

# **POLICY STATEMENT**

## **Payment of Annual Fees**

for

**COVER OF EXCELLENCE<sup>®</sup> SCHEMES**

under

**PROFESSIONAL STANDARDS LEGISLATION**



## What is this policy about?

An occupational association, any of whose members are subject to a scheme in force under professional standards legislation, is required to pay annual fees to the Professional Standards Council(s). This policy statement gives guidance about the calculation and payment of those fees.

### Summary

- An occupational association with a scheme pays an annual fee to the Council for the jurisdiction in which the scheme application was made. The fee is calculated on the number of members of the association who are covered by the scheme.
- The fee is calculated at the rate of \$50 per participating member per “annual fee period” – that is, each period of 12 months beginning on the date on which the scheme commenced, and on each anniversary of that date. This is, effectively, \$50 per member, per annum.
- The first payment is made at the end of the first calendar quarter in which the scheme commenced. Further adjustment payments are made at the end of each subsequent quarter, during the annual fee period, for any additional members of the association to whom the scheme applies during that quarter.
- The fee is paid for the whole annual fee period, regardless of when the person joins the association. There is no pro-rata reduction for fee payment.
- The quarterly fee due dates during the annual fee period are the last days of the first, second, third and fourth calendar quarters from the scheme start date. For example, please see the attached Professional Standards Regulation 2009 (NSW), s6 – this is consistent with the regulations in the other jurisdictions.
- Interest is payable for the *whole of the overdue period* if the fee is not paid within 30 days of the dates on which the fee is due.
- An association is required to provide the Council with an independent *Annual Membership Verification Certificate*, signed by its accountant, within two months of the day on which the annual fee was due, setting down the detail of quarterly fee payments, fee due dates and the accrued interest, if any.
- However, an association with a cumulative number of members less than 100 may provide the Council with an *Annual Membership Declaration Certificate*<sup>1</sup> signed by its Chief Executive Officer (or nominee), within the same timeframe and with the same level of detail as specified for the Annual Membership Verification Certificate.
- If the cumulative number of additional members covered by the scheme in successive quarters is less than 10, adjustment payments may be held over to the end of the annual fee period. The association must nonetheless notify the Secretariat by e-mail that it is electing to do so. In this case, no interest is payable in respect of new members joining during the relevant fee quarter.
- The Council will apply any fee received to recover outstanding fees and/or interest from previous annual fee periods, before applying it to the fee payment of the year in which it is received. Any interest accruing in the current annual fee period will be payable by the end of the fee period.

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<sup>1</sup> That is, in lieu of the Annual Membership Verification Certificate.

## 1. Legislative Requirements

1.1 Professional standards legislation provides for the limiting of occupational liability of professionals (and members of other occupational groups) under professional standards schemes approved by the Professional Standards Councils. The relevant Acts are:

- *Professional Standards Act 1994* (NSW)
- *Professional Standards Act 1997* (WA)
- *Professional Standards Act 2003* (Vic)
- *Professional Standards Act 2004* (Qld)
- *Professional Standards Act 2004* (SA)
- *Professional Standards Act 2004* (NT)
- *Civil Law (Wrongs) Act 2002* (ACT)
- *Professional Standards Act 2005* (Tas)

1.2 The objects of the legislation are to limit the civil liability of members of occupational groups, improve occupational standards and protect consumers of professional services. A solicitor, accountant or other professional practitioner may be liable for unlimited damages under the general law. However, a practitioner to whom a scheme applies has limited liability, to the extent permitted under the legislation.

### Objectives:

NSW	WA	VIC	QLD	SA	NT	ACT	TAS
s3	s3	s3	s4	s3	s3	schedule 4.1	s3

1.3 The funds available for the purposes of enabling the Councils to perform their functions include fees paid under professional standards legislation by occupational associations. The annual fee payable by an occupational association to the Council(s) is calculated based on those members of the association to whom a scheme applies.

### Functions:

NSW	WA	VIC	QLD	SA	NT	ACT	TAS
s43	s12	s46	s43	s46	s45	schedule 4.37	s47

1.4 The legislation provides that regulations may make provision concerning fees for applications for the approval, amendment or revocation of a scheme, together with the annual fee in respect of members of an association to whom a scheme applies.

NSW	WA	VIC	QLD	SA	NT	ACT	TAS
s53(2)	s55(2)	s57(2)	s71(2)	s57(2)	s58(2)	n.a.	s57

The relevant Regulations are:

- *Professional Standards Regulation 2009* (NSW)
- *Professional Standards Regulation 1998* (WA)
- *Professional Standards Regulation 2006* (SA)
- *Professional Standards Regulation 2007* (QLD)
- *Professional Standards Regulation 2007* (VIC)
- *Professional Standards Regulation 2007* (NT)

1.5 The professional standards Regulations provide:

The annual fee to be paid to a Council by an occupational association any of whose members are subject to a scheme in force under the Act (being a scheme that applies to all persons within the association or to a specified class or classes of persons within the association) is \$50 for each person to whom the scheme applies who is a member of the association at any time during the relevant annual fee period.

NSW	WA	VIC	QLD	SA	NT	ACT	TAS
cl.5	cl.4	cl.5	cl.4	cl.4	cl.6	n.a.	n.a.

**2. To whom do the schemes apply?**

2.1 The professional standards legislation provides that a scheme applies to a class of persons within an association. That class is specified in the scheme.

NSW	WA	VIC	QLD	SA	NT	ACT	TAS
s17	s30	s19	s19	s19	s18	schedule 4.15	s20

2.4 The Acts also mandatorily apply the scheme to the officers, partners and employees of members within the class specified in the scheme (see ss3&4, below).

NSW	WA	VIC	QLD	SA	NT	ACT	TAS
s18 & s19	s31 & s32	s20 & s21	s20 & s21	s20 & s21	s19 & s20	schedule 4.16	s21 & s22

2.3 The members of occupational associations may be:

- individuals (ie natural persons);
- firms (ie partnership and companies); or
- both individuals and firms.

2.4 Many associations only allow individuals to be members. However, where associations have firms as members, it is usual for the principals of the firm to be required to be individual members of the association. Where a member firm is a partnership, it is necessary for some or all of the partners to likewise be individual members of the association. Some individuals, partnerships and companies provide services under a trading name.

**3 How is the fee calculated?**

3.1 The fee remains the liability of the occupational association. Many occupational associations raise the fee by levying their members.

3.2 The prescribed annual fee payable to the Council is calculated based on the number of members of the occupational association to whom the scheme applies, that is:

- the member within the class specified in the scheme;
- the member who is a partner of that member; and
- the member who is an employee of that member.

### Member – Individual:

- 3.3 Where the member within the specified class is an *individual* member of the association, the annual fee is calculated on the number of individual members in the class and on the number of other members of the association who are partners or employees of the individual members.
- 3.4 Where an occupational association has firms as members and requires some or all of the principals of the firm to also be individual members, the fee is calculated on the firms (where the firm is a *company*) and on the individuals within the firm (principals and employees) who are also members of the same occupational association. In respect of a member firm that is a *partnership*, the partners are to be regarded as the principals of the firm. In respect of a member firm that is a *company*, the directors of the company are to be regarded as the principals of the firm.

*For example: In respect of a sole practitioner, who is a member of the occupational association and within the class specified in the scheme and who employs support staff, none of whom are members of the same occupational association as the sole practitioner, the annual fee payable by the occupational association is calculated on the sole practitioner only. The calculated amount is:*  
***(1 member within the specified class) x \$50 = \$50.***

### Member - Firm (Partnership):

- 3.5 Where the member within the specified class is a firm and where the member firm is a *partnership*, the annual fee is calculated on the number of individual members of the association (ie on each partner who is a member of the association and on the number of employees who are members of the association).

*For example: In respect of a firm with 10 partners, all of whom are members of the occupational association, and 200 employees, 90 of whom are members of the same occupational association, the calculated amount is:*  
***(10 partners + 90 professional employees) x \$50= \$5000.***

### Member Firm (Company)

- 3.6 Where the member within the specified class is a member firm and where the member firm is a *company*, the fee is calculated on the number of member companies of the association and on the number of employees within the company who are members of the association.

*For example: In respect of a company with 4 directors and with 95 employees, all of whom are members of the same occupational association, the company is itself a legal entity and, as a member of the occupational association, it must be counted. The calculated amount is thus:*  
***(1 company + 4 directors + 95 professional employees) x \$50 = \$5000.***

## 4 Calculation of fees

- 4.1 If a scheme applies to a person, it also applies to each partner of that person. However, if a partner of the person is entitled to be a member of the occupational association, but chooses *not* to be a member, the scheme does not apply to that partner. Similarly, if an employee of a person to whom a scheme applies is entitled to be a member of the same occupational association as the person, but

chooses *not* to be a member, the scheme does not apply to that employee. Those employees of the person to whom the scheme applies who are not entitled to be members of the association would enjoy the benefit of the scheme, but they would not be counted for the purpose of levying annual fees.

- 4.2 An occupational association with individual practitioners *plus* firms as members would calculate the fee:
- if the firm is a *partnership*, on the number of partners and employees who are members of the same association as that of partners.
  - if the firm is a *company*, on the entity, number of directors and employees who are members of the same association as that of the company.

## 5 When is the fee due?

5.1 “Annual fee period” in relation to a scheme means each period of 12 months beginning on the date on which the scheme commences and on each anniversary of that date for the duration of the scheme.

5.2 The annual fee is payable no later than the end of the first quarter in which the commencement/anniversary date falls. If for any reason a scheme becomes applicable to an additional member of the occupational association during the annual fee period, the appropriate payment must be made in respect of the additional member at the end of the quarter in which the scheme became applicable to that member.

NSW	WA	VIC	QLD	SA	NT	ACT	TAS
cl.6	cl.4	cl.5	cl.4	cl.4	cl.7	n.a.	n.a.

For example -

Scheme commenced	Annual fee period	Payment due	First adjustment due (if any)	Second adjustment due (if any)	Third adjustment due (if any)	Fourth adjustment due (if any)
14/04/2008	14/04/08 - 13/04/09	30/06/2008	30/09/2008	31/01/2009	31/03/2009	30/06/2009
	14/04/09 - 13/04/10	30/06/2009	30/09/2009	31/01/2010	31/03/2010	30/06/2010
	14/04/10 - 13/04/11	30/06/2010	30/09/2010	31/01/2011	31/03/2011	30/06/2011
	14/04/11 - 13/04/12	30/06/2011	30/09/2011	31/01/2012	31/03/2012	30/06/2012
	14/04/12 - 13/04/13	30/06/2012	30/09/2012	31/01/2013	31/03/2013	30/06/2013
Interest accrues:		30/06 (if fees not paid by 30/07)  Qld: 01/08 (if fees not paid by 30/07)	30/09 (if fees not paid by 30/10)  Qld: 01/11 (if fees not paid by 30/10)	31/01 (if fees not paid by 02/03 or 01/03 in a leap year)  Qld: 03/03 or 02/03 on a leap year (if fees not paid by 02/03 or leap yr 01/03)	31/03 (if fees not paid by 30/04)  Qld: 01/05 (if fees not paid by 30/04)	30/06 (if fees not paid by 30/07)  Qld: 01/08 (if fees not paid by 30/07)

5.3 Note that there is a fourth adjustment payment required for new members to whom the scheme applies that join the association (or relevant class of membership) in the final quarter of the annual fee period. Because there is no pro-rata reduction for members' participation in the scheme (see **Summary**, above),

the final adjustment is a separate payment to the annual fee, even though both are due on the same date. The former fee is retrospective; the latter, prospective.

- 5.4 If any amount of the annual fee (including any payment required for additional members) is not paid within 30 days after the date it is due, simple interest is payable on the outstanding balance, at the rate of 0.05% per day, until that balance is paid.

NSW	WA	VIC	QLD	SA	NT	ACT	TAS
cl.7	cl.4	cl.5	cl.5	cl.4	cl.8	n.a.	n.a.

- 5.5 Annual fees are calculated for each person to whom the scheme applies who is a member of an occupational association **at any time during** the relevant annual fee period. Therefore there is no recalculation or pro rata remission of fees based on any members to whom the scheme ceases to apply during the annual fee period.
- 5.6 Where a practitioner or firm reports the number of members in the firm to the occupational association at the commencement of the annual fee period, it is *not* required to advise the occupational association of any increase in staff or movement of staff (see also 3.5 & 3.6, above).
- 5.7 Provided that the cumulative number of new members covered by a scheme during successive fee quarters does not exceed 10, the fee adjustment may be made in the fourth quarter (or the quarter in which the cumulative number reaches or exceeds 10). No interest will be charged for full payment made for the additional members within 30 days of the end of the relevant period. Otherwise, interest will be applied as in 6.1, below (see also the example in 5.2, above).

## 6 Calculation of interest

- 6.1 Fee details are based on the information contained in annual membership verification/declaration certificates provided, together with records of payment. Simple interest at the rate of 0.05% per day is payable on the outstanding balances until that balance is paid.

*In the example given above at **When is the fee due?** (scheme commences on 14/04/08 & first annual fee due on 30/06/08), interest would be calculated as follows:*

$$\text{Interest} = \text{amount payable} \times 0.0005 \times \text{number of days from 30 June to the date of actual payment}$$

## 7 Annual Membership Verification or Declaration Certificates

- 7.1 The Council requires occupational associations to provide the Secretariat with an independent *Annual Membership Verification Certificate* (the certificate), verifying the number of members to whom the scheme applied for the annual fee period, the fees payable and the dates and amounts paid to the Council during the annual fee period.
- 7.2 The certificate should be prepared annually, showing the quarterly position and the dates and amounts paid. The certificate should also report any interest paid or payable, per quarter, for the annual fee period.

- 7.3 The certificate must be prepared by a qualified accountant who is a member of a “Professional Accounting Body”, which is defined as the Certified Practising Accountants Australia (CPAA), the Institute of Chartered Accountants in Australia (ICAA) and the National Institute of Accountants (NIA), with the exception being that the accountant cannot sign the report for the association of which (s)he is a member.
- 7.4 An association with cumulative number of members covered by the scheme of less than 100 in any annual fee period may submit an *Annual Membership Declaration Certificate*<sup>2</sup>, signed jointly by its Chief Executive Officer (or his/her nominee).
- 7.5 The Council, by giving to an association an advance notice of 21 days, may inspect an association’s accounts to verify an association’s numbers of members to whom a scheme applied for each quarter during any annual fee period.
- 7.6 The certificate is due within two months of the day on which the annual fee was due.

*For example: The Scheme commences on 7 January 2010. The annual fee would be payable by 31 March 2010. The Annual Membership Verification Certificate will therefore be due on 31 May 2010.*

**Please see the Annual Membership Verification/Declaration Certificates forms, below**

## **8. Is remission of amounts payable possible?**

- 8.1 The Council may, if it considers that there are special reasons for doing so in a particular case, remit the whole or any part of:
- the fee payable for an application for the approval of the Council of an amendment to, or revocation of a scheme;
  - the annual fee;
  - any interest payable.

<b>NSW</b>	<b>WA</b>	<b>VIC</b>	<b>QLD</b>	<b>SA</b>	<b>NT</b>	<b>ACT</b>	<b>TAS</b>
cl.8	cl.5	cl.7	cl.6	cl.4	cl.9	n.a.	n.a.

## **9 Refund Policy**

- 9.1 As there is no re-calculation or pro rata remission of fees based on any members to whom the scheme ceases to apply during the annual fee period, no fee will be returned for any person who ceases to be a member at any time during the annual fee period.
- 9.2 If an association owes fees and/or interest to the Council for previous annual fee periods, any fee payment received in the current annual fee period will first be applied to the recovery of fees and interest of the past years, in order of due dates. Any excess amount remaining after the full recovery of previous years’ interest and fee will be applied first to the fees of the current annual fee period in order of due dates. Any interest accruing in the current annual fee period will be payable by the end of the fee period.

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<sup>2</sup> That is, in lieu of the Annual Membership Verification Certificate.

- 9.3 If the association overpays the fee in respect of its scheme, any balance remaining will be applied first to any amount owing to the Council; and, secondly, to any amount that may fall due in future, unless the association requests a refund.
- 9.4 If the association elects to receive a refund, the Council will return any balance of overpayment to the association within two weeks of verifying that the overpayment has been made, if the overpayment is not fully used under 9.3, above.

## 10 ANNUAL VERIFICATION or DECLARATION CERTIFICATES - FORMS

### ANNUAL MEMBERSHIP VERIFICATION CERTIFICATE<sup>a</sup>

Verification of [occupational association] members covered by the [name of scheme] in [State/Territory].

#### Scope

We have examined the attached Returns for the [name of Occupational Association] for the annual fee period. Each period<sup>b</sup> [ ] to [ ]. The [name of Occupational Association] is responsible for the preparation and presentation of the Returns and the information they contain. We disclaim any assumption of responsibility for any reliance on this report or on the Returns to which it relates to any person other than the Professional Standards Council(s); or for any purpose other than that for which it was prepared.

We have conducted an independent examination of the Returns in order to express an opinion on them to the Professional Standards Council(s). Our procedures included examination, on a test basis, of evidence supporting the amounts and other disclosures in the Returns. These procedures have been undertaken to form an opinion whether in all material respects, the attached Returns are presented fairly in accordance with Professional Standards Council requirements.

#### Our Opinion

Our opinion expressed in this report has been formed on the above basis. In our opinion the information contained in the attached Returns and detailed in the table below is presented fairly and in accordance with the underlying records of the [name of Occupational Association].

Quarter	Cumulative no. of members	Amount due to PSC <sup>c</sup>	Amount paid <sup>d</sup>	Date paid <sup>e</sup>	Interest due to PSC (if any) as at certification date <sup>f</sup>	Interest paid	Date paid
1 <sup>g</sup>							
2 <sup>h</sup>							
3							
4							

SIGNATURE OF ACCOUNTANT \_\_\_\_\_

DATE OF EXAMINATION \_\_\_\_\_

#### Notes:

- The Council reserves the right to inspect the relevant accounts of an association providing the Annual Membership Verification Certificate.
- Each period of 12 months beginning on the date on which the scheme commenced and on each anniversary of that date: clause 3 Professional Standards Regulation 2004.
- List amounts due per quarter, not cumulatively. Requirements for the payment fees are specified in the relevant Regulations (see note d, below) and the Councils' *Policy Statement: Payment of Annual Fees*.

d

NSW	WA	VIC	QLD	SA	NT	ACT	TAS
cl.5	cl.4	cl.5	cl.4	cl.4	cl.6	n.a.	n.a.

e

NSW	WA	VIC	QLD	SA	NT	ACT	TAS
cl.6	cl.4	cl.5	cl.4	cl.4	cl.7	n.a.	n.a.

f Rate of 0.05% per day

NSW	WA	VIC	QLD	SA	NT	ACT	TAS
cl.7	cl.4	cl.5	cl.5	cl.4	cl.8	n.a.	n.a.

g Number of members covered at any time during the quarter

h Number in quarter 1 plus any additional members covered at any time during the 2nd quarter and so on for quarters 3 & 4.

NSW	WA	VIC	QLD	SA	NT	ACT	TAS
cl.6(2)	cl.4(5)	cl.5(3)	cl.4(4)	cl.4(3)	cl.7(2)	n.a.	n.a.

## ANNUAL MEMBERSHIP DECLARATION CERTIFICATE<sup>a</sup>

### Declaration of [occupational association] members covered by the [name of scheme] in [State/Territory].

#### Scope

We have examined the attached Returns for the [name of Occupational Association] for the annual fee period<sup>b</sup> [ to ]. The [name of Occupational Association] is responsible for the preparation and presentation of the Returns and the information they contain. We disclaim any assumption of responsibility for any reliance on this report or on the Returns to which it relates to any person other than the Professional Standards Council(s); or for any purpose other than that for which it was prepared.

We have conducted an examination of the Returns in order to express an opinion on them to the Professional Standards Council(s). Our procedures included examination, on a test basis, of evidence supporting the amounts and other disclosures in the Returns. These procedures have been undertaken to form an opinion whether in all material respects, the attached Returns are presented fairly in accordance with Professional Standards Council requirements.

#### Our Opinion

Our opinion expressed in this report has been formed on the above basis. In our opinion the information contained in the attached Returns and detailed in the table below is presented fairly and in accordance with the underlying records of the [name of Occupational Association].

Quarter	Cumulative no. of members	Amount due to PSC <sup>c</sup>	Amount paid <sup>d</sup>	Date paid <sup>e</sup>	Interest due to PSC (if any) as at certification date <sup>f</sup>	Interest paid	Date paid
1 <sup>g</sup>							
2 <sup>h</sup>							
3							
4							

SIGNATURE OF CEO/NOMINEE \_\_\_\_\_

DATE OF EXAMINATION \_\_\_\_\_

#### Notes:

- The Council reserves the right to inspect the relevant accounts of an association providing the Annual Membership Verification Certificate.
- Each period of 12 months beginning on the date on which the scheme commenced and on each anniversary of that date: clause 3 Professional Standards Regulation 2004.
- List amounts due per quarter, not cumulatively. Requirements for the payment fees are specified in the relevant Regulations (see note d, below) and the Councils' *Policy Statement: Payment of Annual Fees*.

d

NSW	WA	VIC	QLD	SA	NT	ACT	TAS
cl.5	cl.4	cl.5	cl.4	cl.4	cl.6	n.a.	n.a.

e

NSW	WA	VIC	QLD	SA	NT	ACT	TAS
cl.6	cl.4	cl.5	cl.4	cl.4	cl.7	n.a.	n.a.

f Rate of 0.05% per day

NSW	WA	VIC	QLD	SA	NT	ACT	TAS
cl.7	cl.4	cl.5	cl.5	cl.4	cl.8	n.a.	n.a.

g Number of members covered at any time during the quarter

h Number in quarter 1 plus any additional members covered at any time during the 2nd quarter and so on for quarters 3 & 4.

NSW	WA	VIC	QLD	SA	NT	ACT	TAS
cl.6(2)	cl.4(5)	cl.5(3)	cl.4(4)	cl.4(3)	cl.7(2)	n.a.	n.a.