

Public Consultation Document

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Australian Institute of
Building Surveyors

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PUBLIC CONSULTATION DOCUMENT

Purpose

The purpose of this Public Consultation Document is for the Professional Standards Councils (Councils) to seek comments and submissions from the public in considering an application for a professional standards scheme. This is a mandatory consideration for the Councils under section 8(1) of the Professional Standards Act 1994 (NSW), in that Councils is required as part of a process to give public notice explaining the nature and significance of the scheme. This document serves that purpose.

Public notification of a scheme does not necessarily mean the proposed scheme will be approved by the Councils and authorised by the relevant Attorneys General or Minister.

The Australian Institute of Building Surveyors (AIBS) has submitted an application to the Councils to approve a professional standards scheme. The Councils is the body responsible for approving schemes under the Professional Standards Legislation.

Professional Standards Legislation is Australian state-based legislation. Its objects (generally across all jurisdictions) are:

- (1) To protect the consumers of services provided by professionals
- (2) To facilitate the improvement of occupational standards for professionals
- (3) To enable the creation and approval of schemes to limit the liability of professionals to whom a scheme applies.

For a scheme to be approved under Professional Standards Legislation, the occupational association proposing the scheme must demonstrate a high commitment to professional standards and consumer protection, implement comprehensive professional risk management strategies and set professional indemnity insurance standards for scheme participants.

The Australian Institute of Building Surveyors application is being considered by the Councils and is now available for public submissions and comments.

How can I make a comment or submission?

Comments and submissions must be made in writing to the Chief Executive Officer, Professional Standards Councils, within 28 days of public notification.

The Professional Standards Councils is located at Level 2, St James Centre, 111 Elizabeth Street, Sydney, NSW, 2000.

Website: www.psc.gov.au

Email: pscinfo@psc.gov.au

Telephone: 1300 555 772 / (02) 8315 0800.

Comments and submissions received will be public, unless confidentiality is specifically requested, and will be subject to the Privacy and Personal Information Protection Act 1998 (NSW).

BENEFITS OF A PROFESSIONAL STANDARDS SCHEME

How will consumers benefit from the Scheme?

The Australian Institute of Building Surveyors Professional Standards Scheme upholds the professional standards of Scheme Members, who are building surveyors, and ensures that clients have access to appropriately qualified and skilled building surveyor practitioners for representation and advice. It ensures that Scheme Members are insured appropriately, participate in continuing professional development, adopt appropriate risk management strategies and processes and are subject to a complaints and disciplinary structure.

The benefit to consumers of the Scheme is an assurance that the professional standards of Scheme Members meet those required by the AIBS, which include formal education and experience requirements required for registration by state and territory governments, and the Professional Standards Council. This ensures that consumers are well served by appropriately qualified, experienced, ethical, and responsible building surveyors.

The requirement for Scheme Members to be covered by an approved professional indemnity insurance policy provides another layer of protection for consumers.

How does the Scheme enhance the professional standards of AIBS members?

The Professional Standards Council expects the AIBS, as an association seeking approval of a scheme, to demonstrate that Scheme Members form a professional community that can protect consumers and manage risk. This includes the requirement that the AIBS regulates Scheme Members in such a manner so as to maintain and improve professional standards.

Consistent with these expectations the AIBS has implemented a number of strategies and services aimed at enhancing the professional standards of Scheme Members. These include but are not limited to:

Training and development programs:

AIBS operates a program of conferences and training events each year across Australia.

These events focus on improving the technical competence and skills of Scheme Members as well as equipping Scheme Members with business management, business development and organisational behaviour capabilities.

AIBS provides regular technical and policy updates and a range of communications at both national and jurisdictional level and an on-line learning and development capability through AIBS TV. This enables Scheme Members to undertake self-paced learning as well as to access information, guides, templates, and practice notes to improve their practices and processes.

National Accreditation Program:

AIBS has a National Accreditation Scheme which establishes minimum requirements for accreditation based on qualifications, experience, and continuing professional development for Scheme Members. The National Accreditation Scheme also requires compliance with the Code of Professional Conduct which includes professional standards, use of information, interactions with clients, interactions with the building surveying profession, general conduct and acting in the public interest.

Professional Audit Program:

AIBS is implementing a Professional Audit Program to sit alongside its National Accreditation Program.

An effective auditing program will enhance the credibility of the building surveying profession amongst Government regulators, insurers, building professionals and the community through its capacity to demonstrate that building surveyors who are Scheme Members are adhering to consistent levels of practice and professionalism in their work.

AIBS believes that a successful auditing program will have at its core an improved standard of conformity of the built environment. The program aims to provide a fair and equitable audit system that encourages the application of high standards of professional ethics and practices through consistent implementation and compliance with legislative and technical requirements.

All Scheme Members will be required to be accredited under the AIBS National Accreditation Scheme and all Scheme Members must comply with the Professional Audit Program.

Continuing Educational Program:

AIBS operates a Continuing Professional Development (CPD) program for Scheme Members which requires Scheme Members to comply with minimum CPD Program point requirements annually and across a 3-year period.

The CPD points requirements are:

A minimum of 90 points in total over a 3-year period and a minimum of 20 points in total annually.

A minimum of 45 points attained over a 3-year period and a minimum of 10 points annually must be via structured or tertiary learning programs.

(Note: The board has temporarily reduced the CPD requirement due to COVID-19 restrictions).

Complaints and Discipline System:

AIBS has a Code of Professional Conduct supported by a complaints procedure designed to ensure that Scheme Members behave and perform in a professional manner and that consumers have the capacity to raise concerns about Scheme Member conduct with AIBS and for those concerns to be addressed in a professional and transparent manner.

The Code of Professional Conduct includes conduct requirements for professional standards, use of information, interactions with clients, interactions with the building surveying profession, general behaviour and acting in the public interest.

Breaches of the Code of Professional Conduct can lead to Scheme Members having conditions placed on their membership and/or accreditation, suspension of their membership and/or accreditation or cancellation of their membership and/or accreditation.

Where a regulator or a court makes an adverse determination in response to a formal complaint or a claim against a Scheme Member, AIBS will ensure that the terms of the determination are reflected in its discipline regime.

Any alleged breach of the Code of Professional Conduct by a Scheme Member will, when brought to the notice of the board of the AIBS, be actioned in accordance with the process set out in clause 1.12 of the AIBS By-Laws, and if the Scheme Member is proven to be in breach, the board of AIBS may impose a range of disciplinary actions as it sees fit, including suspension and expulsion of Scheme Members.

Complaints regarding an alleged breach of the Code of Professional Conduct must be made in writing and addressed to the CEO. The CEO is to ensure that the complaint is dealt with in accordance with the By-Laws.

How does limiting participant liability help consumers?

Limiting liability underpins the availability of sustainable and affordable professional indemnity insurance for Scheme Members. This ensures that the consumers of building surveying services receive timely and fair compensation for legitimate claims.

In return for the benefit of limited liability, Scheme Members are expected to meet the professional standards and conduct expected of a profession. This creates a balance that not only allows more Scheme Members to run an efficient and viable building surveying practice, but which in turn also increases competition and improves access to justice for consumers of building surveying services.

Is the Scheme professional indemnity insurance?

The Australian Institute of Building Surveyors Professional Standards Scheme is not a source of professional indemnity insurance. However, for a Scheme Member to be able to limit liability under the Australian Institute of Building Surveyors Professional Standards Scheme they must hold professional indemnity insurance that meets certain requirements.

A key requirement is that the amount payable under the policy, after legal costs, must not be less than the amount for which liability is limited under the Australian Institute of Building Surveyors Professional Standards Scheme.

All AIBS Practising Members will be required to be covered by the scheme unless they apply for and are granted an exemption.

Under the Australian Institute of Building Surveyors Professional Standards Scheme the following liability limits will apply:

Building Levels	Category	Liability limit
Level 1	Unlimited (all buildings)	\$2 million
Level 2	Limited (less than 2000M2 and 3 storeys or less)	\$1 million

The Scheme

What is a professional standards scheme?

A Professional Standards Scheme (Scheme) is a legislative instrument that obliges an organisation, such as the AIBS, to monitor, enforce and improve the professional standards of members under the Scheme (Scheme Members), thereby reducing risk for consumers of professional services.

In recognition, the Scheme limits the civil liability or damages that professionals under the Scheme may incur if a court upholds a claim against them.

Professional standards regulated by the Australian Institute of Building Surveyors Professional Standards Scheme include:

- Education and professional experience criteria
- Continuing occupational education requirements
- Consumer risk management
- Ethical and behavioural conduct codes
- Complaint and disciplinary systems
- Insurance requirements and standards

The Scheme is constituted by a brief legal document known as the Scheme Instrument which sets out the details of the Scheme's scope, jurisdiction, duration, and liability limitation.

What is the Australian Institute of Building Surveyors Scheme?

The Scheme is provided by the AIBS exclusively for those members who are Practicing Members.

It is designed for the purposes of:

- (a) improving and promoting the professional standards of AIBS Practicing Members; and
- (b) protecting the consumers of building surveying services.

The Scheme limits the civil liability of Scheme Members to selected amounts, provided they meet the Scheme's requirements.

Who administers the Scheme?

Responsibility for administering the Scheme and ensuring compliance with the requirements of the Professional Standards Act 1994 (the Act) and of the Professional Standards Council (PSC) rests with the board of the AIBS and its senior officers; predominantly the Chief Executive Officer (CEO).

The CEO is assisted in this role by the Technical and Policy Manager, the Professional Development Manager, the Members Services Manager and Accreditation management staff. Key support will also be provided through the National Accreditation Scheme and the Professional Audit Program.

Who is the Australian Institute of Building Surveyors?

AIBS is a member based occupational association of building surveyors.

AIBS was founded in Victoria in 1962 and has grown into a National organisation including members from each state and territory within Australia.

AIBS' principle objectives include to:

- Advocate a safe, sustainable, and equitable built environment to the community, National, State and Local governments, the private sector, and the academic community.
- Ensure the public interest of building safety is maintained.
- Ensure the structure and governance of AIBS allows continued membership growth through partnerships with allied professions.
- Advance the professional interests of members.
- Establish, administer, and review standards of competency amongst persons working professionally in the disciplines involved in building surveying.

- Foster and strengthen the technical knowledge and professionalism of persons working professionally in the disciplines of building surveying.
- Provide for and encourage the highest levels of competency in the disciplines of building surveying through education and training and the support of national continuous professional development.
- Provide a forum for the exchange of knowledge and views pertaining to the disciplines of building surveying.
- Harness the profession's collective knowledge on issues affecting the profession and to collect and disseminate information concerning the disciplines of building surveying.
- Deliver accountability and good corporate governance of AIBS to its members.
- Provide a Building Surveying Accreditation service to ensure the provision of the highest standards of service by Building Surveying professionals.

Where does the Scheme operate?

The Scheme is intended to apply in all states and territories where mutual recognition provisions exist – New South Wales, Western Australia, Victoria, Northern Territory, South Australia, Australian Capital Territory, Queensland and Tasmania.

When will the Scheme apply?

The Australian Institute of Building Surveyors Professional Standards Scheme will commence on or about 1 July 2021 and will operate for 5 years from the date of commencement in accordance with the legislation. It is the current intention of the board of the AIBS that the Scheme will be extended beyond the initial 5-year period.

Does the Scheme apply to all members?

Unless exempted by the AIBS, the Australian Institute of Building Surveyors Professional Standards Scheme is intended to apply to all Practising Members of AIBS.

Describe the classes of membership captured by the Scheme.

AIBS has two broad categories of membership:

1. Practicing membership; and
2. Non-Practicing membership

All Practising Members will be required to be and remain accredited under the AIBS National Accreditation Scheme and will be Scheme Members.

Only those Practicing Members who are granted exemption from the Australian Institute of Building Surveyors Professional Standards Scheme will be exempted, otherwise all Practicing Members will be included in the Scheme.

Non-Practicing Members are not authorized to undertake building surveying work and will not be included in the Australian Institute of Building Surveyors Professional Standards Scheme.

How is the level of limited liability of participating Australian Institute of Building Surveyors Professional Standards Scheme (Scheme Members) Members determined?

The level of limited liability for a Professional Standards Scheme is generally proposed and approved at a level to accommodate the normal range of claims within the industry based on an assessment of claims history over the previous 10 years. The limitation of liability is proposed at a level to encompass historic claims, other than perhaps occasional extreme outlier claims, adjusting for any clear drivers of change to the risk profile. This is generally justified by historic claims data and actuarial analysis.

Schemes are time-limited instruments and may be approved for five years, at the end of which time a new scheme may be made, in continuity with the previously-approved scheme .

Successful professional indemnity claims against AIBS members over the last 10 years have been generally small in number and modest in quantum, with the exception of several recent claims relating to what is commonly known as “combustible cladding”.

Due to the recent spate of claims relating to combustible cladding across Australia, professional indemnity insurers are no longer willing provide professional indemnity policies that include any form of cladding work. Where a member is unable to acquire professional indemnity insurance in respect of a particular type of work, or where there is a legal exemption from holding professional indemnity insurance for a particular type of work, the scheme will not limit the liability of the member, and it is good practice for the member to advise the client before the type of work is undertaken by the member.

In most states and territories, governments have or are in the process of taking responsibility for addressing cladding claim issues.

The Australian Institute of Building Surveyors Professional Standards Scheme is proposing the following limitation of liability:

- Level 1 Building Surveyor – Unlimited (can undertake work on all buildings) - \$2 million cap.

- Level 2 & 3 Building Surveyor – Limited (can only work on buildings less than 2000M² and 3 storeys or less) - \$1 million cap.

These limits are well above the average for successful claims for each building category over the last 10 years.

Can an Australian Institute of Building Surveyors member opt out of the Scheme?

Only Practicing Members are entitled to become Scheme Members.

All Practicing Members will be required to become Scheme Members unless they apply for and are granted an exemption from the Scheme.

Practicing Members who work solely for local government or other public entities where the entity employs the Practicing Member and where that entity is not able to meet the professional indemnity insurance requirements may apply for an exemption.

Practicing Members who are able to prove that they do not and will not undertake building surveying work, such as academics, may also apply for an exemption from the Scheme.

In certain circumstances, a Scheme Member may apply to AIBS for a higher liability cap to apply to a specific project and subject to the AIBS being satisfied that sufficient professional indemnity insurance is and will be in place for the duration of the project, that increased cap may be allowed.

How will consumers know if an Australian Institute of Building Surveyors Professional Standards Scheme Member is covered by the Scheme?

Scheme Members will be required to disclose on their letterhead, web site and other official documentation that their liability is limited by a professional standards scheme.

The AIBS will maintain and publish a public register of Scheme Members and will respond to public enquiries regarding Scheme Member status. Scheme Members are required to be Accredited under the AIBS National Accreditation Scheme and to comply with the requirements of the AIBS Professional Audit Program. Any Scheme Members who do not comply will no longer be entitled to be Practicing Members and will be removed from the register of Scheme Members.

The AIBS will promote Scheme awareness across its sphere of influence, beyond the AIBS membership and including on its web site.

How long does the Scheme operate for?

It is proposed that the Scheme will operate for 5 years from the date of its commencement.

THE AUSTRALIAN INSTITUTE OF BUILDING SURVEYORS AND ITS MEMBERS

Who are Australian Institute of Building Surveyor's members?

AIBS has two broad categories of membership:

1. Practicing membership; and
2. Non-Practicing membership

Practicing Membership is awarded to those members who are accredited under the AIBS National Accreditation Scheme and may include body corporates where those body corporates meet the membership requirements of AIBS.

The membership requirements for body corporates relate to the requirement for all building surveyors undertaking work for the body corporate to be Practicing Members and for at least one (1) director of the body corporate to also be a Practicing Member.

What types of work do The Australian Institute of Building Surveyor's members carry out?

Building surveyors are involved in statutory and consulting work.

Statutory work:

Statutory building surveyors have legislative authority to assess and evaluate plans and designs for proposed buildings (including proposed alterations and improvements) and proposed regulated building use (including proposed changes in use) to ensure the plans, designs and use comply with the relevant building standards and statutory regulatory requirements.

Building surveyors also ensure that buildings are constructed in accordance with approved plans and in accordance with the National Construction Code and Australian Standards to ensure that they are safe and compliant.

The intention of the authority provided in the legislation in relation to building standards and regulations is to ensure that work done is completed in a compliant manner and that buildings, because they are compliant, are safe and suitable for occupation.

Whilst statutory building surveyors work with other building professionals involved in the building process (builders, architects, civil engineers, electrical engineers, fire engineers, developers, manufacturers etc.), the work of statutory building surveyors is discreet, separate and independent of those other parties, particularly as it involves the exercise of a regulatory function which other professionals are not able to perform.

Building surveyors acting in statutory roles undertake the following functions:

- a. assess and determine or certify the extent to which application documents comply with technical building requirements;
- b. issue approvals, consents or building permits as applicable under relevant State and Territory laws;
- c. inspect building work to audit compliance with relevant laws;
- d. inspect health and safety aspects of existing buildings to verify ongoing compliance with approval or occupation requirements;
- e. where authorised by State and Territory laws, take appropriate compliance and enforcement actions to ensure building work complies with regulatory requirements;
- f. certify inspected works as complying with regulatory requirements and/or approved documents; and
- g. approve the use and occupation of buildings or parts of buildings in accordance with relevant laws.

Consulting work:

Consulting building surveyors work with a broader range of industry professionals, bodies and clients than statutory building surveyors as there are no legislative constraints to the engagements they accept. Provided consultant building surveyors are acting within the limitations of their qualifications and experience, there is a broad range of occupational work that can be undertaken.

The result of consulting building surveying work should be that the end users of buildings (owners or occupiers) are less likely to be exposed to personal injury or liability for injury, are less exposed to additional costs of repair or excessive maintenance work in order to enable use, and that the value in use of the asset (the building) is not adversely impacted due to non-compliance.

Building surveyors acting in consulting roles undertake the following functions:

- a. providing design advice to assist in the provision of compliant proposal documentation;
- b. provide advice to building owners and builders in response to statutory inspections of building work in progress to advise on how to achieve compliance with relevant laws;

- c. inspect building work on behalf of a building owner to audit agreed aspects such as compliance with relevant laws and contractual requirements including in relation to fitness of purpose and consumer law related aspects of work by the owner's builder;
- d. inspect buildings to ascertain and report on the reasons for failures, defects or other aspects of unsatisfactory performance, on behalf of the building owner, builder, design consultant, insurer, a regulator or as an expert assisting a legal process;
- e. provide advice to owners and operators of buildings about achieving ongoing compliance with approval or occupation requirements designed to protect health and safety aspects of existing buildings and also but not necessarily on work health and safety legislation compliance;
- f. provide advice to owners and builders responding to compliance and enforcement actions related to how to remediate building work that has been performed otherwise than in conformity with regulatory requirements;
- g. provide expert evidence to a Court, Arbitrator or Tribunal;
- h. provide compliance assessment services to product and material certification accreditation bodies to be used as part of certification of products;
- i. provide opinions or assessments of the adequacy of work performed by other building surveying practitioners to inform an audit process operated by a regulator or other body.

WHERE CAN I FIND MORE INFORMATION?

If you have any questions please view our web site at www.aibs.com.au

Or:

Write to the CEO at:

ceo@aibs.com.au

Or:

Suite 5.03, Level 5
828 Pacific Highway
Gordon NSW 2072

Or:

Tel 1300 312 427