

Application template for a

# Professional Standards Scheme

By

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## Application to the Professional Standards Councils for a Professional Standards Scheme

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## 1 OCCUPATIONAL ASSOCIATION

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

[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

[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

### 1.4 Objectives/Mission of the Association

### 1.5 Persons to whom the scheme applies

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

[[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

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

#### 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

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

#### 1.6.1 Occupation(s)

[The occupation(s) represented by the [Occupational Association] is/are:]

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

#### 1.6.2 Body corporate

[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

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

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)]

**1.7 Related or parent organisations**

**1.7.1 Description of relationship with other organisations**

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.

**1.8 Legislation applying to the association or members of the association**





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

- 2.1 The occupational work done by members of the occupational association to whom the scheme applies
- 2.2 Those for whom occupational work is done
- 2.3 Other persons who could be affected by the occupational work
- 2.4 Risks arising from the occupational work

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 sometime 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

INADEQUATE	Rating	Measure	Definition	Characteristics
	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 and Control	Control Effectiveness Rating	Overall Risk Rating
		<ul style="list-style-type: none"> <li>•</li> <li>•</li> <li>•</li> <li>•</li> </ul>				<ul style="list-style-type: none"> <li>•</li> <li>•</li> <li>•</li> <li>•</li> </ul>		
		<ul style="list-style-type: none"> <li>•</li> <li>•</li> <li>•</li> <li>•</li> </ul>				<ul style="list-style-type: none"> <li>•</li> <li>•</li> <li>•</li> <li>•</li> </ul>		
		<ul style="list-style-type: none"> <li>•</li> <li>•</li> <li>•</li> <li>•</li> </ul>				<ul style="list-style-type: none"> <li>•</li> <li>•</li> <li>•</li> <li>•</li> </ul>		

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

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



### 3 NATURE AND LEVEL OF CLAIMS

- 3.1 Data obtained from the insurance industry
  - 3.1.1 Description of approach to brokers and/or underwriters
  - 3.1.2 Key Findings



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
2016																
2015																
2014																
2013																
2012																
2011																
2010																
2009																
2008																
2007																
2006																



## 3.2 Surveys of members

### 3.2.1 The survey instrument

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

Table 8: Member Survey

*[NAME OF ASSOCIATION]* MEMBER SURVEY

for purposes of application for a Professional Standards Scheme under professional standards legislation

The [association] is currently preparing an application to the [state\territory] Professional Standards Council for a Professional Standards 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:

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

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
2006		
2007		
2008		
2009		
2010		
2011		
2012		
2013		
2014		
2015		
2016		

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

<input type="checkbox"/>	Less than \$100,000
<input type="checkbox"/>	\$100,000 to less than \$250,000
<input type="checkbox"/>	\$250,000 to less than \$500,000
<input type="checkbox"/>	\$500,000 to less than \$750,000
<input type="checkbox"/>	\$750,000 to less than \$1,000,000
<input type="checkbox"/>	\$1,000,000 to less than \$5,000,000
<input type="checkbox"/>	\$5,000,000 to less than \$10,000,000
<input type="checkbox"/>	\$10,000,000 or more



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

Year (Previous 10 Years)	Number of Notifications	Number of Claims	Highest Claim Amount
2006			
2007			
2008			
2009			
2010			
2011			
2012			
2013			
2014			
2015			
2016			

\*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
2006				
2007				
2008				
2009				
2010				
2011				
2012				
2013				
2014				
2015				
2016				





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 Professional indemnity 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?

.....

12. If you are not in favour of a capped liability scheme, please state your reasons:

.....

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To find out more about the professional Standards Councils and Professional Standards Schemes, please visit the website of the Professional Standards Councils at [www.psc.gov.au](http://www.psc.gov.au)

Thank you for your participation



.3.2.2 The method of collecting the data

3.2.3 The method of collating the data

3.2.4 Excluding data

3.2.5 Key Findings



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
2016																
2015																
2014																
2013																
2012																
2011																
2010																
2009																
2008																
2007																
2006																



### 3.3 Searches of legal databases

#### 3.3.1 Methodology

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



### 3.3.2 Key Findings

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
2006												
2007												
2008												
2009												
2010												
2011												
2012												
2013												
2014												
2015												
2016												



### 3.4 Internet and media research

#### 3.4.1 Methodology

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



### 3.4.2 Key Findings

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
2006												
2007												
2008												
2009												
2010												
2011												
2012												
2013												
2014												
2015												
2016												





### 3.5 Data relating to largest claims for the last 10 years

Table 15: 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						



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

Table 16: 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)
2016							
2015							
etc							



### 3.7 Analysis of all claims data



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

Table 17: Risk Management Plan

MEMBERSHIP REQUIREMENTS	
Risk no. & definition	
Risk status	(ie likelihood, consequence, & qualitative assessment)
Strategy objectives	
Means to implement strategy (plan)	
Means of monitoring implementation	
Means of measuring effectiveness	
Risk no. & definition	
Risk status	(ie likelihood, consequence, & qualitative assessment)
Strategy objectives	
Means to implement strategy (plan)	
Means of monitoring implementation	
Means of measuring effectiveness	
Repeat as required	



## CONTINUING PROFESSIONAL DEVELOPMENT

Risk no. & definition	
Risk status	(ie likelihood, consequence, & qualitative assessment)
Strategy objectives	
Means to implement strategy (plan)	
Means of monitoring implementation	
Means of measuring effectiveness	
Risk no. & definition	
Risk status	(ie likelihood, consequence, & qualitative assessment)
Strategy objectives	
Means to implement strategy (plan)	
Means of monitoring implementation	
Means of measuring effectiveness	
Repeat as required	



CODES OF ETHICS & PRACTICE

Risk no. & definition	
Risk status	(ie likelihood, consequence, & qualitative assessment)
Strategy objectives	
Means to implement strategy (plan)	
Means of monitoring implementation	
Means of measuring effectiveness	
Risk no. & definition	
Risk status	(ie likelihood, consequence, & qualitative assessment)
Strategy objectives	
Means to implement strategy (plan)	
Means of monitoring implementation	
Means of measuring effectiveness	
Repeat as required	



COMPLAINTS & DISCIPLINE – VOLUNTARY MEDIATION

Risk no. & definition	
Risk status	(ie likelihood, consequence, & qualitative assessment)
Strategy objectives	
Means to implement strategy (plan)	
Means of monitoring implementation	
Means of measuring effectiveness	
Risk no. & definition	
Risk status	(ie likelihood, consequence, & qualitative assessment)
Strategy objectives	
Means to implement strategy (plan)	
Means of monitoring implementation	
Means of measuring effectiveness	
Repeat as required	



## QUALITY ASSURANCE AND AUDIT

Risk no. & definition	
Risk status	(ie likelihood, consequence, & qualitative assessment)
Strategy objectives	
Means to implement strategy (plan)	
Means of monitoring implementation	
Means of measuring effectiveness	
Risk no. & definition	
Risk status	(ie likelihood, consequence, & qualitative assessment)
Strategy objectives	
Means to implement strategy (plan)	
Means of monitoring implementation	
Means of measuring effectiveness	
Repeat as required	





## RISK MANAGEMENT REQUIREMENTS OF MEMBERS

Risk no. & definition	
Risk status	(ie likelihood, consequence, & qualitative assessment)
Strategy objectives	
Means to implement strategy (plan)	
Means of monitoring implementation	
Means of measuring effectiveness	
Risk no. & definition	
Risk status	(ie likelihood, consequence, & qualitative assessment)
Strategy objectives	
Means to implement strategy (plan)	
Means of monitoring implementation	
Means of measuring effectiveness	
Repeat as required	



OTHER AREAS OF POTENTIAL RISK	
Risk no. & definition	
Risk status	(ie likelihood, consequence, & qualitative assessment)
Strategy objectives	
Means to implement strategy (plan)	
Means of monitoring implementation	
Means of measuring effectiveness	
Risk no. & definition	
Risk status	(ie likelihood, consequence, & qualitative assessment)
Strategy objectives	
Means to implement strategy (plan)	
Means of monitoring implementation	
Means of measuring effectiveness	
Repeat as required	



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					
Action					
Risk no.3					
Repeat as required					

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.



## 5 MEMBERSHIP REQUIREMENTS OF THE ASSOCIATION

5.1 Educational and other qualifications

5.2 Overseas qualifications

5.3 Other entry requirements

5.4 Verification of entry requirements

5.5 Legislative Requirements

[Occupational Association] is not aware of any inconsistencies between its membership requirements and any other statutory requirements [otherwise than as follows:]



## 6 CONTINUING OCCUPATIONAL EDUCATION (COE)

- 6.1 Power to require COE
- 6.2 Required strands of COE and number of hours
- 6.3 Providers of COE
- 6.4 Monitoring COE compliance with requirements
- 6.5 Sanctions for non-compliance
- 6.6 Data collection and analysis
- 6.7 Legislative Requirements

[Occupational Association] is not aware of any inconsistencies between its continuing occupational education requirements and any other statutory requirements [otherwise than as follows:]

- 6.8 Review of COE system



## 7 CODE OF ETHICS AND CODE OF PRACTICE

- 7.1 Body responsible for developing the Code of Ethics and Code of Practice
- 7.2 Adherence to the Code of Ethics
- 7.3 Review of Code of Ethics
- 7.4 Comparison between association's code of ethics and the Councils' Model Code of Ethics Principles



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.		





### **7.5 Consequences for non-compliance**

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

### **7.6 Legislative Requirements**

[Occupational Association] is not aware of any inconsistencies between its code of ethics and code of practice requirements and any other statutory requirements [otherwise than as follows:]



## 8 COMPLAINTS AND DISCIPLINE SYSTEMS AND VOLUNTARY MEDIATION SERVICES

- 8.1 Complaints handling bodies
  - 8.1.1 The authority of the body to handle complaints
  - 8.1.2 Investigators
  - 8.1.3 Decision Makers
  - 8.1.4 Appeal Panel
  - 8.1.5 Reporting complaints information
- 8.2 Actions forming the subject of a complaint
- 8.3 Persons who can make a complaint
- 8.4 Methods for determining complaints
  - 8.4.1 Method for lodging a complaint
  - 8.4.2 Methods and process of hearing complaints
  - 8.4.3 Tests for upholding or dismissing complaints
  - 8.4.4 Review/appeals process for the complainant and practitioner/member
  - 8.4.5 Mediation (if applicable) in the process
- 8.5 Discipline and sanctions
  - 8.5.1 Disciplinary rules and procedures
  - 8.5.2 Grounds for disciplining members
  - 8.5.3 The disciplinary process
  - 8.5.4 Forms of discipline and sanctions
  - 8.5.5 Monitoring sanctions
- 8.6 Notices of Decisions
- 8.7 Rights of representation of parties to a complaint



## 8.8 Complaints and discipline data

### 8.8.1 Collection

### 8.8.2 Analysis

### 8.8.3 Using complaints and discipline data to inform risk management strategies



## 8.9 Deviations from Model Code

Table 19: Comparative table: complaints and discipline system

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)).		
What happens after a complaint is made	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: <ol style="list-style-type: none"> <li>a. it may require the complainant to provide further particulars of the complaint,</li> <li>b. it may carry out an investigation into the</li> </ol>		



	<p>complaint,</p> <ul style="list-style-type: none"><li>c. it may attempt to resolve the complaint by conciliation,</li><li>d. it may decline to entertain the complaint (because, for example, the complaint is frivolous, vexatious, misconceived or lacking in substance),</li><li>e. it may conduct a hearing into the complaint.</li></ul>		
Action after a hearing	<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"><li>a. caution or reprimand the person,</li><li>b. impose conditions as to the carrying out of the person's occupation,</li><li>c. require the person to complete specified courses of training or instruction,</li><li>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 persons specified by the association,</li><li>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,</li><li>f. expel the person from membership of the association.</li></ul> <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</p>		



	compensation.		
Notices of decisions	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.		
Rights of representation	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.		
Exercise of functions under the Code	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 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>		



#### **8.10 Legislative requirements**

[Occupational Association] is not aware of any inconsistencies between its complaints and discipline and voluntary mediation service requirements and any other statutory requirements [otherwise than as follows:]

#### **8.11 Review of complaints and discipline system**



## 9 QUALITY ASSURANCE AND AUDIT

- 9.1 Compliance with continuing occupational education
- 9.2 Compliance with association's insurance standards
- 9.3 Sufficiency of business assets
- 9.4 Membership requirements
- 9.5 Compliance with disclosure requirements
- 9.6 Cost and availability of insurance
- 9.7 Claims data
- 9.8 Legislative Requirements

[Occupational Association] is not aware of any inconsistencies between its quality assurance requirements and any other statutory requirements [otherwise than as follows:]





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



## 11 COST AND AVAILABILITY OF INSURANCE AGAINST OCCUPATIONAL LIABILITY

### 11.1 Member survey

(Refer to section 3.2.1 above for members survey or Table 8, insert survey results as per Table 7 (if possible).)

### 11.2 Members' perception

### 11.3 Underwriters/brokers views



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

12.1 The Association's insurance standards

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



## 13 THE STANDARDS DETERMINED BY THE OCCUPATIONAL ASSOCIATION IN RELATION TO INSURANCE POLICIES

### 12.1 The Association's insurance standards

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

Table 20: Comparative table – insurance standards (please refer to the current policy statement: [www.psc.gov.au/advice-for-scheme-associations/resource-centre](http://www.psc.gov.au/advice-for-scheme-associations/resource-centre))

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.			



### 12.3 Inconsistencies between relevant legislation and Compulsory insurance under the Act

[Occupational Association] is not aware of any inconsistencies between its insurance standards requirements and any other statutory requirements [otherwise than as follows:].



## 14 THE SCHEME

### 13.1 Persons to whom the scheme applies

#### 13.1.1 Register of members

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

### 13.3 Specifying limits of liability

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

#### 13.4.1 Nature of discretionary authority

#### 13.4.2 Criteria for considering discretion



## 15 ADMINISTRATION OF THE SCHEME

14.1 Organisational structure

14.2 Corporate governance of the association

14.3 The administration of the scheme

14.3.1 Systems in place to administer the scheme

14.3.2. Persons responsible for administering the scheme



