

Guidance note on use of data sources

For professional standards schemes
under professional standards legislation

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1.0	PSCs	18/02/2022	25/03/2022	This is a new guidance

What is the purpose of this guidance note?

This guidance note discusses key data sources that associations can refer to when:

- applying for a professional standards scheme
- operating an approved scheme
- meeting statutory compliance reporting obligations associated with an approved scheme
- developing risk management and continuing professional development programs.

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Professional Standards Councils' statutory mandate

1. The professional standards legislation of each state and territory provides for the Professional Standards Councils to encourage and assist occupational associations to improve their occupational standards and regulatory capacity¹ and to monitor associations' occupational standards², compliance with their risk management strategies³, and the implementation and effect of these strategies⁴. The Councils do this through the scheme application and supervision processes.

What sort of data are the Councils looking for?

For approval of a proposed scheme

2. The professional standards legislation prescribes the matters the Councils must consider before approving a professional standards scheme propounded by an occupational association. The Councils' [Scheme Application Framework](#) assists occupational associations to address these matters. Broadly, the professional standards legislation requires the Councils consider the need to adequately protect consumers, as evidenced by:
 - the nature and level of claims relating to occupational liability made against members of the association that is applying for a scheme
 - the position of persons likely to be affected by limiting liability under a scheme
 - the association's risk management strategies, and how it will implement them
 - the association's standards in relation to insurance policies
 - the cost and availability of insurance
 - commentary received from the general public about the proposed scheme.
3. In the context of the professional standards legislation, consumer protection involves all the measures that an association identifies, implements, and continuously improves to minimise the potential for harm to its members' clients.
4. The Councils' decision-making is largely informed by comprehensive information from two sources:
 - the history of professional indemnity insurance claims made against members of an occupational association
 - the professional risk management strategies that the association has in place.
5. The former might be considered a retrospective/predictive measure, while the latter has the potential to be more forward-looking. These data assist the Councils to:

¹ *Civil Law (Wrongs) Act 2002* (ACT) sched.4.37(1)(c)&(d); *Professional Standards Act 1994* (NSW) s.43(1)(c)&(d); *Professional Standards Act 2004* (NT) s.45(1)(c)&(d); *Professional Standards Act 2004* (Qld) s.43(1)(c)&(d); *Professional Standards Act 2004* (SA) s.46(1)(c)&(d); *Professional Standards Act 2005* (Tas) s.47(1)(c)&(d); *Professional Standards Act 2003* (Vic) s.46(1)(c)&(d); *Professional Standards Act 1997* (WA) s.12(1)(c)&(d).

² *Civil Law (Wrongs) Act 2002* (ACT) sched.4.37(1)(e); *Professional Standards Act 1994* (NSW) s.43(1)(e); *Professional Standards Act 2004* (NT) s.45(1)(e); *Professional Standards Act 2004* (Qld) s.43(1)(e); *Professional Standards Act 2004* (SA) s.46(1)(e); *Professional Standards Act 2005* (Tas) s.47(1)(e); *Professional Standards Act 2003* (Vic) s.46(1)(e); *Professional Standards Act 1997* (WA) s.12(1)(e).

³ *Civil Law (Wrongs) Act 2002* (ACT) sched.4.37(1)(f); *Professional Standards Act 1994* (NSW) s.43(1)(f); *Professional Standards Act 2004* (NT) s.45(1)(f); *Professional Standards Act 2004* (Qld) s.43(1)(f); *Professional Standards Act 2004* (SA) s.46(1)(f); *Professional Standards Act 2005* (Tas) s.47(1)(f); *Professional Standards Act 2003* (Vic) s.46(1)(f); *Professional Standards Act 1997* (WA) s.12(1)(f).

⁴ *Civil Law (Wrongs) Act 2002* (ACT) scheds.4.32-4.33; *Professional Standards Act 1994* (NSW) ss.36-37; *Professional Standards Act 2004* (NT) ss.37-38; *Professional Standards Act 2004* (Qld) ss.37-38; *Professional Standards Act 2004* (SA) ss.38-39; *Professional Standards Act 2005* (Tas) ss.39-40; *Professional Standards Act 2003* (Vic) ss.38-39; *Professional Standards Act 1997* (WA) ss.48-49.

- determine whether to approve a scheme that both protects consumers and facilitates improvements in occupational standards
 - determine the monetary ceiling (or "cap") for the limitation of liability in a scheme.
6. Of course, data sources are wide and responding to the information requests in the [Scheme Application Framework](#) may usefully include inputs from:
- associations' regulators
 - press and social media
 - legal decisions and settlements
 - complaints system data
 - member surveys
 - feedback from continuing professional development programs
 - feedback from consumers of association members' services.
7. By using multiple sources of data, associations can provide the Councils with a more accurate and complete picture of how effectively they regulate their members' conduct towards strengthening consumer safeguards.

Integrating multiple data inputs

8. The Councils want to understand how the various data inputs are integrated into the association's regulatory systems. Very often, unfortunately, there does not appear to be any clear relationship drawn between, for example, claims, complaints systems, and CPD. The Councils expect to see analysis of the underlying cause of claims⁵, trends identified in complaints data, relevant risks identified and defined on the basis of these data and appropriate mitigation strategies built into risk management plans.
9. Where the mitigation strategies include, for example, CPD or changes to standards of practice - tailored to address known and emerging risks – the Councils expect that data would be generated through evaluations and member feedback, together with an analysis of the effect on complaints and claims information, to measure the efficacy of the risk mitigation, and to inform development of continuous improvement strategies.

For ongoing operation of a scheme and compliance reporting

10. Once a scheme has been approved and is in force, the data requirements continue in respect of the association's operation of its scheme and statutory compliance obligations⁶, including through its Annual Professional Standards Report (APSR)⁷, submitted on or before 31 March each year. The APSR requires associations to disclose information about:
- its ongoing risk management, including any proposed changes
 - updated claims data
 - updated costs and availability of insurance data
 - updated complaints and discipline data
 - statutory disclosure compliance data

⁵ See root cause analysis, below.

⁶ The professional standards legislation provides that an association must provide information to the Councils at any time, if requested to do so, concerning the association's risk management strategies, or which a Council may reasonably require to exercise its functions.

⁷ Previously referred to as the Professional Standards Improvement Program (PSIP) report.

Sourcing your data

11. To meet the information requirement for a scheme application and the APSR, and to effectively operate a scheme, the types of data required can be grouped into three broad categories:
 - i. Professional indemnity insurance (claims, notifications, cost and availability)
 - ii. Complaints and discipline systems
 - iii. Professional risk management.

i. Professional indemnity insurance data

Scheme application

12. The Councils are looking for at least 7 years' claims data used to ensure there is sufficient information available to enable them to fulfil their statutory obligations when determining the appropriate limits on liability.

Annual Professional Standards Report (APSR)

13. The APSR may require the following professional indemnity insurance information to be reported, in accordance with the information provided in an association's most recent professional standards scheme application:
 - average cost of insurance within a range of indemnity limits relevant to the scheme, as a proportion of gross fees
 - availability of insurance for those indemnity limits
 - extent insurance is being purchased overseas
 - any reports from brokers or insurers on the insurance picture (effects, market comments) for your members and/or like professionals, including competitor groups to your association
 - number of brokers your members use for insurance access
 - contact details for insurance brokers
 - number and name of underwriters your members use for insurance products.

Where can I get professional indemnity insurance data?

- association preferred insurer
- members
- Australian Prudential Regulation Authority National Claims and Policies database
- legal databases
- Civil and Administrative Tribunals (CAT) decisions
- Media, social media and internet search on disputes
- public reports and inquiries undertaken by government or statutory agencies, reform papers etc.

Association preferred insurer(s)

14. Sourcing professional indemnity insurance data direct from insurers will be the easiest option for occupational associations.

15. Most occupational associations applying for a scheme will need to seek advice directly from brokers and insurers about claims. To be considered comprehensive all insurers/underwriters who provide professional indemnity insurance to an association need to be surveyed. Information regarding the types of questions to be asked of insurers can be found in the [Scheme Application Framework](#).

Member data and member focus groups

16. If comprehensive data have been obtained from the insurance industry, it will not normally be necessary to include survey data or member data for scheme application or APSR purposes.
17. Such member surveys may be voluntary or mandatory and should yield claims data from a statistically significant sample of their members. Business entity only associations should include survey data from a representative sample of the relevant professionals employed by their members. For voluntary surveys, this may mean targeting larger numbers of members than may otherwise be the case.
18. Associations may also conduct member focus groups to gather perceptions on costs and availability of insurance.

Australian Prudential Regulatory Authority (APRA) National Claims and Policies Database (NCPD)

19. When there are limited or incomplete professional indemnity insurance claims data, associations may look at broader industry professional insurance data.
20. APRA provides the publicly accessible [NCPD](#) which covers information on public, products and professional indemnity insurance. All APRA-regulated insurers that provide these types of insurance policies are required to contribute claims and policies data to the NCPD. Other organisations, such as state and territory insurers, will also submit data to the NCPD.
21. Associations should describe the methodology used to search the NCPD and the key results of any search.

Legal databases searches

22. Searches of legal databases may help identify claims against persons who fall outside the occupational association's targeted group. Associations should describe the methodology used to search legal databases, including:

- names of databases searched
- dates of databases searched
- search terms and search results

and include specific courts or jurisdictions, such as the High Court of Australia and the Federal Court of Australia.

High Court of Australia

23. The High Court of Australia is the highest court in the Australian judicial system. Its role is to interpret and apply the laws of Australia to decide cases of special federal significance, including challenges to the constitutional validity of laws and to hear appeals from Federal, State and Territory courts. Judgments are available in a [searchable database](#) from 2000 onwards.

Federal Court of Australia

24. The Federal Court of Australia provides free access to the [Digital Law Library](#), including Judgments, speeches, and the Industrial Relations Courts of Australia.

Australasian Legal Information Institute (AustLII)

25. [AustLII](#) provides free internet access to Australasian legal materials. This includes state and federal legislation, decisions of courts (including Federal, High and Supreme Courts) and reports on commissions and inquires with legal focus, legal journals.
26. If looking for a specific court or jurisdiction, each state maintains its own databases and library resources including:
 - Supreme Court of the Australian Capital Territory – [Judgments](#)
 - Supreme Court of NSW – [NSW CaseLaw](#)
 - Supreme Court of the Northern Territory - [Index of Judgments](#)
 - Supreme Court of QLD – [Supreme Court Library Queensland](#)
 - Supreme Court of South Australia – [list of Judgments](#)
 - Supreme Court of Tasmania – does not publish Judgments on its website – use [AUSTLII](#)
 - Supreme Court of Victoria - [Law Library of Victoria](#)
 - Supreme Court of Western Australia – [eCourts Portal](#).

Fee-for-service legal databases

27. There are many fee-for-service legal databases that can also be searched to find relevant cases, legislation, journals, precedents, reports and expert commentary. Examples include:
 - [LexisNexis Australia](#)
 - [Casebase](#)
 - [FirstPoint](#)
 - [Westlaw AU](#)
 - [CCH IntelligConnect](#)
 - Judicial Information Research Systems [JIRS \(NSW\)](#)
 - [Informit](#).

Media and internet searches

28. When conducting media and internet searches, associations should describe the methodology used to search legal databases used including:
 - names of databases searched
 - dates of databases searched
 - search terms and search results.

Actuarial report

29. The Councils encourage occupational associations to get actuarial advice regarding setting caps. Suggesting a limitation of liability is a complex process even using all available data sources.
30. The [Actuaries Institute](#) can assist in locating an actuary to independently assist with limitation of liability settings.

ii. Complaints and discipline systems

Application complaints and discipline systems

31. The [Scheme Application Framework](#) notes that an occupational association may adopt the statutory Model Code⁸ with amendments or other modifications approved by the Councils.
32. Associations must collect information on all complaints received, analyse the information and report on the identification of any trends and conclusions that may be drawn from the data.
33. Associations should note that material changes to their complaints and discipline system following scheme approval requires a further approval by the Councils.
34. An additional useful resource for associations may be [AS/NZS 10002:2018](#) Quality management – Customer satisfaction - [Guidelines for complaint management in organisations](#). This provides guidance about complaints handling related to products and services within an organisation, rather than complaints about members' conduct.

Where can I get complaints and discipline systems data?

35. Useful sources of data about occupational licensing and complaints concerning professional conduct and discipline include:
 - Consumer rights and professional standards regulatory reports and research
 - Tribunal databases
 - Complaints agencies reporting.

Consumer rights

36. Consumer and research organisations monitor and identify issues of concern in the delivery of services to consumers. These can be published in the form of reports, evidence reviews and analysis. Scanning and considering these broader and interpretive sources of data can assist associations to detect and respond to emerging risks. Examples of sources include:
 - Consumer Policy Research Centre
 - The Australian Consumer Law
 - UNSW Centre for Law, Markets and Regulation
 - Consumers' Federation of Australia.

Tribunal databases

37. Most Australian states have a Civil and Administrative Tribunal (CAT). Judgments of these tribunals can be found in the state-based Supreme Court database, selecting the CAT as a lower court. Fees may apply for those not directly involved in the case proceedings.
 - ACT Civil and Administrative Tribunal ([ACTCAT](#))
 - NSW Civil and Administrative Tribunal ([NCAT](#))
 - South Australia Civil and Administrative ([SACAT](#))
 - Queensland Civil and Administrative Tribunal ([QCAT](#))
 - Victorian Civil and Administrative Tribunal ([VCAT](#))

⁸ *Civil Law (Wrongs) Act 2002* (ACT) sched.4.35; *Professional Standards Act 1994* (NSW) s.38; *Professional Standards Act 2004* (NT) s.40; *Professional Standards Act 2004* (Qld) s.40; *Professional Standards Act 2004* (SA) s.41; *Professional Standards Act 2005* (Tas) s.42; *Professional Standards Act 2003* (Vic) s.41; *Professional Standards Act 1997* (WA) s.50.

- State Administrative Tribunal in Western Australia ([SAT](#)).

Complaints agencies reporting

38. Complaints and alternative dispute resolution organisations may be able to assist in some information provision on completed cases. There are many providers ranging from government provided and publicly funded to private professional organisations. Examples of sources include:
- Australian Financial Complaints Authority
 - Legal Services Commissioners
 - Disability Services Commissioners.

iii. Risk management

39. The [Scheme Application Framework](#) suggest [AS/NZS ISO 31000:2018 Risk Management](#) as the framework to be adopted by associations.
40. Focus is on the identification and management of potential risks to the professional integrity of the association members, and mitigation strategy.
41. Additionally, for APSR reporting in all jurisdictions, an occupational association must provide the Council(s) with an annual report about its implementation and monitoring of its risk management plan, including the effect of those strategies and changes made or proposed. Reporting continues over the life of the scheme (up to five years).

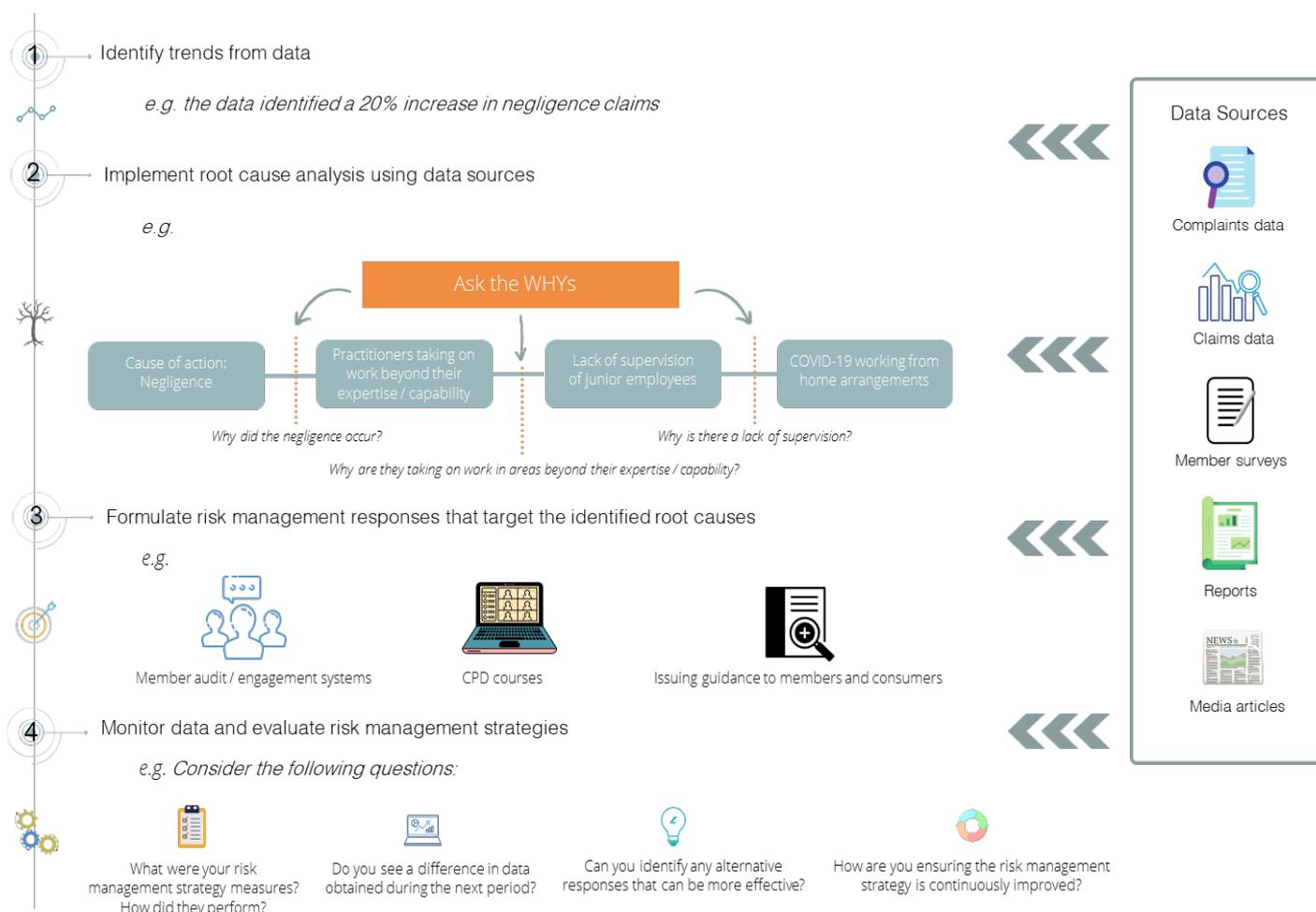
Internal data sources

42. An often-overlooked source of data is the association's own internal data collection, analysis and reporting. Examples of sources include:
- Audit and Risk Management Committees
 - Annual Reports
 - Stakeholder engagement and communications data.

Root cause analysis

43. In the April 2019 Professional Standards Forum, the Councils introduced root cause analysis methodology as a practical risk management tool that associations may utilise to look beyond typology and detect the fundamental causes of complaints and claims. By identifying the root causes, associations are better equipped to respond to ongoing systemic issues and identify the underlying risks to consumers. By identifying the root causes or underlying risks, associations are also better equipped to adjust their risk management strategies, facilitating implementation of an approach that reduces the likelihood of re-occurrence of the factors that led to claims and complaints.
44. The Councils noted in their 2020-2021 Annual Report that the number of associations using root cause analysis to inform their risk management strategies has increased since 2019.
45. The diagram below shows how root cause analysis may be incorporated into risk management strategies.

Incorporating Root Cause Analysis into Risk Management Strategies



Overcoming barriers to the supply of data

46. A matter of concern sometimes expressed by associations when preparing an application for a scheme or in risk management reporting is the confidentiality of data submitted to the Professional Standards Councils, particularly where this mitigates against insurers making claims data available. Typically, the data required are anonymised, and the Councils assume that data will be appropriately and correctly identified where it is confidential or privileged.
47. Statutory confidentiality obligations exist in the *Professional Standards Act 1994* (NSW), where section 50A provides, inter alia, “[a] person must not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made with the consent of the person from whom the information was obtained”. This statutory constraint on the disclosure of any insurance data provided to the Councils is in addition to the common law duties of confidence.
48. There are also duties on the NSW public sector employees of the Professional Standards Authority to protect confidential information, established and enforced through Part 2 or the *Government Sector Employment Act 2013* (NSW), the *State Records Act 1998* (NSW) and the NSW Government Cyber Security Policy.
49. Regarding the confidentiality of these data in relation to a potential request for release of

information – using the *Government Information (Public Access) Act 2009* (NSW) by way of illustration - section 13 of that legislation provides “[there] is an overriding public interest against disclosure of government information for the purposes of this Act if. . . there are public interest considerations against disclosure and, on balance, those considerations outweigh the public interest considerations in favour of disclosure.” Public interest considerations include any effect to prejudice the supply to an agency of confidential information that facilitates the effective exercise of that agency’s functions, found an action against an agency for breach of confidence or otherwise result in the disclosure of information provided to an agency in confidence or prejudice any person's legitimate business, commercial , professional or financial interests.

50. Further, section 54 of the *Government Information (Public Access) Act 2009* (NSW) requires that the information provider be consulted about their “... business, commercial, professional or financial interests ...”, and consideration be given to any objection made to a proposed disclosure, in the course of determining whether there is an overriding public interest against such disclosure.
51. In any case, this legislation does not apply to information supplied directly to the Councils’ actuary: these data are not made available to the Professional Standards Councils, and the actuary cannot be compelled under the *Government Information (Public Access) Act 2009* (NSW) to disclose them.
52. With the above considerations in mind, occupational associations may be assured that it is unlikely that the Professional Standards Councils (or the Professional Standards Authority) could be compelled to disclose commercially sensitive data to a third party.

Other sources of data and guidance for associations in identifying and responding to occupational risks

53. Other potential useful sources of information about the occupation or the profession include:
 - Australian Bureau of Statistics ([ABS](#))
 - Australian Bureau of Statistics - Census Data, ([tables of industry employment](#))
 - Australian Bureau of Statistics - Classification of Occupation ([ASCO](#))
 - [Productivity Commission](#)
 - Australian Competition and Consumer Commission ([ACCC](#)) (how to make a complaint).Australian and International Standards (available for purchase through SAI Global):
 - [Australian Standard 3806:2006](#) – Compliance Programs
 - [AS/NZS 10002:2014](#) Guidelines for complaint management in organisations Australian Standard
 - International Standards Organisation - [ISO 31000 \(2018\) Risk Management](#)
 - International Standards Organisation – [ISO 19600 \(2014\) Compliance Management Systems](#)
 - International Standards Organisation – [ISO 10002 \(2018\) Quality Management](#)- Customer satisfaction – Guidelines for complaints handling in organisations.

Summary list of data sources included in this guidance note

Actuarial report

[Actuaries Institute](#)

Alternative Dispute Resolution Agencies ([ADR](#))
Association complaints and discipline system
Australasian Legal Information Institute ([AustLII](#))
Australian Bureau of Statistics ([ABS](#))
Australian Capital Territory Civil and Administrative Tribunal ([ACTCAT](#))
Australian Prudential Regulation Authority (APRA) National Claims and Policies Database ([NCPD](#))
[Casebase](#)
[CCH IntelligConnect](#)
Federal Court of Australia ([Federal Court](#))
[FirstPoint](#)
High Court of Australia ([High Court](#))
[Informit](#)
International Organization for Standardization ([ISO](#))
Insurance brokers providing insurance to members
Insurance underwriters
Judicial Information Research Systems [JIRS \(NSW\)](#)
[LexisNexis Australia](#)
Media and internet searches
Member surveys
Member focus groups
New South Wales Civil and Administrative Tribunal ([NCAT](#))
Queensland Civil and Administrative Tribunal ([QCAT](#)).
[Productivity Commission](#)
South Australian Civil and Administrative - [SACAT](#)
Statutory complaints and discipline systems
Supreme Court of the Australian Capital Territory - [Judgments](#)
Supreme Court of NSW – [NSW CaseLaw](#)
Supreme Court of the Northern Territory - [Index of Judgments](#)
Supreme Court of QLD – [Supreme Court Library Queensland](#)
Supreme Court of South Australia – [list of Judgments](#)
Supreme Court of Victoria - The [Law Library of Victoria](#)
Supreme Court of Western Australia – [eCourts Portal](#)
Victorian Civil and Administrative Tribunal ([VCAT](#))
Western Australia – State Administrative Tribunal ([WASAT](#))