

# Guidance

## Eligibility

### Using this guidance

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This guidance will help you to complete [Module 3 – Eligibility](#). The module covers the members or classes of members eligible to participate in your scheme.

We will use the information you provide as part of this module to determine whether your proposed scheme complies with the requirements of the professional standards legislation. We consider this when deciding whether to approve a scheme.

### Understanding the requirements for this module

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A scheme should clearly define the members or membership classes that will participate in it.

In this module, you will provide information about:

- which members or membership classes the scheme will apply to
- what proportion of association members the scheme will apply to
- if the scheme permits exemptions or higher disciplinary caps.

You should be able to show how your association categorises members into membership classes (for example, in your constitution, by-laws or membership entry criteria).

The relevant provisions are:

ACT	NSW	NT	Qld	SA	Tas	Vic	WA
Schedule 4, sections 4.15–4.16	sections 17–20	sections 18–21	sections 19–21	sections 19–22	sections 20–23	sections 19–22	sections 30–33

If a scheme will apply only to a specific membership class (not all members of the association) these members should be identifiable before the scheme starts. Any mechanism that allows members to choose which class they belong to after a scheme has started would not be valid under the legislation (see also the discussion of ‘opt-in’ under [Exemption from the scheme](#)).

### Completing the questions

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This section explains the questions in the Eligibility [template](#).

### Members and membership classes

The legislation in each jurisdiction refers to persons a scheme may apply to – either all association members, or a specific membership class or classes. ‘Persons’ in this context could be individuals (that is, people or ‘natural persons’) or corporations.



Many occupational associations have several classes of membership, such as fellows, honorary members and student members. These classes could be based on academic qualifications, experience, certifications, specialty fields or other criteria.

## Register of members

You must provide us with the policy and processes for the register of scheme participants. This register will record the:

- members or membership classes participating in the scheme
- date the member became a scheme participant
- date the member stopped participating in the scheme.

We recommend that the register is publicly available and searchable so consumers can easily find out whether their service provider is a scheme participant. If it is not publicly available, you must explain how consumers and others with a legal right to ask for this information can access it.

The scheme participant register will also help your association to verify the number of participating members. This is required as part of your annual compliance reporting obligations.

## Exclusion from the scheme

A scheme may exclude a class of members. If a membership class is excluded from the scheme they cannot participate.

Exclusions must be abundantly clear to association members and to consumers.

If your scheme excludes a membership class, we will generally only approve it if excluded members do not provide occupational services directly to consumers and do not present any risks to them. Excluded members may not, for example, have the benefit of professional indemnity insurance in their own name, or as employees. This could include members who:

- are employed by government or educational entities
- are in-house professionals
- provide a type of work that cannot have its liability limited by the scheme.

A scheme cannot exclude a type of occupational work. It would instead need to exclude all those who provide that type of work. A member who is specifically excluded from a scheme cannot apply to remove the exclusion.

## Exemption from the scheme

We will assume that **all** members you list in the membership class table in Question 3 of the [template](#) will participate in the scheme unless they are properly exempted.

Exemption from a scheme is different to exclusion. A scheme can allow an association to exempt a person from the scheme if they request it. Exclusion, on the other hand, means that the scheme is not intended to (and does not) apply to the person.

For consistency across all jurisdictions, a member must apply for exemption in writing and the association must consider the application on its unique merits. The association must have procedures to notify the member of the exemption and its start date in writing.

If granted, an exemption from a scheme:



- applies to the entire scheme and cannot apply only to parts of the scheme
- begins on a specified date that the association agrees
- is permanent.

To revoke an exemption, a member must write to the association and ask it to reverse the exemption from a specified date. The association must also have policies and processes for receiving and considering exemption revocations.

Members that the scheme applies to cannot choose whether to participate ('opt in') – they participate in the scheme unless the association approves an exemption. The legislation does not allow people to opt in or out, so we cannot approve a scheme instrument that provides for this.

If your scheme allows exemptions, you must submit the:

- policy and process for receiving and considering exemptions from the scheme, including the governing body or delegated committee's terms of reference for this
- forms or information about exemption that you provide to members or publish on your website
- grounds on which your association will accept an application for exemption
- relevant member register showing that a member is exempt from the scheme.

The relevant legislation for each state or territory is as set out on page 1 of this guidance.

## Higher discretionary caps

A scheme can grant an association discretion to specify a higher maximum amount of liability than would otherwise apply for a person covered by the scheme. This is also referred to as a 'higher discretionary cap'. The person must apply to the association for this. A higher maximum amount of liability may:

- apply to all work or types of work
- apply to a class of consumers or a particular consumer
- be for a specified period or from a specified date until the scheme expires.

If your scheme allows higher discretionary caps, you must submit your policy and processes for accepting, considering and deciding on a requested higher cap, including:

- requiring the member to show the required professional indemnity insurance
- advising the member in writing, including specified dates
- noting the member's status in the scheme participant register.

The relevant legislation for each state or territory is as follows:

ACT	NSW	NT	Qld	SA	Tas	Vic	WA
Schedule 4, section 4.20	section 24	section 25	section 25	section 26	section 27	section 26	section 37

## Copyright and document control

<b>Document version</b>	1.0
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<b>Written by</b>	Director, Professional Standards Regulation

**Approved by**

Chief Executive Officer, Professional Standards Councils

## Revision history

Version	Approved by	Approval date	Effective date	Sections modified
1.0	PSC	18 June 2021	1 July 2021	This is new guidance

## Disclaimer

This guidance applies only to an occupational association preparing a scheme for approval under professional standards legislation. It is not legal or other professional advice and should not be relied on as such. An occupational association should seek its own legal/professional advice to find out how the professional standards legislation and other relevant laws and regulations may apply to it. Go to [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au) to access NSW legislation.

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