***A new draft application must be submitted when amendments are made.***

2. **Compulsory Headings:** The guidelines include a list of headings that occupational associations must include in their application.

If the heading is not applicable to the occupational association, state the reason for this.

A standard set of headings will ensure the occupational associations and the Council(s) have considered all relevant matters (even if they are not applicable).

3. **Councils’ Policy Statements and Guidelines:** The Councils have adopted various policy documents and guidelines to assist associations. The Councils have discretion in approving Schemes, and may approve Schemes that do not comply with their guidelines. Although these guidelines are not mandatory in nature, it is noteworthy, that when an application is submitted in accordance with these guidelines, there is a greater chance that the application will contain all the necessary information required for the Council(s) to approve the Scheme.

Councils’ policies are continually being updated and reviewed. The following documents are currently available from the Professional Standards Councils’ website: <http://www.psc.gov.au/>:

- Application Guidelines
- Policy Statement on Professional Indemnity Insurance
- Model Code of Ethics Principles
- Policy Statement of Complaints and Discipline
- Policy Statement on Payment of Annual Fees

4. **Supporting Documentation:** These application guidelines require an occupational association to provide documents that support its application together with a narrative of those documents.

- Any supporting documentation accompanying the draft application must be:
 - labelled as an appendix to the draft application;
 - contained in a lever arch folder (separate to the draft application); and
 - complete with a corresponding index.
- All pages in the appendix should be numbered in the bottom right hand corner.

- Numbered dividers should separate each document.
 - The corresponding index to the appendix should be included at the front of the folder and should indicate the following:
 - name of document;
 - divider number; and
 - page number.
5. **Reference to supporting documentation:** Whenever a document is referred to within the draft application, reference should be made to the page number and divider number within the appendix folder. For example (pX, Appendix Y), where 'Y' refers to the number on the divider.
6. **References to legislation:**
- Where legislation is referred to, standard legal formatting should be used; name of the Act and year in italics, jurisdiction in brackets eg *Professional Standards Act 1994* (NSW). Abbreviations can be used.
 - Where legislation is referred to in the application, the Act (or abbreviation) and section numbers should be stated (eg s12 PS Act).
 - A copy of relevant legislation (with the exception of professional standards legislation) should be included in the appendix. If only some sections of an Act are relevant, only those sections will be required.

The process from submission of the draft to the commencement of a Scheme.

Applications will be dealt with as expeditiously as possible. Analysis and processing is facilitated by applications that provide all required information in a clear, readable format, with all relevant supporting documentation.

As the Council(s) must review all applications, the speed of analysis and processing of applications depends in part on the cycle of Council meetings. The Councils meet approximately every eight weeks, on Friday mornings. Dates are set out on the PSC website.

Prior to Council meetings, members of each Council receive documentation to be discussed and reviewed at each meeting. In the case of an application, this documentation will include all relevant materials provided by the occupational association and the relevant analysis undertaken by the Secretariat. Any materials to be provided to the Councils for consideration, including the application and supporting documentation, must be provided to the Office of the Professional Standards Councils at least three weeks before a Council meeting. Inclusion of these materials in Council papers will depend on the commitments of the Secretariat and the complexity of the analysis required for the particular application.

The steps involved from submission to commencement of a Scheme include, but may not be limited to:

- Occupational association submits draft application.
- Secretariat contacts occupational association regarding the provision of additional material, where necessary.
- Occupational association submits revised draft application (which addresses any requests for additional material).
- Secretariat engages an actuary to advise on the proposed cap on civil liability.
- Secretariat seeks Crown Solicitor's Office advice. Secretariat writes submission for Council(s).
- Actuary provides draft opinion to Secretariat.
- Crown Solicitor's Office provides advice.
- Actuary discusses draft opinion with Council(s).
- Council(s) considers application.
- Council(s) may request further information.
- Occupational association provides further information if requested to do so by the Council(s).
- Council(s) approve/s Scheme for public notification.
- Scheme notified in the press.
- Comments and submissions received.
- Council(s) consider/s comments and submissions.
- Council(s) may request further information arising from comments and submissions.
- Further revised draft submitted containing further information if requested.
- Council(s) consider/s further revised draft.
- Council(s) approve/s Scheme.
- Council(s) request/s Minister to publish Scheme in Gazette.
- Minister authorises publication.
- Scheme is published in Gazette.
- Scheme commences.
- Annual fees due.

A summary of the above information can be found on the Professional Standards Councils' website, **[click here for further information](#)**.

Legal advice

Neither the Council(s) nor their Secretariat can provide legal advice to occupational associations as to whether a proposed Scheme complies with law. The Council(s) obtain Crown Solicitor's Office advice for their purposes only, and will not provide that advice to occupational associations.

A Scheme document is a technical legal document, which is an important part of the means for limiting a professional's occupational liability.

Associations are strongly encouraged to seek their own legal advice when drafting a Scheme to ensure that the Scheme:

- **complies with the applicable professional standards legislation;**
- **complies with any other relevant laws; and**
- **achieves the intended purpose.**

These guidelines do not constitute legal advice.

Development of these guidelines

A preliminary draft of these guidelines, based on advice received from the NSW Crown Solicitor, was released for public comment in December 2005. Interested stakeholders provided submissions, and the guidelines were amended to take into account those submissions, to the extent possible. The Councils have continued to review and amend these guidelines, in response to comments and suggestions received from stakeholders from time to time. The current version was approved for publication by the Councils on 27 February 2009.

Assistance using the guidelines

Occupational associations that require assistance in using these guidelines are invited to contact the Office of the Professional Standards Councils as above, or on (02) 8688 8060 or 1300 555 772.

COMPULSORY HEADINGS IN AN APPLICATION TO APPLY FOR APPROVAL OF A SCHEME

1	OCCUPATIONAL ASSOCIATION	19
	1.1 Name of Occupational Association and jurisdictions in which the application is made	19
	1.2 The Legal Foundation of the Association	19
	1.3 History	19
	1.4 Objectives/Mission of the Association	19
	1.5 Persons to whom the Scheme applies	20
	1.5.1 Description of the class or classes of persons within the occupational association	20
	1.5.2 The class or classes within the occupational association to whom the Scheme will apply	20
	1.5.3 Table of members	21
	1.5.4 Exemption	21
	1.6 The Occupational Association is entitled to apply for a Scheme under the Act	21
	1.6.1 Occupation(s)	22
	1.6.2 Body corporate	22
	1.6.3 The occupational association represents members of the occupational group or related occupational groups	22
	1.6.4 Membership of the occupational association is principally limited to members of the occupational group [or related occupational groups – NSW, WA, NT only]	23
	1.7 Related or parent organisations	23
	1.7.1 Description of relationship with other organisations	24
	1.8 Legislation applying to the association or members of the association	24
2	THE POSITION OF PERSONS WHO MAY BE AFFECTED BY LIMITING THE OCCUPATIONAL LIABILITY OF MEMBERS OF THE OCCUPATIONAL ASSOCIATION CONCERNED	25
	2.1 The occupational work done by members of the occupational association to whom the Scheme applies	26
	2.2 Those for whom occupational work is done	26

2.3	Other persons who could be affected by the occupational work	27
2.4	Risks arising from the occupational work	27
2.5	The position of persons who may be affected by limiting occupational liability	28
2.6	Members of the occupational group who are not members of the occupational association to whom the Scheme applies	28
3	NATURE AND LEVEL OF CLAIMS	28
3.1	Data obtained from the insurance industry	30
3.1.1	Description of approach to brokers and/or underwriters	30
3.1.2	Key Findings	30
3.2	Surveys of members	30
3.2.1	The survey instrument	31
3.2.2	The method of collecting the data	31
3.2.3	The method of collating the data	31
3.2.4	Excluding data	31
3.2.5	Key Findings	31
3.3	Searches of legal databases	32
3.3.1	Methodology	32
3.3.2	Key Findings	32
3.4	Internet and media research	32
3.4.1	Methodology	32
3.4.2	Key Findings	33
3.5	Data relating to largest claims for the last 10 years	33
3.6	Data relating to types of claims for the last 10 years	33
3.7	Analysis of all claims data	33
4	RISK MANAGEMENT STRATEGIES AND THE MEANS BY WHICH THOSE STRATEGIES ARE TO BE IMPLEMENTED	34
5	MEMBERSHIP REQUIREMENTS OF THE ASSOCIATION	38
5.1	Educational and other qualifications	39
5.2	Overseas qualifications	39

	5.3	Other entry requirements	39
	5.4	Verification of entry requirements	39
	5.5	Legislative Requirements	39
6		CONTINUING OCCUPATIONAL EDUCATION (COE)	40
	6.1	Power to require COE	40
	6.2	Required strands of COE and number of hours	40
	6.3	Providers of COE	41
	6.4	Monitoring COE compliance with requirements	41
	6.5	Sanctions for non-compliance	41
	6.6	Data collection and analysis	41
	6.7	Legislative Requirements	41
	6.8	Review of COE system	42
7		CODE OF ETHICS AND CODE OF PRACTICE	42
	7.1	Body responsible for developing the Code of Ethics and Code of Practice	42
	7.2	Adherence to the Code of Ethics	43
	7.3	Review of Code of Ethics	43
	7.4	Comparison between association's code of ethics and the Councils' Model Code of Ethics Principles	43
	7.5	Consequences for non-compliance	43
	7.6	Legislative Requirements	43
8		COMPLAINTS AND DISCIPLINE SYSTEMS AND VOLUNTARY MEDIATION SERVICES	44
	8.1	Complaints handling bodies	44
		8.1.1 The authority of the body to handle complaints	45
		8.1.2 Investigators	45
		8.1.3 Decision Makers	45
		8.1.4 Appeal Panel	45
		8.1.5 Reporting complaints information	45
	8.2	Actions forming the subject of a complaint	45

8.3	Persons who can make a complaint	45
8.4	Methods for determining complaints	45
8.4.1	Method for lodging a complaint	45
8.4.2	Methods and process of hearing complaints	46
8.4.3	Tests for upholding or dismissing complaints	46
8.4.4	Review/appeals process for the complainant and practitioner/member	46
8.4.5	Mediation (if applicable) in the process.	46
8.5	Discipline and sanctions	46
8.5.1	Disciplinary rules and procedures	46
8.5.2	Grounds for disciplining members	46
8.5.3	The disciplinary process	46
8.5.4	Forms of discipline and sanctions	46
8.5.5	Monitoring sanctions	46
8.6	Notices of Decisions	47
8.7	Rights of representation of parties to a complaint	47
8.8	Complaints and discipline data	47
8.8.1	Collection	47
8.8.2	Analysis	47
8.8.3	Using complaints and discipline data to inform risk management strategies	47
8.9	Deviations from Model Code	47
8.10	Legislative requirements	48
8.11	Review of complaints and discipline system	48
9	QUALITY ASSURANCE AND AUDIT	48
9.1	Compliance with continuing occupational education	49
9.2	Compliance with associations insurance standards	49
9.3	Sufficiency of business assets	49
9.4	Membership requirements	49
9.5	Compliance with disclosure requirements	49
9.6	Cost and availability of insurance	50
9.7	Claims data	50
9.8	Legislative Requirements	50

10	RISK MANAGEMENT BY MEMBERS OF THE ASSOCIATION AND/OR THEIR FIRMS	51
11	COST AND AVAILABILITY OF INSURANCE AGAINST OCCUPATIONAL LIABILITY	51
	11.1 Member survey	52
	11.2 Members' perception	52
	11.3 Underwriters/brokers views	52
	12 THE STANDARDS DETERMINED BY THE OCCUPATIONAL ASSOCIATION IN RELATION TO INSURANCE POLICIES	52
	12.1 The Association's insurance standards	53
	12.2 Comparison between the association's insurance standards with the Councils' Policy Statement on Professional Indemnity Insurance	53
	12.3 Inconsistencies between relevant legislation and Compulsory insurance under the Act	54
13	THE SCHEME	54
	13.1 Persons to whom the Scheme applies	55
	13.1.1 Register of members	55
	13.2 Method of limiting liability: insurance, business assets, or a combination of insurance and business assets	56
	13.3 Specifying limits of liability	56
	13.4 Conferring a discretionary authority on the occupational association to specify a higher limit	57
	13.4.1 Nature of discretionary authority	58
	13.4.2 Criteria for considering discretion	58
14	ADMINISTRATION OF THE SCHEME	59
	14.1 Organisational structure	59
	14.2 Corporate governance of the association	59
	14.3 The administration of the Scheme	59
	14.3.1 Systems in place to administer the Scheme	59
	14.3.2 Persons responsible for administering the Scheme	59

15	TWO PAGE SUMMARY	60
	APPENDIX	61

APPENDIX

Table 1: Likelihood of Risk

Table 2: Consequences of Risk

Table 3: Qualitative Risk Matrix

Table 4: Mitigating Practices and Controls

Table 5: Risk Analysis

Table 6: Claims for previous 10 years (source: Broker/Insurance Industry)

Table 7: Claims for previous 10 years (source: members survey)

Table 8: Member Survey

Table 9: Legal Searches

Table 10: Description of cases

Table 11: Claims for previous 10 years (source: court and legal searches)

Table 12: Media Searches

Table 13: Description of cases in newspapers

Table 14: Claims for previous 10 years (source: internet and media searches)

Table 15: Types of claims for past 10 years

Table 16: 10 largest claims for last 10 years

Table 17: 5 year Risk Management Plan

Table 17.1: Risk Management Plan Assessment

Table 18: Code of Ethics Comparative Table

Table 19: Comparative table: complaints and discipline system

Table 20: Comparative table - insurance standards

Sample Scheme

Explanatory Notes to Compulsory Headings in Application to Apply for Approval of a Scheme

1 OCCUPATIONAL ASSOCIATION

1.1 Name of Occupational Association and jurisdictions in which the application is made

State the name of the association and the jurisdictions in which it is applying to the Council(s) for approval of a Scheme.

[The [Occupational Association] is applying to the [NSW] [Victorian] [Queensland] [Western Australian] [South Australian] [Tasmanian] [Australian Capital Territory] [Northern Territory] Professional Standards Council(s) for approval of a Scheme.

1.2 The Legal Foundation of the Association

Set out the means by which the association is legally constituted. This could be a constitution, a charter or legislation. The relevant constitution, charter or legislation should be included in the appendix. A reference to the relevant clauses or sections should be stated. Refer to the page in the relevant appendix.

[The [OA] is an occupational association of [occupation type] which is constituted by [clause/section] [number] (pX, Appendix Y) of the [legislation/constitution] dated [x].

1.3 History

Provide a brief history of the occupational association, including:

- when it was formed/incorporated;
- any changes to the name of the occupational association;
- any changes to the occupational group represented by the occupational association (for example, an association may have only represented solicitors in the past, but may now represent solicitors and barristers).

1.4 Objectives/Mission of the Association

Include a list of the objectives, missions or goals of the association. This will ordinarily be found in the Constitution of the association.

1.5 Persons to whom the Scheme applies

Professional standards legislation in each jurisdiction refers to persons whom a Scheme may apply to. Note that references to the term, 'person' within the legislation may be taken to include corporations as well as natural persons.

In this part of the application, associations provide information about the types of membership and/or classes of the association and (where relevant) the classes to whom the Scheme applies. This information will allow the Council(s) to contextualise the members to whom the Scheme applies within the whole association, and the extent of the potential for consumer protection and improved professional standards arising from the Scheme.

Note:

Those eligible for membership may include businesses and/or natural persons depending upon the formation and constitution of the occupational association.

NSW	ACT	NT	Qld	SA	Tas	Vic	WA
ss 17 - 20	Sch 4 ss 4.15 - 4.16	ss 18 - 21	ss 19 - 21	ss 19 - 22	ss 20 - 23	ss 19 - 22	ss 30 - 33

Please click here for further explanation of these sections of legislation

1.5.1 Description of the class or classes of persons within the occupational association

Some occupational associations have various classes of members, for example: fellows, honorary members, and student members. State the membership criteria for each class of membership. For example: academic qualifications, experience, certifications, and specialty fields. Include supporting documentation in the appendix, and refer to it in the narrative.

[[Occupational association] has [number] types of membership: [eg Fellows] [Honorary Fellows]

[Fellows]: Article [x] of the Constitution (pX, Appendix Y) provides that a person may be admitted as a Fellow if the following criteria are satisfied:

[xxxxxxx...]

1.5.2 The class or classes within the occupational association to whom the Scheme will apply

State the persons to whom the Scheme applies. State if the Scheme will apply to the whole association or to specific classes of membership.

[The Scheme will apply to all members of [occupational association]] OR [The Scheme will apply to [x] class[es] of [occupational association]]

State the reasons why the occupational association is applying for a Scheme for only a limited class or classes of membership.

1.5.3 Table of members

For occupational associations with more than one class of member, include a table in the following format:

Class of Member	Number of members	Number of members to whom Scheme will apply
Total		

1.5.4 Exemption

Specify the criteria by which members may be exempted from the Scheme.

State the reasons why the occupational association is including an exemption.

Refer to the relevant sections of legislation below:

NSW	ACT	NT	Qld	SA	Tas	Vic	WA
S 17(2)-(4)	Sch 4 S4.15(2)-(4)	S 18(2)-(4)	S 19(2)-(4)	S 19(2) – (4)	S 20(2) – (5)	S 19(2) – (4)	S 30(2) – (4)

Please click here for further explanation of these sections of legislation

1.6 The Occupational Association is entitled to apply for a Scheme under the Act

An occupational association is entitled to apply for a Scheme in accordance with the applicable legislation if the occupational association:

1. is a body corporate;
2. represents the interests of persons who are members of the same occupational group (or related occupational groups – in NSW, NT and WA only); and
3. has a membership limited principally to members of that occupational group (or those occupational groups – in NSW, NT and WA only).

Refer to the relevant legislation for definitions of *occupational association* and *occupational group*:

NSW	ACT	NT	Qld	SA	Tas	Vic	WA
s. 4	Sch 4 S 4.2	s. 4	s. 7 sch 2	s. 4	s. 4	s. 4	s. 4

Please click here for further explanation of these sections of legislation

1.6.1 Occupation(s)

Describe the occupation (which may be a profession or trade) [The occupation(s) represented by the [Occupational Association] is/are:]

[The [occupation] is a [trade/profession]]

If the occupation is not a traditional trade or profession, provide some documentation which supports the assertion that the occupation is an occupation within the meaning of the relevant legislation.

If the association is a business entity only association, describe the major occupation(s) employed by the member firms. A business entity only association is an association comprising only firms of business entities. A 'firm' may be a sole practitioner, a partnership or a corporation. A 'business entity only' association allows business entities to be members of the association, but it does not allow individual professionals, or practitioners, within those business entities to be members.

1.6.2 Body corporate

State the legislation under which the association is constituted.

[The [Occupational Association] is a body corporate constituted under [relevant legislation]]

1.6.3 The occupational association represents members of the occupational group or related occupational groups

Provide information about the size of the membership and size of the relevant occupation/profession/trade.

[The [Occupational Association] represents members of the [x] [occupation/profession/trade], as mandated by [article x] of the [Constitution] (px, Appendix Y)]

This information will allow the Council(s) to understand the significance of the occupational association in the context of the broader occupational group, and the extent to which consumer protection and improved professional standards may be increased as a result of the Scheme.

There are many reports and statistics on occupational/industry distribution. Census data contains comprehensive statistics. The 2006 census tables for *industry of employment* and *occupation* are available from the Australian Bureau of Statistics website: <http://www.abs.gov.au/>. If the path to the data is not clear, the Australian Bureau of Statistics' National Information and Referral Service can be contacted for assistance on 1300 135 070.

To the extent possible, fill in the table for the classes of members and jurisdictions in which the association is applying for a Scheme. For example:

State	Individual Membership	Estimated Individual professionals (members and non members)	Firm Membership	Estimated Firm professionals (members and non members)	Total
NSW					
Vic					
QLD					
WA					
SA					
Tas					
ACT					
NT					
Cth					
Total					

1.6.4 Membership of the occupational association is principally limited to members of the occupational group [or related occupational groups – NSW, WA, NT only]

[Article [x] of the [Constitution] (pX, Appendix Y) provides that the following persons may be admitted to membership of [Occupational Association] (set out the relevant section of the Constitution or other document relating to membership requirements)]

Note:

Those eligible for membership may include businesses and/or natural persons depending upon the formation and constitution of the occupational association.

1.7 Related or parent organisations

Some occupational associations have legal, business or professional relationships with other organisations.

Related organisations may include:

- a technical society that is part of the occupational association and is relevant to the Scheme proposed;

- an international organisation that the occupational association is affiliated with (such an organisation may set a Code of Ethics which has been adopted by the occupational association);
- organisations that have co-operated to create an occupational association for the purposes of applying for a professional standards Scheme;
- wholly owned subsidiaries providing insurance to members of the association;
- an organisation which administers a complaints and discipline system applicable to members of the occupational association; and/or
- organisations that co-operate with business entity only associations to regulate individual professionals or practitioners employed by member firms.

1.7.1 Description of relationship with other organisations

List all related organisations.

Does the relationship have a formal status? For each related organisation, define any institutional arrangements that exist (such as a memorandum of understanding).

For each related organisation, describe:

- the objectives of the organisation;
- any relevant overlaps in decision-making;
- any relevant overlaps in regulation;
- any relevant overlaps in data-sharing; and/or
- any other relevant issues.

For business entity only associations, clearly explain how these relationship(s) with other organisations facilitate monitoring and reporting between individuals, member firms and the association, with regard to:

- codes of conduct and ethics for professional employees;
- qualifications and professional experience of professional employees;
- continuing occupational education for professional employees; and
- complaints and discipline systems for professional employees.

1.8 Legislation applying to the association or members of the association

List the legislation regulating:

- the occupational association;
- members of the occupational association; and/or
- the occupational work carried out by members of the occupational group(s) that may have an impact on the performance of a member.

A description should be provided in general terms.

State the name of the relevant statute (including year and jurisdiction) [eg *Legal Profession Act 2004* (NSW)] and the relevant Part/Division/Sections. Briefly describe the nature of the regulation [eg licensing of builders].

Occupational associations should refer to all relevant legislation that regulates the association or its members in the performance of their occupation, and is relevant to the issues raised in professional standards legislation. This will include legislation, which:

- regulates professional standards;
- requires members of an association to purchase professional indemnity insurance; and/or
- subjects members of an association to:
 - a statutory complaints and discipline system, and/or
 - continuing occupational education etc.

More specific headings relating to any inconsistencies between another Act and professional standards legislation concerning:

- compulsory insurance;
- risk management; and
- complaints and disciplinary matters,

are required by these guidelines in accordance with relevant legislation.

NSW	ACT	NT	QLD	SA	TAS	VIC	WA
s 49	-	s 55	-	s 6	s 6	s 6	s 6

Please click here for further explanation of these sections of legislation

2 THE POSITION OF PERSONS WHO MAY BE AFFECTED BY LIMITING THE OCCUPATIONAL LIABILITY OF MEMBERS OF THE OCCUPATIONAL ASSOCIATION CONCERNED

Professional standards legislation in each jurisdiction sets out the matters that the Council(s) must consider before approving a Scheme. This list is mandatory. Therefore it is mandatory for associations to provide the Council(s) with material that will allow it/them to consider the things stated in the list.

Refer to the following sections of legislation concerning matters for consideration, including relevant definitions of ‘*occupational liability*’ and ‘*damages*’:

NSW	ACT	NT	Qld	SA	Tas	Vic	WA
s. 10	Sch 4 S 4.7	s. 10	s. 12	s. 11	s. 11	s. 11	s. 23
s. 4	Sch 4 S 4.2	s. 4	s. 7 sch 2	s. 4	s. 4	s. 4	s. 4
s. 5	Sch 4 S 4.3	s. 5	s. 6	s. 5	s. 5	s. 5	s. 5

Please click here for further explanation of these sections of legislation

The definitions set out in the relevant statute should be considered when describing the occupational liability of members of the occupational association to whom the Scheme applies.

The subheadings in this section will assist occupational associations to:

- identify relevant areas of risk; and
- develop risk management strategies to deal with those risks.

(Refer to **section 4 of these guidelines** for assistance).

2.1 The occupational work done by members of the occupational association to whom the Scheme applies

Describe the generic types of work performed by the occupational group (for example, design of structures, advising on legal consequences, financial audit etc).

2.2 Those for whom occupational work is done

Describe the types of clients of the occupational group. These may be individuals, corporations or government. Where necessary, include types of corporations (for example, large financial institutions, small businesses etc).

State if members of the occupational association (to whom the Scheme applies) predominantly work for a particular type of client.

Where possible, attempt to list the approximate percentage of each type of client for each category of limited liability in the Scheme. This may be in very approximate terms.

The types of clients are relevant to the Council’s/Councils’ consideration of consumer protection. Different consumer protection considerations may arise for

unsophisticated consumers (for example a home owner seeking to conduct an extension to their home) compared with sophisticated consumers (for example a large corporation wishing to build an office block).

2.3 Other persons who could be affected by the occupational work

Describe other persons who could be affected by the work done by members of the occupational association. For these purposes, consider only '*occupational liability*' as defined in the relevant statute. (For example, a subsequent purchaser of a residential property may suffer economic loss as a result of negligent engineering work).

Members of an occupational association to whom a Scheme applies may have the benefit of limited liability in a claim, which is brought by a person other than a client. Therefore occupational associations should consider the possibility of other persons who could be affected by the occupational work of their members as part of their risk analysis.

2.4 Risks arising from the occupational work

Describe the risks arising from the occupational work to persons who may be affected by that work. For each risk identified:

- estimate the range of possible financial consequences of the risk occurring;
- the possible ranges of the likelihood of the risk occurring; and
- the mitigating practices and controls (these could include current risk management strategies, legislative regulation etc).

Claims data (refer to section 3 below) may help to assess the likelihood of the risk occurring and the financial consequences of the risk occurring.

The risk analysis required by the Council(s) is high level and in most cases will have already been carried out by an association as part of developing its risk management strategy.

If no risk management analysis has previously been carried out, many risk analysis tools are available in the market. For example, Standards Australia publishes AS/NZS ISO 31000:2009 Standard for risk management.

A very basic sample template (**Table 5**) and supporting tables (**Tables 1-4**) is provided in the Appendix to assist associations with their risk analysis. Associations may use these tables to provide the information requested in this section. The tables will need to be tailored for each occupational association.

2.5 The position of persons who may be affected by limiting occupational liability

List the persons who may be affected by limiting occupational liability. For example, the list may include consumers (clients and third parties) who are able to recover less in an action as a result of the limit on occupational liability than they otherwise would.

The analysis in sections 2.1-2.4 and the claims data in section 3 below, will assist in this analysis. (Note that sections 2.2 and 2.3 identify the persons who may be affected by the occupational work, however, this section requires an identification of the persons who may be affected by limiting occupational liability. It is likely that fewer persons and/or fewer types of work will be referred to in this section than are referred to in sections 2.2 and 2.3).

2.6 Members of the occupational group who are not members of the occupational association to whom the Scheme applies

Discuss whether, members of the occupational group who are not members of the occupational association to whom the Scheme applies, may be affected by the limitation of liability.

Consider whether the limitation of liability for members of the occupational association may cause members to be less competitive, or whether the Scheme may provide an unfair advantage for members to the detriment of non-members.

When answering this section, it is recommended that associations seek legal advice as to whether their proposed Scheme breaches any state and/or federal competition, fair-trading and consumer protection laws.

3 NATURE AND LEVEL OF CLAIMS

In each jurisdiction, legislation indicates that it is mandatory for the Council(s) to consider a history of claims for occupational liability made against members of the occupational association. The following sections of legislation are relevant:

NSW	ACT	NT	Qld	SA	Tas	Vic	WA
s. 10	Sch 4 s 4.7	s. 10	s. 12	s. 11	s. 11	s. 11	s. 23
s. 26	Sch 4 s 4.22	s. 27	s. 27	s. 28	s. 29	s. 28	s. 39

Please click here for further explanation of these sections of legislation

Firm only associations should provide claims data in relation to individual professionals employed by their members.

Despite the legislation requiring the Council(s) to consider the claims made against members of the occupational association before approving a Scheme, and the occupational associations ability to suggest a limit of occupational liability; ultimately, it is the Council(s) that must make a determination as to the limit of liability to be specified in the Scheme.

The Council(s) request/s claims data for the last ten years. Ten years of claims data will allow a reasonable number and type of claims to be reported. This is particularly important for associations against whose members few claims have been made. Ten years of claims data will assist associations to identify trends in claims and associated risks, which will aid in the development of risk management responses.

The Council(s) appreciate/s the difficulties associations may have in collecting claims data. If an association cannot provide the data requested by the Council(s), it should explain the steps it has taken to obtain the data in its application.

Claims data should be categorised in terms of types of claims. This will assist the Council(s) to determine the relevant limits of liability. It will also assist the occupational association to focus its risk management strategies on high-risk areas.

NSW	ACT	NT	Qld	SA	Tas	Vic	WA
s. 26	Sch 4 S 4.22	s. 27	s. 27	s. 28	s. 29	s. 28	s. 39

Please click here for further explanation of these sections of legislation

The sources of data for claims

There are many sources of claims data. The legislation requires the Council(s) to consider data relating to occupational liability of *members* of the occupational association. Therefore there should be some assurance that the data supplied relates to members of the association. If data that specifically relates to members is not available the reason for this should be explained.

Occupational associations should endeavour to provide information from a variety of sources to facilitate crosschecking. The most common forms of data are from the insurance industry, member surveys (a sample survey has been provided, see **Table 8**, this must be amended to suit the types of claims faced by members of the occupational association), court and legal searches, and Internet and media research.

Comprehensive data

Where comprehensive data is available from an underwriter or broker, there is no requirement to obtain data from other sources. However, where data from one source is incomplete, associations should seek to provide data from a variety of sources to provide a fuller set of data for setting the limit on liability.

Comprehensive data means data from all underwriters insuring members of an occupational association.

3.1 Data obtained from the insurance industry

3.1.1 Description of approach to brokers and/or underwriters

Describe the methodology used to obtain the data from the insurance industry including successful and unsuccessful approaches to brokers and/or underwriters.

3.1.2 Key Findings

Describe the key findings of the data provided by brokers and/or underwriters. Include the proportion of the occupational group and/or the occupational association to which the data applies and describe the key findings relating to this specific data. This should include an analysis of trends or aberrations in the data.

Attach a table in the form of **Table 6** of the Appendix and fill it in to the extent possible.

3.2 Surveys of members

If comprehensive data has been obtained from the insurance industry, it will not be necessary to include survey data.

Associations should provide claims data from a statistically significant sample of their members. Business entity only associations should include survey data from a representative sample of the relevant professionals employed by their members. For voluntary surveys this may mean targeting a larger number of members than may otherwise be the case.

In addition, associations should include in their sample a targeted group of members who the association knows or considers may have been likely to have had larger claims against them.

Associations may have surveyed members over a number of years. Include a copy of any relevant survey reports in the Appendix.

Describe the methodology used to obtain and analyse the claims data.

This information should include:

- the survey instrument;
- method of collecting data;
- method of collating data;
- data being excluded; and
- key findings.

3.2.1 The survey instrument

[The survey instrument used to collect the claims data is attached at pX, Appendix Y]

An example of an appropriate member survey instrument is attached in the form of **Table 8** of the Appendix.

3.2.2 The method of collecting the data

Describe the method used to collect data. Methods may include:

- requesting the information as a compulsory part of membership renewal;
- online surveys whereby a person includes their membership number; and /or
- sending a survey to members in the post.

The number of responses and the number of possible responses should be referred to and commented on.

Associations may wish to engage an independent firm to assist in the collection, collation and analysis of the survey.

3.2.3 The method of collating the data

The method of collating the data will differ depending on the size of the occupational association. For associations with few members, the data may be collated manually. For associations collecting data from a large number of members, the data may be collated using a computer program.

3.2.4 Excluding data

There may be some data which has been collected but which is not included in the report. Associations should include a reference to data which has been collected, but which has been excluded for any reason.

3.2.5 Key Findings

Describe the key findings of the survey report. This should include an analysis of trends or aberrations in the data. Attach a table in the form of **Table 7** of the Appendix and fill it in to the extent possible.

3.3 Searches of legal databases

If comprehensive data has been obtained from the insurance industry, it will not be necessary to include searches of legal databases.

Note:

Even if a survey of a representative sample of members of an occupational association has been undertaken, searches of legal databases may help to identify claims against persons who fall outside the surveyed group.

3.3.1 Methodology

Describe the methodology used to search legal databases, including:

- names of databases searched;
- date of searches;
- search terms; and
- search results.

Include tables in the form of **Tables 9** and **10** of the Appendix and fill them in to the extent possible.

Note:

It is not necessary to search the names of each member of the association. Searches should be made of generic terms including the name of the occupational group in combination with other relevant search terms such as; 'negligence', 'negligent', 'damages', 'judgement', 'liable', 'breach of contract' etc.

3.3.2 Key Findings

Describe the key findings of the searches of legal databases and attach a table in the form of **Table 11** in the Appendix and fill it in to the extent possible.

3.4 Internet and media research

If data gathered from other sources is sufficient, it will not be necessary to conduct Internet and media research.

3.4.1 Methodology

Describe the methodology used to search the internet and media databases, including:

- names of databases searched;
- date of searches;
- search terms; and
- search results.

Include tables in the form of **Tables 12** and **13** of the Appendix and fill them in to the extent possible.

3.4.2 Key Findings

Describe the key findings of searches of the Internet and media databases and attach a table in the form of **Table 14** in the Appendix and fill it in to the extent possible.

3.5 Data relating to largest claims for the last 10 years

Attach a table in the form of **Table 16** in the Appendix concerning the ten largest claims for the last ten years and fill it in to the extent possible.

3.6 Data relating to types of claims for the last 10 years

Attach a table in the form of **Table 15** in the Appendix concerning the types of claims (for example, type of work, area of practice, etc) and quantum for the last ten years and fill it in to the extent possible.

3.7 Analysis of all claims data

Analyse all the claims data provided to the Council(s). This analysis should include an analysis of:

- the quality and completeness of the data;
- the major gaps in the data;
- whether the data is likely to be representative of claims made against members of the occupational association;
- whether the majority of claims are below the proposed monetary ceiling or limitation amount; and
- the trends in the data over time, including the reasons for any patterns in the data.

These issues will be relevant for justifying the monetary ceiling proposed by the association, and the means for determining the monetary ceiling.

For associations, which have different levels of monetary ceilings, there should be some attempt to justify those ceilings by reference to claims data.

When determining the limitation of liability, the Council(s) must also consider the need to adequately protect consumers. If insurance is unavailable to cover liability at the level of the highest claim, the Council(s) may set the limitation of liability lower than the highest claim, if doing so would adequately protect consumers.

4 RISK MANAGEMENT STRATEGIES AND THE MEANS BY WHICH THOSE STRATEGIES ARE TO BE IMPLEMENTED

The Council(s) is/are required to consider **the association's** risk management strategies and the means by which it is intended those strategies are to be implemented. Refer to the following sections of legislation:

NSW	ACT	NT	Qld	SA	Tas	Vic	WA
s. 10	Sch 4 S 4.7	s. 10	s. 12	s. 11	s. 11	s. 11	s. 23
s. 36	Sch 4 S 4.32	s. 37	s. 37	s. 38	s. 39	s. 38	s. 48

Please click here for further explanation of these sections of legislation

What is risk management?

Australian Standards AS/NZS ISO 31000:2009 defines risk management as a logical and systematic process of:

- establishing context;
- identifying;
- analysing;
- evaluating;
- treating;
- monitoring; and
- communicating,

risks associated with any activity, function or process in a way that will enable organisations to minimise losses and maximise opportunities.

Many associations will have risk management systems in place. If not, there are many publications available on how to develop a risk management system. For example, Australian Standards produces AS/NZS ISO 31000:2009, a risk management standard and accompanying guidelines in both hard copy and on CD. They are available for purchase online at <http://www.saiglobal.com/shop/>. Additionally there are many organisations that can provide training in risk management, including Standards Australia, through their commercial arm, SAI Global. For more information contact Standards Australia on 1800 035 822 or SAI Global on 131 242.

What types of risk management strategies interest the Council(s)?

Risk management strategies are not defined in any of the relevant statutes, however, each of the statutes list various elements that could be relevant in the development of a risk management plan, such as:

- codes of ethics;
- codes of practice;
- quality management;
- risk management;
- resolution of complaints by clients;
- voluntary mediation services;
- membership requirements;
- discipline of members; and
- continuing occupational education.

Each statute refers to risk management issues, including:

- costs and availability of insurance;
- insurance standards;
- business assets;
- disclosure; and
- the nature and level of claims.

NSW	ACT	NT	Qld	SA	Tas	Vic	WA
s. 22	Sch 4 s 4.18	s. 23	s. 23	s. 24	s. 25	s.24	s. 35
s. 23	Sch 4 s 4.19	s. 24	s. 24	s. 25	s. 26	s. 25	s. 36
s. 26	Sch 4 s 4.22	s. 27	s. 27	s. 28	s. 29	s. 28	s. 39
s 27	Sch 4, s 4.23	s 28	s 28	s 29	s 30	s 29	s 40
s. 33	Sch 4, s 4.29	s. 34	s. 34	s. 35	s. 36	s. 35	s. 45

Please click here for further explanation of these sections of legislation

Based on the above-mentioned sections of legislation, the Council(s) has/have identified six principal areas which it/they consider/s appropriate for occupational associations' risk management strategies:

1. Membership entry requirements;
2. Continuing occupational education;
3. Code of ethics and code of practice;
4. Complaints and discipline of members and voluntary mediation services;
5. Quality assurance and audit;
 - a. continuing occupational education;
 - b. insurance standards;
 - c. business assets;
 - d. analysis of the cost and availability of insurance;
 - e. analysis of nature and level of claims;
 - f. disclosure;
 - g. use of *Cover of Excellence*[®] Logo;
6. Risk management by members of the association and/or their firms.

Each of these sections will be dealt with below.

In the following sections of the application, occupational associations will describe the structures in place to support each area of risk management.

It is important that the risk management process undertaken is documented and that risks reported on by each individual occupational association reflects the risk profile of that association.

Risk Management Reporting Requirements

The Council(s) require/s associations to submit a risk management plan for the duration of the Scheme (for up to five years). The development of this plan will assist the association to comply with its statutory risk management reporting obligations.

When developing this plan, the association should develop risk management strategies which deal with the risks arising as a result of the occupational work done by persons practising in the occupation as identified in section 2 above. High-level risk areas for professionals include:

- Ethics and professional conduct;
- Technical knowledge and skills; and
- Practice management.

Associations are required to provide details of more specific risks, which the association is intending to treat by means of its risk management strategies in a five-year risk management plan.

The plan should make reference to each of the risk management areas outlined above. For each key area listed above, the plan should state the:

- risk/s which the strategy is treating;
- five-year risk management strategy/ies with respect to the key area,(This should include the objective of the strategy);

- means by which the strategy/ies will be implemented; and
- means by which the strategy/ies will be monitored, including the way in which the effectiveness of the strategy/ies will be measured.

In all jurisdictions, an occupational association must provide the Council(s) with an annual report about its implementation and monitoring of its five-year risk management report. This includes information on risk management strategies, including the effect of those strategies and changes made or proposed to be made to those strategies. *Reporting will be for the duration of the Scheme (up to five years).*

NSW	ACT	NT	Qld	SA	Tas	Vic	WA
s. 37	Sch 4 S 4.33	s. 38	s. 38	s. 39	s. 40	s. 39	s. 49

Please click here for further explanation of these sections of legislation

The plan should be provided in the format of **Table 17** in the Appendix. There may be more than one entry for each risk management area.

Table 17.1 provides a summarised example of the priorities an associations risk treatment plan should address over the life of a scheme. Actions may take several years or not occur in any year (for example the complete policy development cycle, or the role out of new or specific member requirements).

Note: while monitoring may occur each and every year, monitoring alone will not result in the effective treatment of identified risks. Only action items that combat the identified risks should be provided in **Table 17.1**, as opposed to results achieved through monitoring risk management plans.

What is a strategy?

A strategy is an overall plan designed to achieve a particular long-term aim or objective. At a high level, for example, this could be as simple as ‘to improve professional standards of members’.

The strategies should describe a desired outcome. The outcome should be achievable with respect to the relevant key area.

Associations will engage in a process of risk assessment (as discussed in section 2 above). The end result of this process will be to decide how to deal with the identified risks.

How will the strategy be implemented?

The association should describe the activities, methods and mechanisms undertaken to treat risks. These can be activities such as, conducting a review of a certain

policy, or designing CPD seminars to better educate members about avoiding particular risks.

Activities should focus on achieving the identified outcomes. This will be critical when reporting on the *effect* of the strategies. Associations should develop a small number of activities that can achieve effective outcomes rather than a large number of activities, which do not relate to the outcome of the strategy.

How is the implementation to be monitored and how is the effect of the strategy to be measured?

The association should describe how the implementation of strategies will be monitored. This includes describing:

- who will be monitoring the implementation of strategies; and
- what that person will do to monitor the implementation of strategies.

Monitoring may involve activities such as analysing survey responses, and analysing and auditing data collected from members.

Measures of the effectiveness of strategies may be qualitative (for example, measures of satisfaction) or quantitative (for example, actual numbers or dollar amounts). Associations must state how they are going to measure the effect of the strategy.

5 MEMBERSHIP REQUIREMENTS OF THE ASSOCIATION

Having entry requirements based on:

- educational qualifications;
- number of years of practice in a particular occupation; or
- other qualifications,

may ensure that only persons with sufficient knowledge and/or experience to practice in the occupation are admitted as members of the association.

There may also be entry requirements for particular classes of member of an association, and these will have been referred to in section 1 of the application above.

Entry requirements may also include an undertaking to engage in risk management strategies, such as:

- holding a particular level of professional indemnity insurance; and/or
- engaging in a certain number of hours of continuing professional development each year.

Business entity only associations should note the entry requirements of other organisations with which they have relationships as described in section 1.7.1 of the application, and describe how the association monitors their compliance.

In many jurisdictions, the relevant legislation provides that an association has the power to create a means of implementing risk management strategies as a condition of membership.

NSW	ACT	NT	Qld	SA	Tas	Vic	WA
s. 36	s. 4.32	s. 37	s. 37	s. 38	s. 39	s. 38	s. 48

Please click here for further explanation of these sections of legislation

5.1 Educational and other qualifications

State the educational or other qualifications required for membership of the association. Include the relevant policy in the Appendix and refer to relevant pages in the description.

5.2 Overseas qualifications

Describe the method for assessing overseas qualifications. Include relevant documents in the Appendix, and refer to relevant pages in the description.

5.3 Other entry requirements

Describe any other entry requirements. Include relevant documents in the Appendix, and refer to relevant pages in the description.

5.4 Verification of entry requirements

Describe the method used to verify entry requirements. Include relevant documents in the Appendix, and refer to relevant pages in the description.

5.5 Legislative Requirements

State any legislative requirements, which must be satisfied before a person can practice in the occupation.

Note:

Generally, professional standards legislation across all jurisdictions is similar, in that, most statutes provide that strategies are to apply in addition to other

statutory requirements and must not be inconsistent with them. Refer to the following sections of legislation:

NSW	ACT	NT	Qld	SA	Tas	Vic	WA
s. 36	s. 4.32	s. 37	s. 37	s. 38	s. 39	s. 38	s. 48

Please click here for further explanation of these sections of legislation

Include a statement in the following terms: [[Occupational Association] is not aware of any inconsistencies between its membership requirements and any other statutory requirements].

Describe how the occupational association came to this conclusion (for example, seeking legal advice).

6 CONTINUING OCCUPATIONAL EDUCATION (COE)

6.1 Power to require COE

Describe the source of the power to require COE (note that the legislation in all jurisdictions uses the expression “continuing occupational education” rather than “continuing professional development” or CPD).

Business entity only associations should note the COE requirements of other organisations with which they have relationships as described in section 1.7.1 of the application, and describe how the association monitors their compliance.

Include relevant documents in the Appendix, and refer to relevant pages in the narrative.

6.2 Required strands of COE and number of hours

Explain the structure of the COE programme in terms of the risks that the programmes are seeking to address.

State the strands of COE and the number of hours required in each strand. A ‘strand’ is a course or group of courses. Strands in COE programmes may relate to the generic areas of risk such as:

- Ethics and the regulation of the professional;
- Technical occupational knowledge;
- Technical occupational skills; and
- Practice management.

Include relevant documents in the Appendix, and refer to relevant pages in the narrative.

6.3 Providers of COE

List the main providers of COE to members. Include relevant documents in the Appendix, and refer to relevant pages in the narrative.

6.4 Monitoring COE compliance with requirements

Describe how compliance is monitored or audited. Include relevant documents in the Appendix, and refer to relevant pages in the narrative.

6.5 Sanctions for non-compliance

State the sanctions for non-compliance with compulsory COE requirements. Include relevant documents in the Appendix, and refer to relevant pages in the description.

6.6 Data collection and analysis

State if the association collects data on the COE of its members. State how data is used for the management of risk. (For example, there may be a high-risk area on which COE courses are offered, but the association may collect data indicating few members attend courses on that high-risk area. The association may consider making courses on that high-risk area a compulsory strand of its COE program to minimise the risk.)

6.7 Legislative Requirements

State the legislation (if any), which requires members of the association to engage in COE.

Note:

Generally, professional standards legislation across all jurisdictions is similar, in that, most statutes provide that strategies are to apply in addition to other statutory requirements and must not be inconsistent with them. Refer to the following sections of legislation:

NSW	ACT	NT	Qld	SA	Tas	Vic	WA
s. 36	s. 4.32	s. 37	s. 37	s. 38	s. 39	s. 38	s. 48

Please click here for further explanation of these sections of legislation

Include a statement in the following terms: [[Occupational Association] is not aware of any inconsistencies between its continuing occupational education requirements and any other statutory requirements].

6.8 Review of COE system

State the method and time-cycle for review of the continuing occupational education system.

7 CODE OF ETHICS AND CODE OF PRACTICE

The Council(s) require/s occupational associations to have a code of ethics.

A code of ethics refers to moral principles and ideals of the good practitioner.

A code of practice provides a model of practical moral reasoning in order to facilitate the application of the code of ethics. It should include concrete examples of ethical problems and solutions.

Business entity only associations should note the codes of ethics and codes of practice that apply to individual professionals in the employ of their members, by virtue of the relationships described in section 1.7.1 of the application, and explain how the association monitors their compliance. In particular, what sanctions may be applied by the association to members, in respect of breaches of the codes by individual employees.

The Councils have published a **Model Code of Ethics Principles**. It is recommended that associations read this document before completing this section of the application.

7.1 Body responsible for developing the Code of Ethics and Code of Practice

An occupational association may adopt a Code of Ethics and/or Code of Practice developed by another organisation.

State the name of the organisation that was responsible for developing the Code of Ethics and/or Code of Practice adopted by the occupational association.

State the reasons why the occupational association has adopted the Code of Ethics and/or Code of Practice of another organisation.

7.2 Adherence to the Code of Ethics

State the way members ratify or otherwise indicate their acceptance of the Code of Ethics and/or Code of Practice.

7.3 Review of Code of Ethics

State the time cycle and method for reviewing the Code of Ethics and/or Code of Practice (or the continued adoption of the Code of Ethics and/or Code of Practice of another organisation).

7.4 Comparison between association's code of ethics and the Councils' Model Code of Ethics Principles

Pages 14-18 of the **Model Code of Ethics Principles** sets out the generic content of an acceptable code of ethics. The Council(s) will consider the Association's Code of Ethics in light of this suggested generic content.

Include a table in the format of **Table 18** in the Appendix, outlining the extent to which the Association's code of ethics contains principles consistent with the Councils' guide.

7.5 Consequences for non-compliance

State the consequences for breaching the Code of Ethics and/or Code of Practice.

7.6 Legislative Requirements

State the legislation (if any), which includes a code of ethics or code of practices to which members of the association must adhere.

Note:

Generally, professional standards legislation across all jurisdictions is similar, in that, most statutes provide that strategies are to apply in addition to other statutory requirements and must not be inconsistent with them. Refer to the following sections of legislation:

NSW	ACT	NT	Qld	SA	Tas	Vic	WA
s. 36	s. 4.32	s. 37	s. 37	s. 38	s. 39	s. 38	s. 48

Please click here for further explanation of these sections of legislation

Include a statement in the following terms: [[Occupational Association] is not aware of any inconsistencies between its code of ethics and code of practice requirements and any other statutory requirements].

8 COMPLAINTS AND DISCIPLINE SYSTEMS AND VOLUNTARY MEDIATION SERVICES

An occupational association may adopt the Model Code provided in the relevant legislation as indicated below:

NSW	ACT	NT	Qld	SA	Tas	Vic	WA
Sch 1	Sch 5	Sch 1	Sch 1	Sch 1	Sch 1	Sch 1	Sch 3

Please click here for further explanation of these sections of legislation

An association may include additions, omissions or other modifications as approved by the Council(s). A non-exhaustive list of additions, omissions and areas of modification can be found in each jurisdiction’s legislation indicated below in section 8.9 of these guidelines.

Business entity only associations should note the complaints and discipline systems of other organisations with which they have relationships as described in section 1.7.1 of the application. These associations should also describe how these complaints and discipline systems apply to individual professionals employed by their members, and how the association monitors their compliance. In particular, what sanctions may be applied by the association to members in respect of complaints raised against individual employees.

The Councils have published a **Policy Statement on Complaints and Discipline Systems**, it is recommended that associations read this document before completing this section of the application.

The **Policy Statement on Complaints and Discipline Systems** guides the Council(s) in its/their assessment of complaints and discipline systems used by occupational associations. The Council(s) retain/s the discretion to approve a Scheme that does not comply with the policy.

8.1 Complaints handling bodies

Name all bodies, (including the occupational association where relevant) which handle complaints about members of the occupational association.

For each body include a copy of any relevant manuals or policies on discipline and/or complaints in the Appendix.

8.1.1 The authority of the body to handle complaints

State the authority pursuant to which the body operates (constitution, legislation etc). Refer to relevant articles/sections.

8.1.2 Investigators

State the title/position of the investigators and whether they are internal or external to the association. Refer to relevant documents and page numbers in the Appendix.

8.1.3 Decision Makers

State the title/position of the decision makers and whether they are internal or external to the association. Refer to relevant documents and page numbers in the Appendix.

8.1.4 Appeal Panel

State the title/position of the appeal panel and whether they are internal or external to the association. Refer to relevant documents and page numbers in the Appendix.

Note:

It is good practice for the ultimate decision making body concerning dispute resolution to be sufficiently independent to the industry or association.

8.1.5 Reporting complaints information

State the entity to which the complaints handling body reports. Refer to relevant documents and page numbers in the Appendix.

8.2 Actions forming the subject of a complaint

State the actions of a member, which may be the subject of a complaint. Note any exclusions, (for example disputes about fees). Refer to relevant documents and page numbers in the Appendix.

8.3 Persons who can make a complaint

State who can make a complaint. Refer to relevant documents and page numbers in the Appendix.

8.4 Methods for determining complaints

8.4.1 Method for lodging a complaint

State the method for lodging a complaint (for example in writing, by telephone). Refer to relevant documents and page numbers in the Appendix.

8.4.2 Methods and process of hearing complaints

Describe the method of processing a complaint. Refer to relevant documents and page numbers in the Appendix. Include a flow diagram of the process.

8.4.3 Tests for upholding or dismissing complaints

State the tests for upholding or dismissing a complaint. Refer to relevant documents and page numbers in the Appendix.

8.4.4 Review/appeals process for the complainant and practitioner/member

Describe the method of processing a review/appeal. Refer to relevant documents and page numbers in the Appendix. Include a flow diagram of the process.

8.4.5 Mediation (if applicable) in the process.

Describe any mediation processes provided by or on behalf of the association. State who has access to such services.

8.5 Discipline and sanctions

8.5.1 Disciplinary rules and procedures

Include a copy of the disciplinary rules and sanctions in the Appendix.

8.5.2 Grounds for disciplining members

State the grounds on which a member may be disciplined. Refer to relevant documents and page numbers in the Appendix.

8.5.3 The disciplinary process

Describe the disciplinary process. Refer to relevant documents and page numbers in the Appendix.

8.5.4 Forms of discipline and sanctions

State the forms of discipline and sanctions, which may be administered. Refer to relevant documents and page numbers in the Appendix.

8.5.5 Monitoring sanctions

State how the implementation of disciplinary sanctions is to be monitored. Refer to relevant documents and page numbers in the Appendix.

8.6 Notices of Decisions

State how parties/members/public are notified of complaints and disciplinary decisions. Refer to relevant documents and page numbers in the Appendix.

8.7 Rights of representation of parties to a complaint

State the circumstances in which parties to a complaint may be legally represented. Refer to relevant documents and page numbers in the Appendix.

8.8 Complaints and discipline data

Complaints and discipline data provide valuable feedback to service providers and occupational associations about their service delivery and client satisfaction. Complaints data can be used to structure educational programs to improve professional standards and consumer protection.

8.8.1 Collection

State the method for collecting complaints and discipline data.

8.8.2 Analysis

State the method for analysing complaints and discipline data.

8.8.3 Using complaints and discipline data to inform risk management strategies

State the method of feeding complaints data into other risk management areas.

8.9 Deviations from Model Code

As previously stated, an association may adopt a Model Code as provided in each jurisdiction's legislation.

An association may include additions, omissions or other modifications as approved by the Council(s). A non-exhaustive list of additions, omissions and areas of modification can be found in each jurisdiction's legislation as indicated below:

NSW	ACT	NT	Qld	SA	Tas	Vic	WA
s. 38	s. 4.35	s. 40	s. 40	s. 41	s. 42	s. 41	s. 50

Please click here for further explanation of these sections of legislation

Fill in **Table 19** of the Appendix to show how the association's Complaints and Discipline system differs from the Model Code.

8.10 Legislative requirements

State the legislation, which deals with complaints, discipline or voluntary mediation of members of the association.

Note:

Generally, professional standards legislation across all jurisdictions is similar, in that, most statutes provide that strategies are to apply in addition to other statutory requirements and must not be inconsistent with them. Refer to the following sections of legislation:

NSW	ACT	NT	Qld	SA	Tas	Vic	WA
s. 36	s. 4.32	s. 37	s. 37	s. 38	s. 39	s. 38	s. 48

Please click here for further explanation of these sections of legislation

Include a statement in the following terms: [[Occupational Association] is not aware of any inconsistencies between its complaints and discipline and voluntary mediation service requirements and any other statutory requirements].

8.11 Review of complaints and discipline system

State the time cycle and method for reviewing the effectiveness of the complaints and discipline system.

9 QUALITY ASSURANCE AND AUDIT

Set out how the association intends to maintain and monitor compliance with its membership requirements, its rules and the requirements of the Council(s) (particularly in relation to the following subheadings).

Monitoring compliance may usefully occur at the time of annual renewal of membership. The renewal of membership could require the provision of a declaration by members that they have complied with:

- continuing occupational education requirements;
- the association's insurance standards;
- disclosure requirements etc.

9.1 Compliance with continuing occupational education

State the method by which the association monitors members' compliance with the association's continuing occupational education requirements.

9.2 Compliance with associations insurance standards

State the method by which the association ensures that members' insurance complies with the association's insurance standards.

9.3 Sufficiency of business assets

State the method by which an association monitors the sufficiency of business assets (of members of occupational associations whose business assets are used to limit occupational liability).

This could be by way of an annual declaration by the member that they have adequate business assets, or a combination of business assets and insurance to the level of their limit of occupational liability.

In addition, occupational associations should have in place a system to periodically audit members.

9.4 Membership requirements

State the method by which an association ensures that membership requirements are complied with on an annual basis.

9.5 Compliance with disclosure requirements

Legislation in all jurisdictions provides that, persons whose occupational liability is limited by a Scheme must disclose this to clients and prospective clients. Refer to the following legislation:

NSW	ACT	NT	Qld	SA	Tas	Vic	WA
s. 33	sch4.29	s. 34	s. 34	s. 35	s. 36	s. 35	s. 45

Please click here for further explanation of these sections of legislation

The Professional Standards Councils website contains information pertaining directly to **disclosure requirements** for persons to whom a scheme applies.

The Council(s) require/s occupational associations to monitor compliance in accordance with the relevant jurisdictions' legislation as mentioned above. State the method of monitoring this disclosure requirement.

9.6 Cost and availability of insurance

State the method by which the association will monitor the cost and availability of insurance for members.

9.7 Claims data

Legislation in all jurisdictions provides that an occupational association or two or more occupational associations may establish a committee for monitoring and analysing claims made against its/their members for occupational liability. Refer to the following legislation:

NSW	ACT	NT	Qld	SA	Tas	Vic	WA
s. 35	s. 4.31	s. 36	s. 36	s. 37	s. 38	s. 37	s. 47

Please click here for further explanation of these sections of legislation

State the method by which the association will monitor claims made against its members.

The Councils' **Policy Statement on Professional Indemnity Insurance** (September 2007) is available on the PSC website. Associations should comply with this policy with respect to claims data *to the extent reasonably possible*. Setting the limits on liability is closely related to claims against associations' members. It is the responsibility of associations to keep the Council(s) informed about claims and other relevant matters relating to members' insurance.

9.8 Legislative Requirements

State any legislation, which deals with quality management of members of the association.

Note:

Generally, professional standards legislation across all jurisdictions is similar, in that, most statutes provide that strategies are to apply in addition to other statutory requirements and must not be inconsistent with them. Refer to the following sections of legislation:

NSW	ACT	NT	Qld	SA	Tas	Vic	WA
s. 36	s. 4.32	s. 37	s. 37	s. 38	s. 39	s. 38	s. 48

Please click here for further explanation of these sections of legislation

Include a statement in the following terms: [[Occupational Association] is not aware of any inconsistencies between its quality assurance requirements and any other statutory requirements].

10 RISK MANAGEMENT BY MEMBERS OF THE ASSOCIATION AND/OR THEIR FIRMS

State the requirements the association imposes on its members to engage in risk management.

This may include:

- Training in risk management (often as part of COE)
- Quality assurance and record keeping practices
- Audit arrangements to assess compliance and effectiveness

Risk management obligations should be strongly linked to the Association's five year risk management plan (see section 4 of these guidelines).

11 COST AND AVAILABILITY OF INSURANCE AGAINST OCCUPATIONAL LIABILITY

The following sections of legislation require the Council(s) to consider the cost and availability of insurance against occupational liability for members of the occupational association concerned:

NSW	ACT	NT	Qld	SA	Tas	Vic	WA
s. 10	Sch 4 s. 4.7	s. 10	s. 12	s. 11	s. 11	s. 11	s. 23

Please click here for further explanation of these sections of legislation

There are several ways in which data could be provided to the Council(s).

There may be other ways an association may wish to provide data that are not mentioned below.

Associations may use one or a combination of methods of providing data concerning this issue. Associations should provide reasons for presenting the data in the manner they have chosen.

11.1 Member survey

Associations may survey members for raw data on the costs of insurance. Availability of insurance may be inferred by the cost of the premium as a percentage of total business costs and/or gross annual fees. The way in which a reasonable premium may be measured may differ from occupation to occupation.

Refer to relevant survey documents and/or reports, and include copies in the Appendix.

An example of a member survey instrument is attached in the form of **Table 8** of the Appendix.

11.2 Members' perception

Associations may survey members on their perceptions of the cost and availability of insurance.

Refer to relevant survey documents and/or reports, and include copies in the Appendix.

11.3 Underwriters/brokers views

Associations may include data provided by insurance underwriters or brokers on the cost and availability of insurance. This could include a range of premiums, taking into account that premiums in part depend on claims history and the risk profile of the insured.

Include supporting documentation in the Appendix where relevant.

12 THE STANDARDS DETERMINED BY THE OCCUPATIONAL ASSOCIATION IN RELATION TO INSURANCE POLICIES

In all jurisdictions, the legislation provides that the Council(s) must consider the standards determined by the occupational association in relation to insurance policies.

Generally, the professional standards legislation in each jurisdiction provides that:

- an occupational association may require its members to hold insurance against occupational liability;
- such a requirement may be imposed as a condition of membership;
- the occupational association may set the standards with which the insurance must comply; and
- the occupational association may specify different standards of insurance for different classes of members or for different kinds of work or on the basis of any other differing circumstances that it considers relevant.

12.1 The Association's insurance standards

The association should have documented insurance standards, which members must meet. A copy should be included in the Appendix.

The association is to provide the Council(s) with an undertaking, providing that the association will seek Council approval prior to any amendment being made to the association's insurance standards. Council approval is to be sought and obtained prior to any action concerning an association's insurance standards.

12.2 Comparison between the association's insurance standards with the Councils' Policy Statement on Professional Indemnity Insurance

The Councils have produced a **Policy Statement on Professional Indemnity Insurance**. This policy deals with:

- terms of insurance policies including:
 - the insuring clause;
 - reinstatements;
 - defence costs;
 - excess payments;
 - run-off cover;
 - retroactive date; and
- insurance provided by overseas insurance captives and mutuals.

Associations should complete **Table 20** of the Appendix to show how the association's insurance standards differ from the Councils' **Policy Statement on Professional Indemnity Insurance** and the reasons for any difference.

The Council(s) may approve a Scheme where an occupational association's insurance standards do not conform to the Councils' **Policy Statement on Professional Indemnity Insurance**.

12.3 Inconsistencies between relevant legislation and Compulsory insurance under the Act

State the legislation that deals with insurance requirements of members of the association.

Note:

Generally, professional standards legislation across all jurisdictions is similar, in that, most statutes provide that strategies are to apply in addition to other statutory requirements and must not be inconsistent with them. Refer to the following sections of legislation:

NSW	ACT	NT	Qld	SA	Tas	Vic	WA
s. 36	Sch 4 s. 4.32	s. 37	s. 37	s. 38	s. 39	s. 38	s. 48

Please click here for further explanation of these sections of legislation

Include a statement in the following terms: [[Occupational Association] is not aware of any inconsistencies between its insurance standards requirements and any other statutory requirements].

13 THE SCHEME

The association should submit a Scheme for each jurisdiction in which it is applying for a Scheme. The jurisdiction in which the Scheme is to apply should be included in the name of the Scheme.

Definition of a Scheme

Generally, the term ‘*Scheme*’ has been expressed to mean, ‘a Scheme for limiting the occupational liability of members of an occupational association’.

The following sections of legislation provide definitions for each of the relevant statutes:

NSW	ACT	NT	Qld	SA	Tas	Vic	WA
s.4	Sch 4 s 4.2	s.4	s.7, Sch.2 Dictionary	s.4	s.4	s.4	s.4

Please click here for further explanation of these sections of legislation

Method of limiting occupational liability

A Scheme may limit occupational liability by reference to an insurance policy or business assets, or a combination of the two, refer to the following sections of legislation:

NSW	ACT	NT	Qld	SA	Tas	Vic	WA
s 21	Sch 4, s. 4.17	s. 22	s. 22	s. 23	s. 24	s. 23	s. 34
s. 22	Sch 4 s 4.18	s. 23	s. 23	s. 24	s. 25	s.24	s. 35
s. 23	Sch 4 s 4.19	s. 24	s. 24	s. 25	s. 26	s. 25	s. 36
s. 25	Sch 4 s 4.21	s. 26	s. 26	s. 27	s. 28	s. 27	s. 38

Please click here for further explanation of these sections of legislation

Note that there are many different ways of determining the caps on liability and writing a Scheme. One way to cap liability is by multiple of charges (refer to the specific sections of legislation listed above).

Associations should provide reasons and justification for the way in which its Scheme has been devised. Reference should be made to the risk analysis and/or claims data to support this.

A sample Scheme document is included in the Appendix. However, please note that the Scheme document(s) should be provided separately and not included in this section of the application. Further, please note that adherence to the sample Scheme document does not guarantee Council approval of the Scheme.

13.1 Persons to whom the Scheme applies

If the Scheme does not apply to all members of the occupational association, state the reasons why a particular class or classes of members were chosen.

13.1.1 Register of members

Occupational associations are required to keep a register of members to whom the Scheme applies. The register should record the classes and/or different levels of limitation of liability as applicable to the types and categories of membership.

The register should also record the exercise of discretion by the association to increase the maximum level of liability. The register should be publicly available so that consumers can ascertain the limit of liability of practitioners with whom they are dealing.

Occupational associations are required to provide an undertaking to the Council(s) that they will maintain a register, and that the register will be posted on their website.

13.2 Method of limiting liability: insurance, business assets, or a combination of insurance and business assets

State the method of limiting liability. The method of limiting liability will be by way of:

- insurance policy;
- business assets; or
- a combination of insurance policy and business assets.

Refer to the following sections of legislation:

NSW	ACT	NT	Qld	SA	Tas	Vic	WA
s 21	Sch 4, s. 4.17	s. 22	s. 22	s. 23	s. 24	s. 23	s. 34
s. 22	Sch 4 s 4.18	s. 23	s. 23	s. 24	s. 25	s.24	s. 35
s. 23	Sch 4 s 4.19	s. 24	s. 24	s. 25	s. 26	s. 25	s. 36
s. 25	Sch 4 s 4.21	s. 26	s. 26	s. 27	s. 28	s. 27	s. 38

Please click here for further explanation of these sections of legislation

State the reasons why the association chose to limit liability in the way it has.

For example, an association choosing to limit liability by business assets alone, or a combination of insurance and business assets, may state as a reason, that insurance is not available in the market, or not available at a reasonable cost.

13.3 Specifying limits of liability

Generally, the legislation in each jurisdiction provides that a Scheme may specify:

- the same maximum amount of liability for all Scheme participants; or

- different maximum amounts of liability for:
 - different classes of Scheme participants; or
 - different classes of Scheme participants, who perform different types of work; or
 - different classes of Scheme participants, who perform particular work in certain circumstances.

Refer to the following relevant sections of legislation:

NSW	ACT	NT	Qld	SA	Tas	Vic	WA
s. 24	Sch 4 s. 4.20	s. 25	s. 25	s. 26	s. 27	s. 26	s. 37

Please click here for further explanation of these sections of legislation

In some jurisdictions, the legislation provides that a Scheme may specify a monetary ceiling or minimum cap by way of a formula. An association may wish to do this for the purposes of flexibility.

For example, this system can be based on a formula where a multiplier has been construed (from claims data analysis) and is then multiplied with the amount of fees earned by a professional within a financial year. The end result being that the professional's insurance requirement and therefore limit of liability is capped at this level and has been calculated on the basis of relevant data.

State the way limits of liability have been specified in the Scheme. State the reasons the association specified the limits of liability in this way by reference to the risk analysis and claims data (sections 2 and 3 of the application).

13.4 Conferring a discretionary authority on the occupational association to specify a higher limit

Generally, the legislation provides that a Scheme may confer a discretionary authority on an occupational association.

This discretionary authority provides that, upon application by a person to whom the Scheme applies, an association may specify in relation to that particular person, a higher maximum amount of liability than would otherwise apply under the Scheme. This higher amount of liability would apply in relation to that person, either in all circumstances, or in any specified circumstance (for example a professional may wish to engage in a larger project outside the scope of work they typically perform. This project may render the insurance requirement under the Scheme insufficient and require a greater limitation of liability to be issued by the association).

NSW	ACT	NT	Qld	SA	Tas	Vic	WA
s. 24	Sch 4 s. 4.20	s. 25	s. 25	s. 26	s. 27	s. 26	s. 37

Please click here for further explanation of these sections of legislation

Note:

In some jurisdictions, the legislation provides that, despite any contract to the contrary, the legislation will still apply to a person whom a Scheme applies. It is also stated that the legislation will continue to apply whether a contract was made before, on or after the date on which the Scheme applied to that person. Refer to the sections of legislation below:

NSW	ACT	NT	Qld	SA	Tas	Vic	WA
s. 50	Sch4 s.4.58	s. 56	s. 67	s. 54	s. 55	s. 54	s. 52

Please click here for further explanation of these sections of legislation

Note:

There is no requirement for a Scheme to confer a discretionary authority. Should an association wish for its Scheme to confer a discretionary authority, the following sections should be completed.

13.4.1 Nature of discretionary authority

State the nature of the discretionary authority, in particular whether it applies to:

- all circumstances;
- any particular specified circumstance;
- any particular group of circumstances; or
- all specified circumstances and groups of circumstances.

13.4.2 Criteria for considering discretion

State the criteria that will be considered by the association when deciding whether or not to specify a higher maximum amount of liability.

14 ADMINISTRATION OF THE SCHEME

The Council(s) must be satisfied that the association is capable of properly administering the Scheme.

14.1 Organisational structure

Include a diagram of the organisational structure of the occupational association.

14.2 Corporate governance of the association

The Council(s) support and endorse strong corporate governance principles. For an example of such principles, refer to 'AS 8000-2003 Good Governance Principles' as published by Standards Australia, (for more information contact Standards Australia on 1800 035 822 or visit its website www.standards.org.au). It is through these guidelines that the Council(s) encourage/s an occupational association to consider the most appropriate corporate governance model to suit its needs.

An association should include an appropriate corporate governance model and address the key aspects of the association's corporate governance in its application.

The more robust the corporate governance of an association, the better equipped it will be to engage in effective self-regulation.

14.3 The administration of the Scheme

An occupational association must have adequate resources and systems in place to properly administer the Scheme. This will include systems in place to:

- implement, monitor and measure the effectiveness of the association's risk management strategies; and
- comply with the Council's/Councils' annual reporting requirements.

14.3.1 Systems in place to administer the Scheme

Describe the systems in place to administer the Scheme.

14.3.2 Persons responsible for administering the Scheme

Include a list of the names, positions, telephone numbers, facsimile numbers, and email addresses of all persons involved in administering the Scheme. Contact details should be provided for:

- the Scheme administrator;
- the person to be contacted regarding payment of annual fees; and
- any persons to whom correspondence should be sent to relating to updates on the Professional Standards Councils' work.

15 TWO PAGE SUMMARY

Occupational associations are required to include a two-page summary of the Scheme and the risk management strategies of the occupational association to improve professional standards and protect consumers.

This document will be posted on the Professional Standards Councils' website with the Scheme document when the Scheme is publicly notified, and when the Scheme is approved.

This document will provide consumers and other interested parties with a summary of:

- the way in which the association is constituted and the occupational group which the association represents;
- the jurisdiction(s) where it is intended the Scheme will apply;
- the classes and types of members of the association to whom the Scheme applies;
- the likely proportion of members of the association to whom the Scheme will apply;
- the types of work carried out by members of the association to whom the Scheme will apply;
- the way in which liability is limited (insurance, business assets, or a combination of insurance and business assets);
- the different levels of limited liability for different members or circumstances;
- whether the association may exempt members from the Scheme;
- whether the Scheme confers a discretionary authority on the association to specify a higher maximum amount of liability;
- a summary of the association's membership requirements for persons to whom the Scheme applies, including;
 - continuing occupational educational program;
 - complaints and discipline system;
 - quality assurance and insurance standards;
- a summary of the key strategies to be undertaken by the association in its five year risk management plan;
- a description of the management structure within the association for the management and administration of the Scheme;
- the website of where the register of members to whom the Scheme will apply can be found; and
- the website of the association where further information about the association and its risk management strategies can be found.

APPENDIX

1. Risk Analysis Tools

Table 1: LIKELIHOOD of Risk

Rating	Likelihood of Occurrence	
Frequent	5	Is expected to occur again either immediately or within a short time (likely to occur most weeks or months).
Likely	4	Will probably occur in most circumstances (several times a year).
Possible	3	Possibly will recur – might occur at some time (may happen every year).
Unlikely	2	Possibly will recur – could occur some time in 2 years.
Rare	1	Unlikely to recur – may occur only in exceptional circumstances

Table 2: CONSEQUENCE of Risk

Rating	Revenue/Expenditure Impact	Impact on Occupational Association's reputation
Serious	5	>A\$1M Significant loss of viability of professional association
Major	4	A\$100,000-A\$1M Significant loss of ability to achieve strategic/operational direction
Moderate	3	A\$10,000-A\$100,000 Moderate loss of ability to achieve strategic/operational direction
Minor	2	A\$1,000-A\$10,000 Minimal impact loss of ability to achieve strategic/ operational direction
Minimal	1	<A\$1,000 Negligible impact on the ability to achieve strategic/operational objectives

Table 3: QUALITATIVE RISK MATRIX (multiply risk likelihood x risk consequence)

Qualitative Risk Analysis					
Likelihood/Probability	Consequences				
	Minimal	Minor	Moderate	Major	Serious/ Catastrophic
Almost Certain	H	H	E	E	E
Likely	M	H	H	E	E
Possible	L	M	H	E	E
Unlikely	L	L	M	H	E
Rare	L	L	M	H	H

E - Extreme risk: Executive attention needed, action plans and responsibility for action specified. Action by CEO required.

H - High risk: Executive attention needed, action plans and responsibility for action specified. Action by designated officer required.

M - Moderate: Executive/CEO notified, but risk managed within the professional associations' normal processes.

L - Low risk: Manage by routine procedures within the professional association.

Table 4: MITIGATING PRACTICES AND CONTROLS

	Rating	Measure	Definition	Characteristics
INADEQUATE	9 or 10	Unsatisfactory	Controls do not exist or else are not operating effectively. Risks will not be controlled	
	7 or 8	Weak	Basic risk management systems, process controls and procedures in place. No guarantee risk will be controlled.	
	5 or 6	Moderate	Majority of risk management systems, process controls and procedures are in place. Basic risks will be controlled some of time. However, scope exists to improve controls.	
ADEQUATE	3 or 4	Good	Majority of risk management systems, process controls and procedures are in place and can be relied on to mitigate or detect risk materialising in most circumstance.	
	1 or 2	Excellent	Risk management systems, process controls and procedures are in place and can be relied on to mitigate or detect risk materialising.	

Table 5: Risk Analysis

Risk No.	Risk Category	Description of Potential Risk	Inherent Risk Likelihood Rating	Inherent Risk Consequence Rating	Overall risk assessment ranking	Mitigating Practices & Control	Control Effectiveness Rating	Overall Risk Rating
		<ul style="list-style-type: none"> • • • • 				<ul style="list-style-type: none"> • • • • 		
		<ul style="list-style-type: none"> • • • • 				<ul style="list-style-type: none"> • • • • 		
		<ul style="list-style-type: none"> • • • • 				<ul style="list-style-type: none"> • • • • 		

2. Claims History

Table 6: Claims for previous 10 years (source: Broker/Insurance industry)

Year	Claims notified				Claims outstanding				Claims finalised by court				Claims finalised by settlement			
	Number of claims	Lowest claim amount	Average claim amount	Highest claim amount	Number of claims	Lowest claim amount	Average claim amount	Highest claim amount	Number of claims	Lowest damages amount	Average damages amount	Highest damages amount	Number of claims	Lowest settlement amount	Average settlement amount	Highest settlement amount
2011																
2010																
2009																
2008																
2007																
2006																
2005																
2004																
2003																
2002																
2001																

Table 7: Claims for previous 10 years (source: members survey)

Year	Claims notified				Claims outstanding				Claims finalised by court				Claims finalised by settlement			
	Number of claims	Lowest claim amount	Average claim amount	Highest claim amount	Number of claims	Lowest claim amount	Average claim amount	Highest claim amount	Number of claims	Lowest damages amount	Average damages amount	Highest damages amount	Number of claims	Lowest settlement amount	Average settlement amount	Highest settlement amount
2011																
2010																
2009																
2008																
2007																
2006																
2005																
2004																
2003																
2002																
2001																

Table 8: Member Survey

[NAME OF ASSOCIATION] MEMBER SURVEY

for purposes of application for a Cover of Excellence[®] scheme under professional standards legislation

The [association] is currently preparing an application to the [state\territory] Professional Standards Council for a Cover of Excellence[®] scheme under professional standards legislation. A part of this process includes applying for caps or limits of indemnity that would be considered by the [state\territory] Professional Standards Council to provide reasonable levels of protection for consumers of our services.

Before approving a scheme, the Professional Standards Council[s] must consider the nature and level of claims relating to occupational liability made against members of a professional association, in order to assess the reasonableness of the proposed caps. As future risks are considered on the basis of historical information, the Professional Standards Council collates insurance claims data over a 10-year period.

This survey is necessary to collect the information required by the Professional Standards Council to consider the [association's] application for a scheme.

Given the importance of obtaining accurate information to support applications for legislated caps, it is imperative that members complete this survey. A low response rate will have limited use and may result in the Professional Standards Council being unable to consider our application.

Once the capped liability scheme is established, the maintenance provisions of the scheme will require compulsory reporting of all future notifications and claims on an annual basis.

Please complete the tables provided, to the extent possible, and use additional space where necessary to complete questions. Answers to all questions must be clear and concise. Information returned must not be deceptive and/or misleading.

PLEASE NOTE THAT CLAIMS INFORMATION PROVIDED TO THE PROFESSIONAL STANDARDS COUNCIL(S) WILL BE ANONYMISED

Completed surveys are to be returned to [the association] in the attached self-addressed envelope by [date].

Survey Questions:

1. Please indicate (*circle*) the state or territory in which you are based:

ACT	South Australia
New South Wales	Western Australia
Victoria	Northern Territory
Tasmania	Queensland

2. If you are a corporate member, please state the approximate number of **[members of the profession]**, whether known to be members of the association or not, and other staff in your firm in each of the following years:

Year (Previous 10 Years)	Number of Professionals	Number of other staff
2001		
2002		
2003		
2004		
2005		
2006		
2007		
2008		
2009		
2010		
2011		

3. Please tick your approximate annual gross turnover based on last financial year:

- Less than \$100,000
- \$100,000 to less than \$250,000
- \$250,000 to less than \$500,000
- \$500,000 to less than \$750,000
- \$750,000 to less than \$1,000,000
- \$1,000,000 to less than \$5,000,000
- \$5,000,000 to less than \$10,000,000
- \$10,000,000 or more

4. Please state the number of notifications and/or claims in each year:

Year (Previous 10 Years)	No. notifications	No. claims	Highest claim amount
2001			
2002			
2003			
2004			
2005			
2006			
2007			
2008			
2009			
2010			
2011			

* The "Highest Claim Amount" is the amount as claimed, which is not necessarily the amount in the final settlement / judgement.

5. Please state the value of successful actions/payouts in each year and indicate whether or not this was finalised by settlement or by a court. If there was more than one claim in any one year, please provide data on each and every claim separately (*ie not in the aggregate*):

Year (Previous 10 Years)	Payout by settlement	Payout by judgement	Legal Fees	Excess / Deductible
2001				
2002				
2003				
2004				
2005				
2006				
2007				
2008				
2009				
2010				
2011				

6. Please provide details of any outstanding claims in the table below (*if space is inadequate, please use additional page*):

Unresolved Claim no.	Year Action Commenced	Anticipated Payout	Anticipated Legal Fees	Excess/Deductible

7. Do you currently have professional indemnity insurance?

- Yes
- No (*proceed to question 12*)

8. Please tick the band level of professional indemnity insurance you currently hold:

- Less than \$1,000,000
- \$1,000,000 to less than \$5,000,000
- \$5,000,000 to less than \$10,000,000
- \$10,000,000 to less than \$50,000,000
- \$50,000,000 to less than \$200,000,000
- more than \$200,000,000

9. In the last year, which of the following statements best describes your experience with PI insurance:

- Professional indemnity insurance was difficult to purchase.
- Professional indemnity insurance was not difficult to purchase, but was difficult to purchase at the level which you required.
- Professional indemnity insurance was arranged by your association.
- Professional indemnity insurance was easy to purchase.

10. What is your current premium?

.....

11. What is your current excess/deductible?

Table 9: Legal Searches

Date	Database	Search terms/date limits	Number of meaningful hits	Case names and citations

Table 10: Description of cases

Case name and citation	Brief description of type of claim	Amount claimed	Judgment Consumer/ Professional	Judgment Amount	Costs awarded

Table 11: Claims for previous 10 years (source: court and legal searches)

Year	Claims filed				Claims finalised by court				Claims finalised by settlement			
	Number of claims	Lowest claim amount	Average claim amount	Highest claim amount	Number of claims	Lowest claim amount	Average claim amount	Highest claim amount	Number of claims	Lowest claim amount	Average claim amount	Highest claim amount
2011												
2010												
2009												
2008												
2007												
2006												
2005												
2004												
2003												
2002												
2001												

Table 12: Media Searches

Date	Database	Search terms/date limits	Number of meaningful hits	Case names and citations

Table 13: Description of cases in newspapers

Case name and citation	Brief description of type of claim	Amount claimed	Judgment Consumer/ Professional	Judgment Amount	Costs awarded

Table 14: Claims for previous 10 years (source: internet and media searches)

Year	Claims filed				Claims finalised by court				Claims finalised by settlement			
	Number of claims	Lowest claim amount	Average claim amount	Highest claim amount	Number of claims	Lowest claim amount	Average claim amount	Highest claim amount	Number of claims	Lowest claim amount	Average claim amount	Highest claim amount
2011												
2010												
2009												
2008												
2007												
2006												
2005												
2004												
2003												
2002												
2001												

Table 15: Types of claims for past 10 years

Year	Type of claim	Number of claims	Percentage of all claims	Lowest Claim amount	Highest claim amount	Average claim amount	Sources (member survey, insurance industry data, legal search, media report)
2011							
2010							
etc							

Table 16: 10 largest claims for last 10 years

	Year	Type of claim	Amount claimed	Amount paid (split into claim, plaintiff's costs, defence costs)	Status: Notified/ Outstanding/Finalised by Court/ Finalised by settlement	Source (member survey, insurance industry data, legal search, media report)
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						

3. Risk Management Planning

Table 17: 5 Year Risk Management Plan

Membership requirements	
Risk Name	
Risk status	(eg likelihood, consequence, and qualitative assessment)
Strategy objectives	
Means to implement strategy (plan)	
Means of monitoring implementation	
Means of measuring effectiveness	
Continuing occupational development	
Risk Name	
Risk status	(eg likelihood, consequence, and qualitative assessment)
Strategy objectives	
Means to implement strategy (plan)	
Means of monitoring implementation	
Means of measuring effectiveness	
Code of Ethics and Code of Practice	
Risk Name	
Risk status	(eg likelihood, consequence, and qualitative assessment)
Strategy objectives	
Means to implement strategy (plan)	
Means of monitoring	

implementation	
Means of measuring effectiveness	
Complaints and Discipline and Voluntary Mediation Services	
Risk Name	
Risk status	(eg likelihood, consequence, and qualitative assessment)
Strategy objectives	
Means to implement strategy (plan)	
Means of monitoring implementation	
Means of measuring effectiveness	
Quality assurance and audit	
Risk Name	
Risk status	(eg likelihood, consequence, and qualitative assessment)
Strategy objectives	
Means to implement strategy (plan)	
Means of monitoring implementation	
Means of measuring effectiveness	
Risk management	
Risk	
Risk status	(eg likelihood, consequence, and qualitative assessment)
Strategy objectives	
Means to implement strategy (plan)	
Means of monitoring implementation	

Means of measuring effectiveness	
----------------------------------	--

Table 17.1: Risk Management Plan Assessment example (to assess Risk Management Plan for duration of scheme)

	Year 1	Year 2	Year 3	Year 4	Year 5
Risk no 1					
Action					
Risk No 2					

Note: while monitoring may occur each and every year, monitoring alone will not result in the effective treatment of identified risks. Only action items that combat the identified risks should be provided in table 17.1, as opposed to results achieved through monitoring risk management plans.

4. Code of Ethics

Table 18: Code of Ethics Comparative Table

PSC Code Number	PSC Code Summary (from the Model Code of Ethics)	Association Code Number (including page number in application annexure)	Association Code Summary
Number 1 of Model Code	Describe minimum standards and occupational ideals; guiding principles and virtues.		
Number 2 of Model Code	Statement about minimum standards ought not be compromised.		
Number 3 of the Model Code	Statement about members ought obey the just and reasonable laws of community.		
Number 4 of Model Code	Commitment to the principle of individual autonomy (comprising freedom of action, speech, work etc)		
Number 5 of the Model Code	Commitment to non-discrimination on the basis of gender, race etc.		
Number 6 of the Model Code	Members ought obey the just and reasonable regulations governing members of the association		
Number 7 of the Model Code	An integrity statement that members ought avoid telling lies and do what they say they will do.		
Number 8 of the Model Code	Set out fundamental goals or ends of the occupation.		
Number 9 of the Model Code	Prioritise some of the principles, rights and ideals listed in the code.		
Number 10 of the Model Code	Set out the principal rights of the members in relation to salient groups such as employers, peers and clients.		
Number 11 of the Model Code	Statement committing members to respect the relevant rights of consumers and clients.		
Number 12 of the Model Code	Complaints and disciplinary processes ought to conform to principles of independence, reasonableness and fairness.		

Number 13 of the Model Code	Members ought only undertake work they are competent to perform.		
Number 14 of the Model Code	Members ought to undertake their work conscientiously, with efficiency and effectiveness.		
Number 15 of the Model Code	Contain a statement regarding adequate initial and ongoing education.		
Number 16 of the Model Code	Contain a statement-committing members to compete fairly in the market.		
Number 17 of the Model Code	One should build one's professional or occupational reputation based on merit.		
Number 18 of the Model Code	Address the issue of occupational or organisational culture.		
Number 19 of the Model Code	Address problematic ethical issues that arise in the profession.		
Number 20 of the Model Code	Statement in relation to the collective responsibility of members to report on any failure to meet minimum standards.		
Number 21 of the Model Code	Statement in relation to the need for loyalty and cooperation among members of an occupation.		
Number 22 of the Model Code	Address ethical issues of members working in multi-disciplinary workplace or organisation where a potential conflict of interest may arise.		

5. Complaints and Discipline Systems

Table 19: Comparative table: complaints and discipline system

Note:

This table is consistent with the Professional Standards Councils' policies, and with the Model Code for Complaints and Discipline contained within the legislation of each jurisdiction.

Model Code	Model Code Text	Provision of occupational association	Difference between occupational association and Model Code
Actions subject of complaint	A complaint may be made that a member of the occupational association has acted (or has failed to act) in such a way as to justify the taking of disciplinary action against the member under this Code. A complaint may be made and dealt with even though the person about whom it is made has ceased to be a member.		
Who may make a complaint	Any person may make a complaint (including the occupational association and the Council(s)).		
How a complaint is made	A complaint may be made to the occupational association. The complaint must be in writing and contain the particulars of the allegations on which it is founded. the occupational association must notify the Council(s) of each complaint made to it (other than a complaint made by the Council(s)).		

<p>What happens after a complaint is made</p>	<p>The occupational association must consider a complaint as soon as practicable after the complaint is made to it or notified to it by the Council(s). The association may then do any one or more of the following:</p> <ul style="list-style-type: none"> a. it may require the complainant to provide further particulars of the complaint, b. it may carry out an investigation into the complaint, c. it may attempt to resolve the complaint by conciliation, d. it may decline to entertain the complaint (because, for example, the complaint is frivolous, vexatious, misconceived or lacking in substance), e. it may conduct a hearing into the complaint. 		
<p>Action after a hearing</p>	<p>After an occupational association has conducted a hearing into a complaint against a person, it may, if it finds the complaint substantiated, do any one or more of the following:</p> <ul style="list-style-type: none"> a. caution or reprimand the person, b. impose conditions as to the carrying out of the person's occupation, c. require the person to complete specified courses of training or instruction, d. require the person to report as to the carrying out of the person's occupation at the times, in the manner and to the 		

	<p>persons specified by the association,</p> <p>e. order the person to obtain advice as to the carrying out of the person's occupation, from such persons as are specified by the association,</p> <p>f. expel the person from membership of the association.</p> <p>If the association does not find the complaint substantiated, it must dismiss the complaint. The association is not entitled to make an award of compensation.</p>		
Notices of decisions	<p>Within 30 days after a decision is made by an occupational association concerning a complaint, the complainant and the person against whom the complaint is made must be given a written statement of the decision. The statement must include the reasons for the decision.</p>		
Rights of representation	<p>The complainant and the person about whom the complaint is made are not entitled to legal representation during attempts to resolve the complaint by conciliation but are entitled to legal representation during a hearing into the complaint.</p>		
Exercise of functions under the Code	<p>A function of an occupational association under this Code may, in accordance with a resolution of the association, be exercised by the executive body of the association or by a</p>		

	person or persons appointed for the purpose.		
Protection from liability	<p>No matter or thing done or omitted by the occupational association or a person acting in accordance with a resolution of the association subjects a member of the executive body of the association or the person so acting personally to any liability if the matter or thing was done or omitted in good faith for the purpose of implementing this Code.</p> <p>[Note: The QLD PSL does not include a section to this effect and all jurisdictions other than WA and NSW include an additional subsection in regards to 'reasonable belief.']</p>		

6. Insurance Standards

Table 20: Comparative table – insurance standards (please refer to the current policy statement here)

Note:

Council may at its discretion request further information than is suggested in this table.

PSC policy topic & number	Description	Association standard (include reference in application)	Description	Difference between PSC policy statement and association's insurance standards
6 (& 8) Approval of Schemes under PSL – insurance standards	The insurance policy held by members of the OA must be a policy (or policy of a kind) that complies with standards set by the OA.			
7(a) Limitation of liability by insurance arrangements	The insurance policy held by members of the OA must insure the member against the occupational liability to which the cause of action relates.			
7(b) Limitation of liability by insurance arrangements	The amount payable under the policy in respect of that occupational liability must be not less than the monetary ceiling specified in the Scheme for the class of person and the kind of work to which the cause of action relates.			
9.1 Ability of the insurer to respond to and meet a claim	The insurer is subject to a recognised prudential regulatory regime.			

9.2(a) Insuring clause	Includes cover for misleading and deceptive conduct under the TPA, Corporations Act, ASIC Act & State-based fair trading legislation.			
9.2(b) Extensions & Exclusions	Extensions cover all reasonable occupational activities & services that might give rise to occupational liability, with minimal exclusions.			
9.2(c) Reinstatements	At least one automatic reinstatement.			
9.2(d) Deductibles or Excess	Set at reasonable levels, having regard to the monetary cap and the capacity of the member to meet the deductible or excess.			
9.2(e) Retroactive Date	Not unreasonably limited. Policies that provide cover on a "claims made" basis would generally meet this condition.			
9.2(f) Run-off Cover	Reasonable cover for at least traditional statutory limitation periods.			
9.3 Defence Costs	Costs in addition cover preferred.			

7. SAMPLE SCHEME

Note:

Applications for Schemes in more than one state and/or territory requires an association to draft individual Scheme documents for each jurisdiction.

Professional Standards Act [year (jurisdiction)]

THE [NAME OF OCCUPATIONAL ASSOCIATION] SCHEME

PREAMBLE

- A. The [name of occupational association][acronym of occupational association] is an occupational association.
- B. The [acronym of occupational association] has made an application to the Professional Standards Council, appointed under the *Professional Standards Act [year (jurisdiction)]* (the Act), for a Scheme under the Act.
- C. The Scheme is prepared by the [acronym of occupational association] for the purposes of limiting occupational liability to the extent to which such liability may be limited under the Act.
- D. The Scheme propounded by the [acronym of occupational association] is to apply to [describe members of the association to whom the Scheme is to apply]
- E. The [acronym of occupational association] has furnished the Council with a detailed list of the risk management strategies intended to be implemented in respect of its members and the means by which those strategies are intended to be implemented.
- F. The Scheme is intended to commence on [insert date] and remain in force for five (5) years from its commencement unless, prior to that time, it is revoked, its operation ceases, or it is extended pursuant to [relevant section] (NSW s32, ACT sch 4.28, NT s33, Qld s33, SA s34, Tas s35, Vic s34 and/or WA s44A) of the Act.
- G. The Scheme is also intended to apply in [other jurisdictions]¹.

THE [NAME OF OCCUPATIONAL ASSOCIATION] SCHEME

1. Occupational association

- 1.1 The [name of occupational association] Scheme (the Scheme) is a Scheme under the *Professional Standards Act [year (jurisdiction)]* (the Act) prepared by the [name of occupational association][acronym of occupational association] whose business address is: [insert business address].

¹ Depending on the existence of relevant mutual recognition provisions in professional standards legislation in the other jurisdictions.

2. Persons to Whom the Scheme Applies

- 2.1 The Scheme applies to all members of [occupational association] who are [state whether it is all members, or a class of member or classes of members].
- 2.2 This Scheme also applies to all persons to whom the Scheme applied under clause 2.1 at the time of any act or omission, giving rise to occupational liability.

3 Limitation of liability

- 3.1 This Scheme only affects the liability for damages arising from a single cause of action to the extent to which the liability results in damages exceeding \$500,000.
- 3.2 If a person, who was at the time of the act or omission giving rise to occupational liability, a person to whom the Scheme applied, against whom a proceeding relating to occupational liability is brought, is able to satisfy the court that such person has the benefit of an insurance policy:
 - (a) of a kind which complies with the standards determined by the [acronym of occupational association],
 - (b) insuring such person against that occupational liability, and
 - (c) under which the amount payable in respect of that occupational liability is not less than the monetary ceiling specified in this Scheme.

That person is not liable in damages in relation to that cause of action above the monetary ceiling specified in this Scheme.

- 3.3 The monetary ceiling is \$[insert amount].
- 3.4 Clause 3.2 does not limit the amount of damages to which a person to whom the Scheme applies is liable if the amount is less than the amount specified for the purpose in this Scheme in relation to a person to whom the Scheme applies.
- 3.5 This Scheme limits the occupational liability in respect of a cause of action founded on an act or omission occurring during the period when the Scheme was in force of any person to whom the Scheme applied at the time the act or omission occurred.

4 Duration

- 4.1 This Scheme will be in force for a period of 5 years from the date of commencement.