

3.1.2 Guidance

Consumer protection guidance

For Schemes being prepared under Professional Standards
Legislation

June 2021





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1.0	PSC	18 June 2021	1 July 2021	This is a new guidance

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Pilot



1. Guidance statement

A key aim of this guidance is to assist your association in completing Submodule 3.1 *Consumers affected by the Scheme and identification of consumer harms*. This covers the relevant consumer protection information under the Professional Standards Legislation which is mandatory for applicant associations to submit when seeking approval of the Professional Standards Councils for a Professional Standards Scheme.

The guidance has been developed to assist you to understand and respond to the submodule's terminology and application requirements, particularly in understanding the position of persons who may be affected by limiting the occupational liability of members of the occupational association concerned i.e. who are the consumers of members' services - or other persons who could be affected - and what consumer harms will be addressed by approval of the proposed Scheme?

2. Legislative obligations

Section 10 of the legislation (using the *Professional Standards Act 1994* (NSW) as an example) provides that, before approving a Scheme, the Councils must consider among other things the position of persons who may be affected by limiting the occupational liability of members of the occupational association.

3. Consumer protection requirements

Consumers use a variety of services provided by a range of occupational groups. There is generally an expectation that services supplied by these groups will be accessible, affordable and of a high standard. When these expectations are not met, and harm results, there is a further expectation that consumers will be able to seek redress. Different consumer protection considerations may arise for unsophisticated consumers (e.g. homeowners wishing to extend their home) compared with sophisticated consumers (e.g. a large corporation wishing to build an office block).

Consistent with the risk requirements of Module 4.0 *Professional risk management strategies*, consumer protection is critical for embedding into an association member's activities those measures aimed at minimising the potential for harm to clients who use a member's professional service.

The submodule is designed to obtain information from your association regarding consumers of its members' services, including:

- identifying the consumers/clients themselves (particularly vulnerable persons)
- describing the types of services provided by members of the association participating in the Scheme
- describing different services that may be provided to different types of consumers
- identifying the harms associated with providing services
- communicating these harms to members and consumers through the Scheme, including informing consumers of access to redress.

Because it is possible that a claim may be brought by a person other than a client / direct consumer of a member's services, the Councils also require the occupational association to consider other persons who could be affected by the occupational work of their members and provide examples in the submission for this submodule.



Harm can best be understood by applying the categories of technical and non-technical services that an association member can provide to a client. The non-technical category focuses on behavioural interaction as evidenced in the harm generated when the basic principles of professional conduct are not followed by the association or its members. The technical category relates to the competency dynamic of a member's technical skills and the lack of responsiveness to a client's needs, creating a divergence between consumer expectations and the exclusive, static nature of technical advice.

Developing harm prevention processes such as the coordination of inter-professional expertise to develop workable consumer remedies is a major objective of the submodule, along with their inclusion in an established improvement cycle for associations.

The next sections of this guidance set out the information being sought by the submodule alongside a brief commentary on each to explain their relevance for consumer protection.

a) QUESTIONS: Documentation evidence

Firstly, the submodule asks that you describe your association's current, or proposed, types of clients who will be using your members' services and, if there are different limitations of liability in the proposed Scheme, an estimate of the percentage of each type of client for each category of limited liability.

In addition, the submodule requires that you describe the harms / potential harms to consumers arising from your association members' work.

• Commentary

The above information requirements seek to establish a consumer/client profile of your association by which the Councils can assess the scale and depth of your client base.

The value of this information is that it sets out the foundation for understanding the range of strategies and processes which will be required for effective harm prevention strategies and processes.

b) QUESTIONS: Improvement & consumer protection outcomes

For Step 2, the submodule asks you to provide a range of information including:

- *Your association's detailed plans to address consumer harms and risks.*
- *Role and responsibilities of your association's executive and governing body in assessing the effectiveness of the strategies to address consumer harms within a framework of continuous improvement.*
- *Communication of your association's consumer harm prevention strategies and how you assess and improve this communication.*
- *Measures you use to assess the effectiveness of your association's consumer harm prevention strategies and their frequencies.*
- *Your association's consumer harm prevention improvement cycle, for example, how emerging trends from the outcomes of conduct, complaints and discipline processes are used to inform revisions of the harm prevention strategies.*
- *Process of engaging and consultation with stakeholders (e.g. members, public, consumers, regulators, related associations) to assure alignment.*
- *Development of practical measures of effectiveness of each harm prevention strategy, for example, collection, collation, analysis and reporting to the governing body.*



- **Commentary**

The purpose of this information is for your association to demonstrate the scale and quality of the harm prevention strategies that currently or are proposed to underpin your Scheme.

The questions being asked are directed to showing the dynamics of key elements such as governance, communication, and stakeholder participation in making sure that your strategies operate effectively.

How your strategies will or are proposed to address consumer harms is an important consideration for your association. Moreover, this information will assist the Councils in identifying any gaps and to make recommendations to the applicant association on actions that are considered appropriate to address those gaps.

A useful starting point to determine the likely extent and composition of consumer harms is the establishment of a reflective-type forum involving key internal and external stakeholders and consumer representation of your association to regularly meet, analyse and discuss significant harm issues and related professional learnings. A key outcome of such a forum would be to identify areas for inter-professional coordination aimed at devising appropriate remedies.

Part of these remedies would be to address consumer harms emanating from professional work categories as presented in the summary below:

Categories	Professional activity	Harms - examples
Non-technical (behavioural interaction)	Market practice	Suffering from e.g. financial loss experienced by vulnerable or disadvantaged consumers
	Delivery/provision of goods and services	Suffering from e.g. loss of time or delays
Technical (exclusive, competency based)	Personal information/ privacy/data protection	Suffering e.g. inappropriate use or inadequate protection

Assessment of the involvement of and ways to assist vulnerable consumers is a key part of the required strategies. It is also useful to note that consumers can be vulnerable because of a range of circumstances; they may have specific physical, psychological or financial hardship; they may face challenges such as language or cultural background that makes it difficult to engage in the market; and people who would not usually be considered vulnerable may be vulnerable because of the specific circumstances, such as being subject to a situation of high stress or trauma.

Taken together, the longer-term objective is an improvement plan, drawing on such principles as follows:

- **Zero harm tolerance**

To place overriding priority on 'zero harm' behaviour and improvements that are responsive and capable of ensuring that the association, members, and consumers are as harm-free as possible.

- **Harm-free culture**



To foster and support an association culture in which people are willing to report consumer harm incidents.

- **Continuous learning**

To learn the lessons from consumer harm incidents across the association's industry and other industries to continuously strengthen your expertise, systems, and performance.

- **Partnership and collaboration**

To appreciate that making recommendations for continuous improvements will achieve nothing if they are not matched by proper planning and resourcing, collaboration and consultation across the membership and consumers.

The above principles are broad in scope but are designed to emphasise the importance of change that is sustainable, accountability focused, and results driven.

Data and resulting measures are a vital element of the improvement plan. This relates to how data sources, collation and assessment processes are used by your association to identify and manage consumer harms through, for example, consumer presentation on association review programs. Data sources are varied and include information from the regulators, press and social media, legal decisions, insurance claims, complaints and disciplinary system, member surveys, member feedback and other associations.

Practical measures showing the effectiveness of your strategies are vital to demonstrate their success. Such measures may be qualitative (e.g. measures of satisfaction) or quantitative (e.g. actual numbers or dollar amounts). In addition, you need to state how they are going to measure the effect of the strategy.

Note that the information on the continuous improvement of your harm prevention strategies is also linked to the Councils' annual reporting process. For details, see Module 6.0 *Annual reporting capacity and capability*.

5. Related application modules

Other consumer protection processes need to be assessed as part of the application process. These exist as stand-alone modules, or other module/submodules, as indicated below:

- Professional risk management strategies
- Codes (code of ethics or code of practice)
- Resolution of complaints by clients
- Discipline of members
- Notification of limitation of liability (disclosure of the Scheme by participating members)
- Compliance plan for complying with the Professional Standards Legislation and corporation requirements.