

Professional Associations

Introduction

This subject title considers the role and function of professional associations in the context of the Professional Standards Council regime. This title will consider the following issues:

- What are Professional Associations?
- Concepts of Professional Association and Their Role
- How are Professional Associations and Professional Standards Councils related?
- What obligations come with a Professional Standards Scheme?
- Which organisations have a Professional Standards Scheme?
- What support material is available to occupational associations?
- The future of Professional Associations.

What are Professional Associations?

Professional associations are usually non-profit organisations that aim to further a profession, the interests of individuals engaged in that profession as well as the public interest.¹ Professions have traditionally been largely self-regulating with professional associations operating independently of, and parallel to, government regulation.² Historically, many professional associations were established to confirm whether a person was part of a specialised profession such as accounting, law or medicine. A professional association may exist locally, nationally or globally. In many cases professional associations gain an authority to enforce entry standards, which they use to manage the way services are provided in markets. Typically, professional associations aim for all members of an occupation to join, which allows the association to achieve a monopoly position over all the work encompassed by the occupation. With this authority, professional associations exercise the enforcement of entry standards and seek to protect the competence and integrity of the occupation and its members.

There are many benefits to members of professional associations such as accreditation, education, networking, conferences and seminars or job opportunities. An example of a professional association is the Law Society of New South Wales, which describes its mission as involving:³

¹ Roger Burritt, James Guthrie and Elaine Evans, 'Professional Associations – Past Contributions, Present Tensions and Future Opportunities' in Roger Burritt, James Guthrie and Elaine Evans *Relevance and Professional Associations in 2026* (Chartered Accountants, 2016) 9, 9.

² Cary Coglianese and Evan Mendelson, 'Meta-Regulation and Self-Regulation' in Robert Baldwin, Martin Cave and Martin Lodge (eds), *The Oxford Handbook of Regulation* (Oxford University Press, 2010) 146-7.

³ Law Society of New South Wales, *Vision and Mission* <lawsociety.com.au/about/ourrole/VisionMission/index.htm> (accessed on 27 July 2017).

- Activities and services determined by the needs and welfare of members
- A profession effectively represented at government and community levels
- A competitive national profession
- A community served by ethical, competent and independent legal practitioners
- A community with reasonable and affordable access to justice
- Ongoing reform of the law and the legal system.

Concepts of Professional Association and their Role

The emergence of professional associations can be identified in the *collegia opificum* during the Roman Empire and trade guilds in England and Northern Europe. These groups existed to generate competitive advantages for their respective members by developing and protecting knowledge, and by imposing their own regulation systems on members. By controlling the character and conduct of their members they also tried to preserve the quality and reputation of their members and with the community they worked in. This largely accords with how we define professional associations today. However, because we are now seeing the emergence of a networked world on all fronts, it is important that professional associations be proactive in facing challenges into the future. A concept of professional associations is of importance in understanding what professional associations are and what they can be.

Ross Dawson has argued that professional associations play a key role in four domains.⁴ The first involves 'representation'. A professional association represents and uses its membership's collective voice to influence policy in the interests of members and the public. A problem that can arise in the domain of representation is that an association and its values can become frozen. Although the interests of members may change over time, the professional association may cease to be representative. In this capacity, there is space for associations to become dynamic, proactive leaders of debate as well as responding to the needs of members. Dawson suggests a key principle in the domain of representation is that associations should engage in discussions with its participants to ensure that associations focus not just on the present but also the future.

The second domain for professional associations concerns 'standards'. This refers to the standards required for entrance into a profession, professional recognition and ethics that guide members of the profession. Dawson suggests that professional standards go as far as defining the profession by setting the benchmark for the types of skills required to practice and by enforcing the standards of the profession. To some extent this domain is a form of risk management, where the quality of relevant training and skills assist in reducing the risks of poor judgment and adverse outcomes like insolvency, malpractice and other corporate failure. For individuals, standards of associations establish identities, pathways to careers, wealth and status. For the Professional Standards Council, discussed further below, the domain of standards is of concern in

⁴ Ross Dawson, 'The Future of Associations' in Elaine Evans, Roger Burritt and James Guthrie (eds), *Relevance and Professional Associations in 2026* (The Institute of Chartered Accountants in Australia Incorporated and the Centre for Accounting, Governance and Sustainability at the University of South Australia, 2011) 26.

promoting consumer protection. This is reflected in the additional documentation required by the Council before approving a Professional Standards Scheme. In seeking approval from the Council an association may be concerned with setting:

- Standards for entry into the profession
- Ethical codes
- Complaint resolution procedures
- Ongoing education requirements
- Professional recognition standards.

The third key domain involves professional associations providing education and professional development resources to their members to aid them in satisfying standards set by the association. For example, the Law Society of New South Wales provides resources concerned with legal knowledge, professional skills, practice management and specialist accreditation.⁵ Similarly, Chartered Accountants Australia and New Zealand provides resources on leadership, strategy, continual learning, ethics and technology.⁶

Dawson's final domain for professional associations is that of 'connecting members for mutual value'. This role is fulfilled by organising social and professional events, maintaining a members' directory and various online platforms. This domain is undertaking a fundamental shift due to the rapid development of communication technology and social media sites such as Facebook, Twitter, LinkedIn, Google and others. A significant portion of the global population have access to the internet and mobile devices, many of whom are engaged in social media. In the next five years 2.5 billion more people will become mobile users.

This rapid increase in connectivity through communication technology allows flows and connections across boundaries that have implications for how people become members of professional associations. A variety of traditional functions of professional associations can be achieved through self-organising networks and other knowledge-sharing platforms. For example, individual members of professions are increasingly practising outside of large firms and working with other individuals and networks. Law firms for example are beginning to hire lawyers for temporary, project-based work which allows those lawyers to engage with the profession in new ways.

Dawson's theoretical domain of connectivity illustrates the value of the 'economy of individuals' and the ability for people to organise themselves collectively without formal structures. Social movements, for example, may form through websites like Twitter, often without identifying a single person as the catalyst. In the face of these new forms of networks, and without an achievable vision for the future, professional associations risk remaining static and losing relevance.

⁵ Law Society of New South Wales, *Professional Development* <<https://lawsociety.com.au/ForSolicitors/Education/index.htm>> (accessed on 27 July 2017).

⁶ Chartered Accountants Australia and New Zealand, *Learning Programmes and Tools* <<https://www.charteredaccountantsanz.com/learning-and-events/learning>> (accessed on 27 July 2017).

How Are Professional Associations and Professional Standards Councils Related?

A professional association in the context of the Professional Standards Councils is one that has an approved Professional Standards Scheme and is referred to as an occupational association. The Professional Standards Councils exist as 'meta-regulatory bodies' to occupational associations. That means the Councils support the self-regulation of occupational groups, rather than directly regulating them.

When an occupational association has a Scheme in place they are signalling to the market that they have properly engaged with, and satisfied, their obligations under the Professional Standards Legislation enacted in each State and Territory. A Scheme also signals that the occupational association will enforce the high standards of professional conduct set out in the Scheme.

What Obligations Come with a Professional Standards Scheme?

If an occupational association has an approved Professional Standards Scheme, its provisions bind all members of the association, unless a member has applied for and been granted exemption under the Scheme. A Scheme may also apply to a body corporate and, if so, its terms apply to the officers of that body corporate. Similarly, the Scheme will apply to employees of any person subject to the Scheme. From the perspective of the professional standards legislation, three key regulatory obligations should be borne in mind:

1. As part of its occupational liability limitation function, the professional standards legislation requires that professional associations consider risk management strategies. Not only is this a precondition for approval of a Scheme, the association is also obliged to provide an annual report on implementation to the Professional Standards Council and to report on other occasions if requested to do so.⁷
2. Occupational associations, and all members participating in a Scheme, must disclose the fact of their limited liability in accordance with the Act.⁸ The notification must take the following form: *'Liability limited by a scheme approved under Professional Standards Legislation'*.⁹
3. Occupational associations may also form a committee to monitor and analyse claims made against members for occupational liability. This committee may then publish advice to members with a view to minimising such claims in the future.¹⁰

⁷ *Professional Standards Act 1994* (NSW) ss 36, 37; *Professional Standards Act 1997* (WA) ss 48, 49; *Professional Standards Act 2003* (Vic) ss 38-40; *Professional Standards Act 2004* (Qld) ss 37-9; *Professional Standards Act 2004* (SA) ss 38-40; *Professional Standards Act 2005* (Tas) ss 39-41; *Civil Law (Wrongs) Act 2002* (ACT) sch 4 pt 4.4; *Professional Standards Act 2004* (NT) ss 37-39.

⁸ *Professional Standards Act 1994* (NSW) s 33; *Professional Standards Act 1997* (WA) s 45; *Professional Standards Act 2003* (Vic) s 35; *Professional Standards Act 2004* (Qld) s 34; *Professional Standards Act 2004* (SA) s 35; *Professional Standards Act 2005* (Tas) s 36; *Civil Law (Wrongs) Act 2002* (ACT) sch 4 pt 4.29; *Professional Standards Act 2004* (NT) s 34.

⁹ *Professional Standards Regulation 2014* (NSW) reg 9; *Professional Standards Regulations 2008* (NT) reg 10; *Professional Standards Regulation 2007* (Qld) reg 7; *Professional Standards Regulations 2006* (SA) reg 6; *Civil Law (Wrongs) Regulation 2003* (ACT) reg 13; *Professional Standards Regulations 1998* (WA) reg 6; *Professional Standards Regulations 2007* (Vic) reg 8. There are no professional standards regulations in Tasmania.

¹⁰ *Professional Standards Act 1994* (NSW) s 34; *Professional Standards Act 1997* (WA) s 46; *Professional Standards Act 2003* (Vic) s 36; *Professional Standards Act 2004* (Qld) s 35; *Professional Standards Act 2004* (SA) s 36; *Professional Standards Act 2005* (Tas) s 37; *Civil Law (Wrongs) Act 2002* (ACT) sch 4 pt 4.30; *Professional Standards Act 2004* (NT) s 35.

Occupational associations with approved Schemes will also have ongoing obligations to meet, such as:

- Paying annual fees
- Implementing continuing professional development programs to address industry risks
- Establishing and monitoring consumer complaint channels and discipline systems
- Educating and monitoring members about the obligation to disclose their limited liability on business documentation
- Risk management reporting
- Insurance cover, claims and business assets monitoring
- Annual audit of members
- Annual reporting.

Which Organisations Have a Professional Standards Scheme?

20 Australian associations presently have a Professional Standards Scheme in place, which applies to over 68,000 professionals in a variety of fields. Some of these include:

- Association of Taxation and Management Accountants
- Australian Computer Society
- Bar Associations of Queensland, New South Wales, Victoria, South Australia and Western Australia
- Law Societies of South Australia, Western Australia, Queensland and Victoria
- CPA Australia
- Chartered Accountants Australia and New Zealand
- Engineers Australia
- Royal Institution of Chartered Surveyors and Valuers.

What Support Material Is Available to Occupational Associations?

The Council publishes a range of guidelines and templates to assist occupational associations to fulfil their self-regulatory obligations and to support scheme applications.¹¹ The materials available include:

- Application guidelines
- Templates for scheme applications
- A compliance framework document providing information about compliance with legislative and other requirements relevant to associations
- Factsheets on liability disclosure and professional standards improvement
- Model code of ethics.

The Future of Professional Associations

Professional associations will have to consider how to reconcile their existence as formal structures, while engaging with new forms of self-organising groups on social media networks and elsewhere on the internet.

¹¹ Professional Standards Councils Website, *Professional Standards Schemes* (accessed on 27 July 2017) <<http://www.psc.gov.au/professional-standards-schemes>> (accessed on 27 July 2017).

Technology, for example, allows information to be disseminated in a way that people without professional qualifications or membership to an association. That means not only that professional associations may be more fragmented with a variety of interests segmenting members, but machines, systems and technologies can allow a wider range of individuals to engage with knowledge. Traditionally, expertise has previously been restricted to the domain of a profession. For example, people in Australia increasingly file their own tax returns without relying on the help of a professional accountant. In addition to threats posed by technology, Göran Roos suggests that the future of professional associations is affected in by six shifts in how individuals relate to them:¹²

- Increased competition for their time
- An increased desire to see a return on their investment
- More organisations competing for their attention
- Generational differences in the perceived value of membership
- Increased specialisation of interest
- An increased expectation for technological adeptness.

Accordingly, professional associations are attempting to respond to the segmentation amongst their members and adapt to shifts in technology and the way people form and relate to networks. Of course, while the networked world is clearly breaking down boundaries and creating significant challenges to associations, it is also creating conditions in which the value of associations is potentially greater than it has ever been. Associations now can engage with the world in new ways. Those associations that do adjust will remain relevant and facilitate inevitable transformations of the professions they represent. Their future depends not on protecting existing interests of narrow, isolated disciplines, but in adopting dynamic approaches that engage with the rapidly changing world.

¹² Göran Roos, 'Historical Patterns and the Inevitable Decline of Professional Associations' in Elaine Evans, Roger Burritt and James Guthrie (eds), *Relevance and Professional Associations in 2026* (The Institute of Chartered Accountants in Australia Incorporated and the Centre for Accounting, Governance and Sustainability at the University of South Australia, 2011) 37.

Summary

This article considered the role, function and theoretical basis of professional associations in the context of the Professional Standards Councils. Professional associations face a range of regulatory requirements imposed under the professional standards legislation and by the Professional Standards Councils. Depending on their legal structure, associations may also face regulatory and reporting requirements imposed by other legislative schemes. Professional associations also face a range of challenges principally brought about through rapid changes in the way people form groups using communication technology.

Written by: Andrew Lumsden

This subject overview has been written with the support of the following partners:

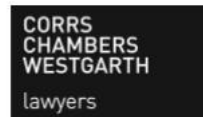


Australian Government
Australian Research Council



UNSW
SYDNEY

CLMR
Centre for Law, Markets and Regulation



Allens > < Linklaters