

Guidance note on scheme expiration

For professional standards schemes
under professional standards legislation

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This guidance note does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Professional Standards Act(s) and other applicable laws apply to you, as it is your responsibility to determine your obligations. Examples in this guide are purely for illustration. They are not exhaustive and are not intended to impose or imply particular rules or requirements.

What is the purpose of this guidance note?

1. This guidance note informs regulated occupational associations of the processes that the Professional Standards Councils follow for advertising an expiring professional standards scheme of a regulated occupational association. It will outline Councils' powers and considerations that are relevant when observing a scheme expiry process, for transparency and accountability to our stakeholders.
2. Information is provided to regulated occupational associations on their obligations under professional standards legislation and regulations with respect to advertising the expiry of a scheme.

Who does this guidance note apply to?

3. This guidance note is applicable to occupational associations administering a scheme under professional standards legislation.
4. Processes for advertising scheme expiry are only to be observed if the duration specified in a regulated association's approved scheme is coming to an end, and the association *does not* have a new scheme application approved at least one month before the expiry date.

Professional standards legislation

5. The table below displays the relevant clauses which inform similar Councils processes relating to public notification of schemes and revocation of schemes.
6. Links to professional standards legislation: <https://www.psc.gov.au/legislation>

ACT	NSW	NT	Qld	SA	TAS	VIC	WA
s 4.5	s 8	s 8	s 9	s 9	s 9	s 9	s 21
public notification of schemes	public notification of schemes	notifying the public					
s 4.14A	s 16B	s 17A	s 18A	s 18A	s 19A	s 18A	s 30A
notification of revocation of schemes	publication of revocation of interstate scheme under corresponding law	notification of revocation of schemes	notification of revocation of schemes				

7. While there is no specific reference in either the legislation or regulations nationally regarding a process for advertising expiring schemes, this guidance note seeks to manage s 3(c) of the *Professional Standards Act 1994* (NSW) (the Act), being the Council's objective "to protect the consumers of the services provided by professionals and others."
8. Additionally, one of the functions of the Council is "to monitor the compliance by an occupational association with its risk management strategies", as per s 43(1)(f) of the Act.

Councils considerations

9. This policy is separate from the public notification of a new scheme and the notification of scheme revocation, which are clearly specified in professional standards legislation.
10. The Councils notify regulated occupational associations of the following obligations from six months, three months, and one month of the scheme expiry date, providing time for associations to communicate any changes to the scheme with their members:
 - (i) cease using the disclosure statement as required by the regulations when the scheme is no longer in force. Absent a professional standards scheme, this may constitute false and misleading conduct under Australian Consumer Law
 - (ii) inform their clients the previous limitation of liability will not be applicable from the expiration date
 - (iii) inform their insurance provider the scheme will no longer apply
 - (iv) re-evaluate their insurance requirements
 - (v) update their website to include a notice of the scheme expiry and date
 - (vi) provide a report to Councils once all actions have been completed.
11. When providing the 1-month expiry letter advice to the regulated occupational association, the Councils will ensure that information regarding the impending expiry of the scheme is communicated to consumers by:
 - (i) Advertising in the Australian newspaper.
 - (ii) Corresponding with all stakeholders, relevant Ministers, and other regulators on the Councils stakeholder contact list
 - (iii) Publishing occupationally oriented social media (such as LinkedIn) news items
 - (iv) Advertising online with Fairfax
12. A scheme application received but not yet determined by the Councils does not preclude the process for advertising of an expiring scheme.

The advertising expiring schemes process

13. On behalf of the Councils, the Professional Standards Authority will ensure that the expiring scheme:
 - (i) is advertised in a daily newspaper, circulated in all States and Territories
 - (ii) is advertised on the Councils' website
 - (iii) is advertised on the Professional Standards Authority's LinkedIn page
 - (iv) is advertised online with Fairfax
 - (v) is advertised no later than the date the one-month expiry letter is issued
 - (vi) advertisement includes the full name of the scheme, the full name of the regulated

occupational association administering the scheme and the expiry date of the scheme.

14. The Authority will report any advertised expiring schemes at the next available Councils meeting, for noting.
15. The scheme administrator for the regulated occupational association will be informed of the advertisement of the expiring scheme. The Councils encourage regulated occupational associations to advertise their expiring scheme in:
 - (i) member newsletters or magazines
 - (ii) association's publicly accessed website
 - (iii) association's social media accounts
 - (iv) advice directly to its members
 - (v) advice directly to its stakeholders (e.g. insurers)
 - (vi) other channels of communication with members and consumers.
16. An example of a scheme expiration advertisement proforma is attached at appendix A.

Appendix A: scheme expiration advertisement proforma

EXPIRATION OF A PROFESSIONAL STANDARDS SCHEME

Professional Standards Act <year> <state/territory>

WHAT IS THIS?

This is a notice that the *<association name>* Professional Standards Scheme will expire on *<date>*. The scheme is an instrument under the *Professional Standards Act <year> <state/territory>* prepared by the *<association name>*, whose business address is: *<address details>*.

WHO DOES IT APPLY TO?

The scheme applies to all members of *<association name>*, unless an association approved exemption applies to a certain *<association name>* member, operating in New South Wales, Victoria, South Australia, the Australian Capital Territory, the Northern Territory, Queensland, Western Australia and Tasmania.

WHAT DO YOU NEED TO DO?

If you are a member of the scheme, you need to:

- stop using the disclosure statement required under regulations which, without a scheme, may constitute a false and misleading representation under the Australian Consumer Law
- tell your clients that the previous limitation of liability will not apply from the expiry date
- tell your insurance provider that the scheme will no longer apply
- re-evaluate your insurance requirements.

If you are a client of a member of the scheme, you should ask them what changes there might be to any business arrangements you currently have or may have in the future.

DO YOU NEED MORE INFORMATION?

If you would like to know more about this notice, please call the Professional Standards Authority on (02) 8315 0800 or email pscinfo@psc.gov.au.

For more information about professional standards schemes, please visit the Councils' website < www.psc.gov.au >.

A range of resources are available to help associations and their members respond to their self-regulatory obligations in our Resource Centre < www.psc.gov.au/advice-for-scheme-associations/resource-centre >.