

4.1.2 Guidance

Association codes

For Schemes being prepared under Professional Standards
Legislation

June 2021





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Disclaimer

This guidance is applicable only to an occupational association preparing a Scheme for approval under Professional Standards Legislation. It does not constitute legal or other professional advice and should not be relied on as such. An occupational associations 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. For access to legislation in force in NSW, go to the official NSW Government website for online publication of legislation at www.legislation.nsw.gov.au.

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1. Guidance Statement

A key aim of this guidance is to assist your association in completing the Module 4.1 and Templates 4.1.1a *Association codes* and 4.1.1b *Comparison of association's codes*.

The module, templates, and guidance are designed for initial applications for a Professional Standards Scheme to the Professional Standards Councils. For associations applying to remake a Scheme, the module, templates, and guidance establish the professional risk management information required by the Councils, some elements of which will presumably have changed over the life of the previously-approved Scheme, and will therefore need to be re-submitted.

The association codes form part of your association's professional risk management strategy. Your association's professional risk management strategy must be provided to the Councils for their consideration to approve a Professional Standards Scheme.

2. Other Councils resources

In preparing to complete the module and templates, the Councils recommend you also refer to:

- Councils research articles in their website 'Research Library of Modern Professionalism', including '*Ethics Codes*' and '*Professional Values*', found here: <https://www.psc.gov.au/research-library/ethics-and-conduct>
- The proceedings of Councils Forum: *Putting the Consumer First in Ethics - 15 October 2020*, found here: <https://www.psc.gov.au/forums>
- Councils improvement guidance on codes; *Model Code of Ethics Principles (2002)*, found here: <https://www.psc.gov.au/advice-for-scheme-associations/resource-centre>

3. Association code content

There is no one single code content that can be simply applied to a given occupation.

Consumer protection codes of ethics differ across occupations, as each offers different services to consumers, and poses different risks. Nevertheless, there are expected standards that provide consumer protections, and these are important elements to ensure the code addresses all major sources of consumer risk. The sections below detail the typical content of consumer protection codes.

a) Code preamble

A brief preamble often introduces the code, evoking the occupation's highest aspirations and ethical traditions. The preamble can include:

- ✓ A 'mission statement' on the occupation's positive contribution to society.
 - e.g. [This occupation] aims to provide [core social benefit] through [constitutive activities] while always respecting [relevant constraints].
- ✓ A 'statement of intent' on the code's purpose and significance.
- ✓ An oath that members can use to publicly declare their allegiance to the code's mission, values, and principles.
- ✓ Statements that harness key sources of code legitimacy. For example:



- A reference to longstanding traditions of ethics in the occupation, such as in medicine, where the Hippocratic Oath dates back millennia (harnessing ownership).
- Highlighting the important social goods delivered by members (harnessing 'ethical content').
- Framing the occupation's special ethical obligations as a fair exchange: 'To deserve the trust necessary for us to perform our important role in society, we undertake to...' or 'To be worthy of the legal privileges bestowed on us by legislation, we undertake to...' (harnessing contractual legitimacy).
- ✓ Overarching guidance statements, including statements of:
 - *Ethical Priority*: Declaring that the code's principles must be prioritised over other pressures and incentives:
 - "The code principles must not be compromised on the basis of any other factors, including market, employer and institutional pressures."
 - "Employee and organizational codes may add new obligations to the member's responsibilities—but they can never remove these obligations."
 - *Stakeholder Priority*: Declaring that some principles have ultimate priority in ethical decision-making: e.g. "In cases of doubt, consumer safety will be the supreme goal pursued by the member."
 - *Comprehensiveness*: Declaring the comprehensiveness of the code's principles and values: e.g. 'The code's values and principles apply to all occupational work. Further guidance provided in the supplementary materials is illustrative and not exhaustive of the application of the code's principles and values.'
 - *Accountability*: Declaring that breaches of the code's standards will be subject to disciplinary action, and that all members undertake to play appropriate roles within such processes.
 - Some codes of ethics have a subsection following the preamble, setting out the arrangements for code implementation, enforcement, and complaints processes.
 - *Review and growth*: Declaring that the code is a living document, that must be continually evaluated and revised to ensure it is fit for purpose. Feedback and ongoing consultation on the code are welcomed.
 - *Guidance*: Declaring that the code must inform - but should not replace - each member's moral decision-making. Members should be empowered to seek guidance and advice, including from supervisors, peers, relevant official resources and, ideally, an advice hotline.
 - *Organisational support*: Declaring that employers should understand the code, and that institutional incentives and opportunities should encourage adherence to the code.



b) Code content: values, principles and standards

The following list of code content is organised under broad **values** (in bold), which are distinguished into *principles* (in italics) that follow from the value.

While almost all occupations will endorse the key values, some principles will be inappropriate for certain occupations. To take the example of the 'fiduciary responsibilities' value, while every occupation should uphold the principle of respecting the best interests of consumers, only some occupations need to consider prohibiting close relationships between members and consumers.

Consumer protection code of ethics *values* and *principles* may include:

- **Expertise**
 - *Ongoing education*: Members will possess adequate initial and continuing education to ensure their knowledge is appropriately comprehensive and up to date. Members will aim to improve and deepen knowledge in their field of expertise.
 - *Competency*: Members will only undertake work within their spheres of competency. They will never mislead others about their qualifications and expertise.
 - *Diligence*: Members will undertake all work conscientiously, efficiently, and effectively. Work will be done in a thorough and timely manner, reflective of the consumer's needs and situation.
 - *Peer and Entrant Education*: The member will contribute to high standards of the occupation through involvement, as appropriate, in the education and training of all colleagues, especially initiates and trainees.
- **Objectivity**
 - *Prohibition on conflicts of interest*: Wherever possible, members will avoid being subject to any conflict of interest, either by removing the conflict, rebating kickbacks or by recusing themselves. Members will be alert to any way new conflicts may arise (such as through changing business practices).
 - *Independence*: Members will observe restrictions on bonuses, gifts, and other perks, as well as on accepting offers of work (such as 'speaking fees') in any cases where these could create a conflict of interest.
 - *Impartiality & disclosure*: In cases where removing a conflict is not possible or appropriate, members will fully disclose that incentive to the consumer. They will never alter their service or advice on the basis of personal remuneration, organizational incentives, or company profit.
 - *Prohibition on over-servicing*: Members will never perform work, or recommend its performance, beyond the consumer's best interests and in line with their informed consent.
- **Care for consumers and others**
 - *Consumer best interests*: Except where otherwise directed by the code's principles, members will prioritise the consumer's best interests, and never act to harm or exploit those interests.



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- *Care for the vulnerable:* The member has special duties to ensure the proper care of highly vulnerable consumers, such as children, or those with diminished mental faculties.
 - *Prohibition on inappropriate relationships:* Acknowledging the power they wield over vulnerable consumers, members will keep their private and professional relationships distinct and avoid inappropriate relationships with consumers, whether natural persons or corporate persons.
 - **Confidentiality, Privacy, and record keeping**
 - *Consumer confidentiality:* Members will respect consumer confidentiality and privacy, within the limits defined by legal duties to public institutions.
 - *Record keeping:* Members will keep appropriate records of consumer information and all services provided to them. Members will keep secure all confidential information.
 - **Consumer Autonomy**
 - *Informed consent:* Members will respect consumers' autonomy, ensuring they are provided with the opportunity to give voluntary informed consent to all services, including, where applicable, full transparency about all fee-structures and costs.
 - *Communication:* Members will take responsibility for ensuring that all advice and information they provide is given in accessible language, working with consumers to ensure their understanding.
 - **Commitment to law and society**
 - *Respect for law:* Members will respect all legislation and regulations pertaining to their field of activity.
 - *Respect for legislative intention:* Members will act in accordance with the spirit, and not merely the letter, of all relevant laws and regulations, and will not act to subvert legislative intentions. (This can be a challenging obligation and must be carefully considered. For example, members will need detailed guidance to judge whether exploiting a loophole in the law counts as a legitimate strategy, or a wrongful violation of legislative intent.)
 - *Non-discrimination:* In their provision of services, members will not discriminate on the basis of gender, ethnicity, religion, sexuality, or any other arbitrary distinction.
 - *Public interest:* Members will respect all obligations to social institutions (e.g. lawyers' duties to 'the court'), and to third parties relying on their declarations.
 - *Human rights:* Members acknowledge their role in directly (for consumers) and indirectly (for third parties and the wider public) contributing to the delivery of human rights, as enshrined in the *Universal Declaration of Human Rights*.
 - *Complicity:* Subject to their other responsibilities, if members become aware of ongoing or planned violation of laws by their employer or consumers, that would expose third-parties to serious risks (e.g. safety risks, risks of fraud),



they will raise their concerns with that party and refuse any work that would make them complicit in any wrongdoing.

- **Collective support of standards**
 - *Support for colleagues and subordinates:* Members acting in teams, or as supervisors, contractors, mentors, or employers of other members, will support the use of the code by their peers and subordinates.
 - *Using appropriate resources:* Members undertake to use all available resources for guidance on the code's requirements. This may include consultation with colleagues, supervisors, or helplines, in order to ensure objectivity in decision-making.
 - *Accountability:* Individually and in cooperation with peers, members will uphold the code's ethical standards, and hold each other accountable. Members will give appropriate credit and recognition to other members and their work.
 - *Non-retaliation:* Whistle-blowers, or any members that act in good faith to bring ethical issues within the occupation into view (including through relevant complaints processes), will be supported appropriately, and protected from retaliation.
- **Integrity**
 - *Honesty:* Members will tell the truth, and avoid misleading others, in all services and any commercial activities associated with those services. They will stand by their public statements and the terms of any undertakings, promises or contracts.
 - *Transparency:* Members will provide fully transparent information in all appropriate cases, such as to alert the consumer to an unavoidable conflict of interest.
 - *Candour:* Members will acknowledge any errors and report to consumers and/or relevant higher authorities any adverse outcomes, mistakes, and near-misses.
- **Cooperativeness**
 - *Collective delivery:* Where appropriate, members will cooperate with one another to collectively deliver the occupation's high ethical standards.
 - *Teamwork:* Members working in teams will ensure that organisation and communication among the team will uphold all consumer protections. There will be no 'diffusion' of responsibility.
 - *Non-plagiarism:* As appropriate to each occupation, members will take care in the use, expression or publication of work prepared by other service-providers and will never mislead consumers or third parties as to the attribution and authorship of any documents.
- **Competitiveness**
 - *Collegiality:* Consistent with local law, limited constraints may be employed on inter-occupation competition (such as advertising), in order to enhance the occupation's dignity, and avoid wasteful advertising 'arms-races'.



- *Fair competition*: Members will compete fairly in the market, never engaging in price-fixing or misleading advertising.
 - *Collegiality and fair competition can press in opposite directions. The first principle is a longstanding tradition in some professions (such as law). The second responds to changing laws (e.g. competition law) and social expectations.*
- **Ethical culture**
 - *Building ethics regimes*: Members undertake to promote ethical culture in all organisations they work as employees, consultants, contractors, or executives.

4. Related application modules

Other professional risk management processes need to be assessed as part of the application process. These exist as stand-alone modules, or other modules/submodules e.g.

- Resolution of complaints by clients and voluntary mediation services
- Discipline of members
- Association insurance standards.