

Mr Jim Varghese AM
Queensland Building and Construction Commission
Governance Review

By email: BLP@epw.qld.gov.au

Dear Mr Varghese

Potential for the Professional Standards Councils to assist in the Queensland Building and Construction Commission review of governance arrangements

I write to introduce the role of the Professional Standards Councils as it relates to the independent review of the Queensland Building and Construction Commission's governance.

The national system of professional standards regulation, administered by the independent statutory Councils, plays an important part in strengthening the regulatory efforts of industry bodies in a range of professional services occupations. The professional standards regime enables occupational associations to proactively identify, regulate, and address competence and conduct issues by improving standards that better protect consumers, in line with the expectations of the wider community.

A summary of the professional standards regulatory regime is enclosed at **annexure A**.

The Councils acknowledge and support the work that the Queensland Government is doing to reform the sector, and the important regulatory role of the Commission. The Councils are not strangers to the reform process nationally. Since 2019, the Councils have worked closely with the Building Ministers' Meeting (formerly Forum) and key regulatory bodies in the built environment to offer practical solutions to persistent compliance problems: advising occupational associations on the benefits of professional standards regulation, and assisting them to develop risk management strategies and systems that deliver better consumer protection and continuous improvements in the competence and conduct of their members.

Professional standards schemes are well-proved, state-based and publicly visible vehicles for professional accountability. An important component of the Councils' assessment of an association's regulatory capacity, before approving a scheme under professional standards legislation, is to review its governance systems, including management of conflicts of interest and financial arrangements, premised on best regulatory practice. The Councils have approved professional standards schemes for several occupational associations representing professionals working in the built environment sector - most recently for the Australian Institute of Building Surveyors and Strata Community Association (NSW). Further, the Councils are lead partner in an Australian Research Council funded three-year linkage project, 'Constructing Building Integrity: Raising Standards Through Professionalism', along with other research partners including the Queensland Department of Mines, Industry Regulation and Safety, and the Queensland Department of Housing and Public Works.

The Councils have an explicit statutory function to advise, encourage and assist in the development of regulatory capacity, have a detailed knowledge of the sector, and are keen to engage, and share their expertise, with peer regulators.

We note that there is a parallel review into the role of developers within the building and construction industry. While we do not suggest that a professional standards scheme is necessarily a solution in that context, we note the review may consider whether further reforms are needed to ensure everyone who benefits from a booming building industry contributes their fair share. This suggests the review may touch upon occupations and professions providing advice services in the sector regulated by the Commission.

Should you wish to discuss or consider any aspect of the national system for professional standards regulation, we would be pleased to provide a briefing and further information to support your work. Please contact me by telephone on 02 8315 0888 or by email at roxane.marcelle-shaw@psa.gov.au, if we can be of assistance.

Yours sincerely



Roxane Marcelle-Shaw
Chief Executive Officer
Professional Standards Authority

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Professional standards regulatory regime

The national system of professional standards regulation was developed in the 1990s, against a backdrop of escalating professional indemnity claims that led to professional service providers either leaving their profession, reducing their insurance, or forgoing insurance. This threatened to leave aggrieved clients with the prospect of being unable to recover damages even if successful in their claim.

Governments agreed it was preferable to provide some guarantee of payment for most claimants than to have a system of unlimited liability with no certainty of any. Beginning in 1994, each state and territory government has established arrangements to set a statutory cap on damages tied to safeguards to protect the interests of consumers.

The vision was to **strengthen consumer protection** and **raise standards** of service delivery by professionals and others while ensuring better access to professional indemnity insurance.¹

The system consists of:

- occupational associations,² operating
- professional standards schemes, enabled by
- professional standards legislation, and the
- Professional Standards Councils.

A **professional standards scheme** is a disallowable instrument underpinned by an occupational association's commitments to monitor, enforce, and improve the professional standards of its members. Schemes operate to drive associations to regulate the conduct of their members and establish robust consumer protection mechanisms.

In return, a scheme provides eligible members with a mechanism to cap the civil liability for damages that professionals and others who take part in an association's scheme may be required to pay if a court upholds a claim against them. The liability caps will vary across and within occupational groups depending on risk factors such as the nature or volume of the work and are usually propounded by the relevant occupational association, often supported by professional actuarial analysis.

There are currently 19 Australian occupational associations that operate schemes. These associations collectively cover more than 88,000 professionals in diverse fields who provide services to millions of Australian individuals and businesses.

Generally, schemes are established following an application by an occupational association to the Professional Standards Councils.

Schemes are established under **professional standards legislation** in each state or territory which share common objects:

- a) to enable the creation of schemes to limit the civil liability of professionals and others,
- b) to facilitate the improvement of occupational standards of professionals and others,

¹ *Review of the Law of Negligence* (Final Report, September 2002).

² An "occupational association" is defined in professional standards legislation as a body corporate "which represents the interests of persons who are members of the same occupation group" and "the membership of which is limited principally to members of that occupation group". An occupation group is also defined to include a "professional group" and a "trade group". The legislation provides that a scheme may also apply to other persons including officers of body corporates, to which, as well as partners, employees, or prescribed associates of persons to whom, a scheme applies.

- c) to protect the consumers of the services provided by professionals and others,
- d) 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.³

Each state and territory has its own **Professional Standards Council**. State and territory governments have agreed that each Council will be constituted by the same 11 members to ensure coordinated and streamlined decision-making, collectively forming the Councils. The functions of the Councils are to:

- advise the relevant Minister concerning the approval, amendment, or revocation of schemes
- advise, encourage, and assist associations in the improvement of occupational standards and self-regulation such as through; codes of ethics, codes of practice, quality management, risk management, complaint resolution, voluntary mediation services, membership requirements, discipline of members and continuing occupational education
- monitoring the occupational standards of persons covered by schemes
- monitoring the compliance by associations with their detailed risk management strategies

Further functions include conducting forums and publishing advice and information. In effect, Councils supervise associations that regulate their members (as a meta-regulator) to monitor and assist them in developing effective consumer protection and improving their professional standards by implementing detailed risk management strategies and professional integrity systems.

In August 2018, the Councils published a statement of their three-year strategic intent and goals which focus on responding to contemporary community expectations and regulatory challenges in achieving the objects of the professional standards legislation – *Strategy 2021*.

The national professional standards regulatory system is funded from statutory fees paid by associations.

³ *Professional Standards Act 1994* (NSW) s 3; *Professional Standards Act 2004* (Qld) s 4; *Professional Standards Act 2004* (NT) s 3; *Professional Standards Act 1997* (WA) s 3; *Professional Standards Act 2004* (SA) s 3; *Professional Standards Act 2003* (Vic) s 3.