

Policy Statement on
**Complaints and
Discipline Systems**

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Policy Statement on Complaints and Discipline Systems

1. Introduction

The standards set out below provide guidance for associations in establishing and implementing their complaints and discipline systems. They guide the Professional Standards Councils (Councils) in its assessment of complaints and discipline systems for Professional Standards Schemes. This statement also includes a non-exhaustive list of strategies and actions that may be adopted for complaints and discipline systems.

2. The Standard

Occupational associations administering a scheme under the Professional Standards Act 1994 (NSW) and 1997 (WA) shall adopt a complaints and discipline system that is consistent with the Model Code, is fair, accountable and accessible, provides for appropriate and fair dispute resolution, maintains the integrity of the association and protects consumers, collects data on complaints and disciplinary measures, and is continuously improved.

2.1 Model Code and Statutory Systems

The complaints and discipline system is consistent with the provisions of the Model Code set out in Schedule 1 of the Professional Standards Act (NSW) and Schedule 3 of the Professional Standards Act (WA), with such modifications as are approved by the Councils. Where an occupation is subject to a statutory complaints system, that system may be adopted by the scheme, but these standards should be adapted to the extent permitted within the parameters of that statutory system.

2.2 Fair

The system is fair to all parties involved, in its treatment, criteria, decisions and procedures. The processes and decisions of the system are objective and unbiased and are seen to be so. Complaints should be dealt with expeditiously.

2.3 Accountable

The system is accountable in so far as it is open, reports outcomes, and gives reasons for decisions. The system recognises, promotes and protects customer's rights including the right to complain. The system has procedures for dealing with complaints about the system.

2.4 Accessible

The system is accessible. Information about the complaints system is available to staff and consumers, with no cost. It is written in plain language to ensure it is easily understood and consistently applied.

2.5 Appropriate and effective dispute resolution

Disputes between clients and practitioners should, if possible, be resolved between the parties in the first instance. If this fails, the system provides a fair, accessible mechanism for dealing with complaints and for resolving disputes appropriately, effectively and efficiently.

2.6 Discipline

Disciplinary procedures are objective, fair, accessible, transparent and accountable. In the absence of special circumstances, adverse disciplinary determinations are published.

2.7 Maintains integrity of the profession and protects consumers

The system is well publicised, appropriate and properly resourced. There are effective and enforceable sanctions for breaches. The system maintains the integrity of the profession.

2.8 Data collection

There is an appropriate system for recording complaints, actions and outcomes to ensure that consumer complaints are acknowledged and outcomes are recorded. The data system collects quantitative and qualitative data that provides information, which is used to continuously improve professional standards.

2.9 Continuously improves

The system is reviewed and updated periodically. There are mechanisms for feeding the outcomes of the complaints and discipline system into improving the system, risk management strategies and professional standards.

2.10 Commitment

There is commitment at all levels to efficient and fair resolution of complaints and enforcement of disciplinary provisions.

Appendices

3. Appendix 1 – The Model Code

This appendix reproduces the Model Code for complaints and disciplinary matters as provided for by Part 5 and set out in Schedule 1 of the PS Act (NSW), and as provided for by Part 6 and set out in Schedule 3 of the PS Act (WA).

3.1 Model Code

A complaint may be made that a member of the occupational association has acted (or failed to act) in such a way as to justify the taking of disciplinary action against the member under this code. A complaint may be made and dealt with even though the person about whom it is made has ceased to be a member.

Note: The Councils recognises the difficulty of taking disciplinary action, and enforcing disciplinary decisions, against past members. However, in keeping with the spirit of the legislation, the association should make reasonable efforts to resolve complaints involving past members. Any person may make a complaint (including the occupational association and Professional Standards Councils).

A complaint is made to the occupational association. The complaint must be in writing and contain the particulars of the allegations on which it is founded. The occupational association must notify the Councils of each complaint made to it (other than a complaint made by the Councils).

Note: The Councils do not require notification to itself of each complaint. However, the Councils require the provision of aggregate complaints and discipline information to it by associations.

The occupational association must consider a complaint as soon as practicable after the complaint is made to it or notified to it by the Councils. The association may then do any one or more of the following:

- *It may require the complainant to provide further particulars of the complaint*
- *It may carry out an investigation into the complaint*
- *It may attempt to resolve the complaint by conciliation*
- *It may decline to entertain the complaint (because for example, the complaint is frivolous, vexatious, misconceived or lacking in substance)*
- *It may conduct a hearing into the complaint.*

After an occupational association has conducted a hearing into a complaint against a person, it may, if it finds the complaint substantiated, do any one or more of the following:

- *Caution or reprimand the person*
- *Impose conditions as to the carrying out of the persons occupation*
- *Require the person to complete specified courses of training or instruction*

- *Require the person to report as to the carrying out of the person's occupation at the times, in the manner, and to the persons specified by the association*
- *Order the person to obtain advice as to the carrying out of the person's occupation, from such persons as are specified by the association*
- *Expel the person from membership of the association*

If the association does not find the complaint substantiated it must dismiss the complaint. The association is not entitled to make an award of compensation.

Within 30 days after a decision is made by an occupational association concerning a complaint, the complainant and the person against whom the complaint is made must be given a written statement of the decision. The statement must include the reasons for the decision.

Note: Notice should be given to a complainant of receipt of an appeal against the decisions and of the outcome of the appeal.

The complainant and the person about whom the complaint is made are not entitled to legal representation during attempts to resolve the complaint by conciliation but are entitled to legal representation during a hearing into the complaint.

Note: This provision does not exclude the taking of legal advice by parties during attempts to resolve the complaint by conciliation. However, the exclusion of legal representation during conciliation is accepted dispute resolution good practice. It is intended to encourage the settling of business disagreements with goodwill, and in good faith, without unnecessary legalistic or adversarial rancour.

A function of an occupational association may, in accordance with a resolution of the association, be exercised by the executive body of the association or by a person or persons appointed for the purpose.

No matter or thing done or omitted by the occupational association or a person acting in accordance with a resolution of the association subjects a member of the executive body of the association or the person so acting personally to any liability if the matter or thing was done or omitted in good faith for the purpose of implementing the Professional Standards Councils Complaints Model Code.

4. Appendix 2 – Strategies and actions relating to each of the Standards

This appendix is a non-exhaustive list of strategies and actions relevant to the Standard that may feature in the complaints and discipline systems of an association where association resources reasonably permit.

4.1 Model Code

An occupational association may adopt the provisions of the Model Code with such additions, omissions or other modifications as may be approved by the Council. The PS Act provides that modifications may include but are not limited to the following:

- The establishment of committees for the purpose of implementing the model code or any of its provisions
- The procedure at meetings of any such committee
- Whether any such committee may administer an oath
- The application or exclusion of the rules of, and practice as to, evidence
- The grounds on which a complaint may be made
- The verification of complaints by statutory declaration
- The suspension of members from membership or from practice
- The imposition of fines
- The making of appeals
- The exchange of information with other occupational associations (within or outside NSW and WA).

4.2 Fair

- An organisation should notify all persons and organisations being complained about except where otherwise provided by law.
 - An organisation should give complainants an opportunity to outline their complaint and respondents an opportunity to know the nature of the complaint and to respond. Both parties must be provided with sufficient information to enable them to understand the other party's case and respond, and must be given an opportunity to rebut the arguments provided. A complaint should be made in writing.
 - An organisation should keep all parties informed about the progress of the complaint.
 - An organisation should notify all complainants of their review rights and advise respondents of their appeal rights if they are dissatisfied with the handling of the complaint.
 - Adequate files must be kept with full details of complaints made, actions and outcomes.
 - Any time limits must be fair and reasonable.
 - Matters concerning third parties should be handled confidentially and not be made public without the consent of the third party.
 - An organisation should impartially and expeditiously investigate complaints assessed as appropriate for investigation.
 - Impartiality may be evidenced by lay participation in determination of complaints, use of external investigators where appropriate, opportunity of all parties to put their case and where appropriate be represented to ensure their case is articulated effectively.
 - The system must comply with the demands of procedural fairness including addressing matters such as a right to representation, a right to respond, a right to receive reasons for
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decisions in writing, the right of review and appeal, and provide for independence from the parties to the complaint.

- Decisions are to be made by reference to what is fair in the circumstances, and having regard to law, standards, policy and good practice in the relevant profession
- Display consistency with past decisions.
- The system has provisions for dealing with actual or perceived conflicts of interest.
- Include lay participation on disciplinary panels.

4.3 Accountable

- Complaints must be acknowledged within a reasonable, specified number of business days.
- Complaints must be dealt with within a reasonable time frame.
- An organisation should set, and endeavour to meet, time standards and inform all parties of reasons for delay.
- Record, as organisational policy, who handles complaints initially, what time limits are imposed, who acts as a review panel if a consumer remains dissatisfied, what remedies are available and what methods for collecting data (types and number, and time taken) are employed.
- Recognise, promote and protect consumer's rights including the right to complain.
- Reports should be made once actions are finalised, and reasons given for decisions reached.
- Mechanisms are in place to ensure sanctions are enforced.

4.4 Accessible

- Make available assistance to complainants to prepare and present their complaints if required.
- An organisation should publish and distribute information about the complaints process in plain language. The process should be easy to understand.
- Complainants and respondents must be treated with courtesy.
- Practitioners should inform clients of the existence, procedures, and scope of complaints regime at the start of the engagement by a client, and at other times when necessary to assist a client to complain and resolve the complaint quickly.
- Professional associations should ensure that all users of their services are aware of the avenues available for complaint.

- Complaint handling procedures must be publicised including alerting customers about their right to complain, and specifying how to make a complaint.
- Professional associations should provide information necessary to enable consumers to complain as well as measures to ensure that the information provided is accurate.
- Organisations must provide information about the complaints process in many easy to understand formats such as telephone directory, info pages, listings, accounts, service guarantee, advertising, customer service guides, and webpages.
- An organisation should respond to telephone enquiries for information about complaints avenues available in a timely and courteous manner.
- Organisations must ensure their complaints system is properly resourced with knowledgeable staff and a designated contact point.
- A complainant should not be required to initiate a complaint by statutory declaration or to satisfy other procedures, which may act to discourage the making of a complaint.

4.5 Appropriate and effective dispute resolution

- Where a client is unable to resolve a dispute with a practitioner, the association provides access for the client to appropriate and effective dispute resolution assistance.
- Make provision for the association or other external body to handle complaints not resolved at earlier stages by practitioners.
- Spell out how the body is to be appointed, how the consumer is to bring a complaint to it, whether representation is allowed, whether the findings are binding, and include an obligation to provide written reasons.
- Incorporate basic principles of conflict resolution (analysis, preparation, effective communication, collaboration).
- Provide for adequate remedies with clear lines of decision making authority.
- An organisation should assess whether complaints are suitable for alternative dispute resolution.

4.6 Maintains integrity of the profession and protects consumers

- Maintain the integrity of the profession by taking disciplinary action in cases of professional misconduct and unprofessional conduct.
 - Complaints are to be investigated expeditiously and confidentially to the extent possible and not be disclosed publicly until the veracity of the complaint has been tested.
 - Associations should develop a plan to direct resources into problem areas.
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- The complaints system can benefit the maintenance of standards. For example, upon discovery of a problem area through analysis of the data collected (for example, poor communications, lack of informed consent, information about costs), associations should develop a plan to direct resources into that area.

4.7 Data collection

The system must contain data collection processes and make use of the information collected for the improvement of standards. For example, there must be a system in place to appropriately record complaints, action taken and their outcomes. Information should be recorded in the database throughout the complaints and discipline process and subsequently in respect of any follow-up action. Information collected should include the nature and source of the complaint, service type complained of, complainant and respondent demographics, process duration, results, action taken (including referrals to management and notification of adverse determinations to relevant regulatory and co-regulatory bodies where appropriate), and enforcement outcomes. Although the standard concerns written complaints, as a matter of good practice information on telephone complaints should be recorded.

4.8 Continuously improves

- Aspire to improve continuously. For example, when a complaint is substantiated the people who deal with the complaint should consider and implement changes to deal with the problem. Regularly review the system so that professional associations can develop, strengthen and maintain complaints measures.
- Monitor complaints in an endeavour to improve the quality of the service or goods.
- There should be formal structures for feeding complaints and discipline information into risk management strategies.

4.9 Commitment

- There needs to be commitment within all levels of the organisation. This may be displayed by responding positively to internal and external complaints, circulating policy and procedure documents, and by providing adequate training.
- Commitment of time and resources to the preparation of these policies also indicates the commitment of an organisation.
- Adequate resources for complaints handling must be provided, with sufficient delegated levels of authority.

5. Appendix 3 – Aspirational strategies and actions

Beyond these standards, strategies and action, a complaints and discipline system should aspire to add elements to improve the systems.

Additional ideas and strategies to aspire to, implement and improve your complaints system may include:

5.1 Fair

- Increase lay members on disciplinary panels.
- Consider strategies for overcoming public disenchantment such as increasing the number of lay members of your disciplinary panel, or ultimately introducing a lay chair as suggested in the Benchmarks for Industry Based Consumer Dispute Resolution Schemes, Department of Industry, August 1997, p10, with all the influence that comes with that position.

5.2 Accessible

- Have an awareness of cultural context and an ability to tailor an approach.
- Provide translators and publications in various community languages.
- Employ adequately trained staff with skills and knowledge to mediate and resolve consumer disputes, and thoroughly investigate the complaint.
- Set up an automatic fax back of fact sheets.
- Establish an email inquiry service.
- Establish a website containing online plain English fact sheets.
- For organisations with the resources and demand, TTY numbers can be made available for the hearing impaired.
- Assistance should be provided in completing complaints forms for those with limited literacy skills.
- An association, whose resources allow, might want to consider a designated complaints person to ensure that consumers get adequate and timely attention.

5.3 Accountable

- Refine and further develop mechanisms for collecting feedback from every engagement.
- Conduct periodic external audits. Much of the cynicism and lack of confidence stems from the professions regulating themselves. Thus a regular external audit would also contribute to the alleviation of doubts and lack of change. Such audits could check the consistency of the decisions, the steps taken to avoid a recurrence of behaviours and treatment of systemic problems, that the volume of material is well organised and properly recorded, without unnecessary duplication. Such an audit would also assess the appeals overturned or wrong/inappropriate decisions reached.

5.4 Appropriate and effective dispute resolution

- Increase the level of consumer satisfaction with the delivery of products and services.
- Enhance the consumer/provider relationship.
- Conflict resolution policy should include a wide range and variety of conflict resolution strategies and responses, techniques and practices, and should enable a selection to be made from those elements which will best meet the needs of the situation.
- Explore the potential of diversionary strategies instead of traditional discipline for example, treatment where the root of the problem is addiction.

5.5 Maintains integrity

- Use valuable feedback about how an organisation is functioning, client satisfaction and service delivery to improve standards.
- Action taken on complaints communicates to consumers that their concerns are being taken seriously.
- Take steps to remedy patterns/trends revealed in data analysis. For example use information derived from complaints to structure educational programs and deliver other strategies to address deficiencies in service delivery and professional performance. Strategies should also be in place to use complaints data to identify management practice and procedures needing improvement, and to review conduct of staff, consultants, contractors or agents.

5.6 Data collection

- Streamline (refine and develop) data collection procedure and processes.
- Make better use of the complaints data generated in order to feed it back into strategies to improve standards. For example, this may be achieved by introducing more sophisticated data processing, recording and analysis.

5.7 Continuously improves

- Demonstrate continuous improvement, improvements in practice and advanced standards. A commitment to continuous improvement will, if known, also increase reputation for commitment to improvement of professional standards.
- Conduct regular external audits.
- Streamline ability to effectively deal with frivolous and vexatious complaints to minimise their impact.

5.8 Commitment

- Establish an organisational culture which acknowledges the right to complain and solicit feedback.
- Establish a culture, within an organisation, of complaints no longer being viewed negatively, but welcomed and not discouraged.