

4.2.2 Guidance

Complaints systems guidance

For Schemes being prepared under Professional Standards
Legislation

June 2021





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1. Guidance statement

A key aim of this guidance is to assist your association in completing Submodule 4.2 *Resolution of complaints from (members') client's system* which is mandatory for applicant associations to submit when seeking approval for a Professional Standards Scheme.

The submodule and guidance are linked to Module 4.0 *Professional risk management strategies* and should be read together. An additional resource is the Councils' *Policy Statement on Complaints and Discipline Systems* (August 2014).

This guidance has been developed to assist you to understand and respond to the submodule's terminology and application requirements, particularly the consideration of complaints as a regulatory objective for strengthening consumer safeguards in an association member's activities.

2. Context

You will appreciate how critical it is for an occupational association to have effective strategies designed to manage the risk a member may cause to harm consumers in the provision of the occupational service. Consistent with Module 4.0 *Professional risk management strategies*, a key function of the complaints system is to guide decision making on controls and mitigation activities with the objective of reducing the risk of harm to consumers.

The Councils' assessment of the efficacy of the consumer complaints system helps the Councils to consider overall the likely effectiveness of the association's risk management strategies and the means by which those strategies are implemented.

The Councils' assessment of an association's consumer complaints system focuses on three questions:

- does the system address and reduce consumer harm?
- does the system improve occupational standards?
- is the system sufficiently integrated with other required elements of the association's professional risk management strategies to provide reasonable assurance of consumer protection and occupational standards improvements?

The submodule is designed to achieve the following:

- to assist applicant associations to understand and comply with the Councils' expectations relating to the consumer complaints systems
- to encourage and support the deployment of efficient and effective consumer complaints systems by associations
- to ensure improved governance by associations in the administration of their consumer complaints systems
- to ensure consumer complaints systems are integrated with other elements of the association's professional risk management strategies including its governance,



membership, member discipline and continuing professional education arrangements

- to ensure consumer complaints systems provide effective information and feedback to the association's professional risk management systems concerning changing community expectations, emerging risks to occupational standards and practice
- to ensure consumer complaints systems promote occupational standards improvement by helping the association and its members to identify the need for changes in standards and/or changes in practice to mitigate risk and reduce consumer harm
- to encourage associations to develop measurable, improved consumer protection outcomes for the users of their members' services
- to raise awareness of significant issues facing Schemes, associations and members including good practices to facilitate the effective management of risk associated with consumer complaints systems and to mitigate consumer harm.

3. Legislative obligations

The legislation requires applicant associations seeking approval for a Scheme to submit the following information to the Councils. The relevant sections of the legislation (using the *Professional Standards Act 1994* (NSW) as an example) are:

- (a) sections 10 and 36 in respect of associations providing their detailed list of professional risk management strategies in respect of members, and the means by which they intend to implement those strategies. The means of implementation may be imposed as a condition of membership or otherwise
- (b) section 37 in respect of associations providing information on their risk management strategies to the Councils if requested to do so.

Note that the professional standards legislation does not mandate an association having its own consumer complaints system as part of its risk management strategies. Nor does the legislation specifically require a consumer complaint system as an independent requirement.

However, as indicated earlier, an effective complaints system is generally considered a critically important element of professional risk management. The Councils' policy is that each association should have, or have access to, a consumer complaints system as a part of its risk management strategies.

In some jurisdictions (ACT, NT, SA, TAS, VIC) the provisions in a proposed scheme for making and determining complaints and enforcing disciplinary measures against the association's members is a mandatory consideration for the Councils before approving a proposed scheme. In the QLD Act (section 12) the equivalent mandatory consideration is expressed as "the measures available to the occupational association under the scheme to discipline its members". Although there is not an equivalent *mandatory* consideration under the NSW and WA Acts, as noted above, the Councils consider that access to a consumer

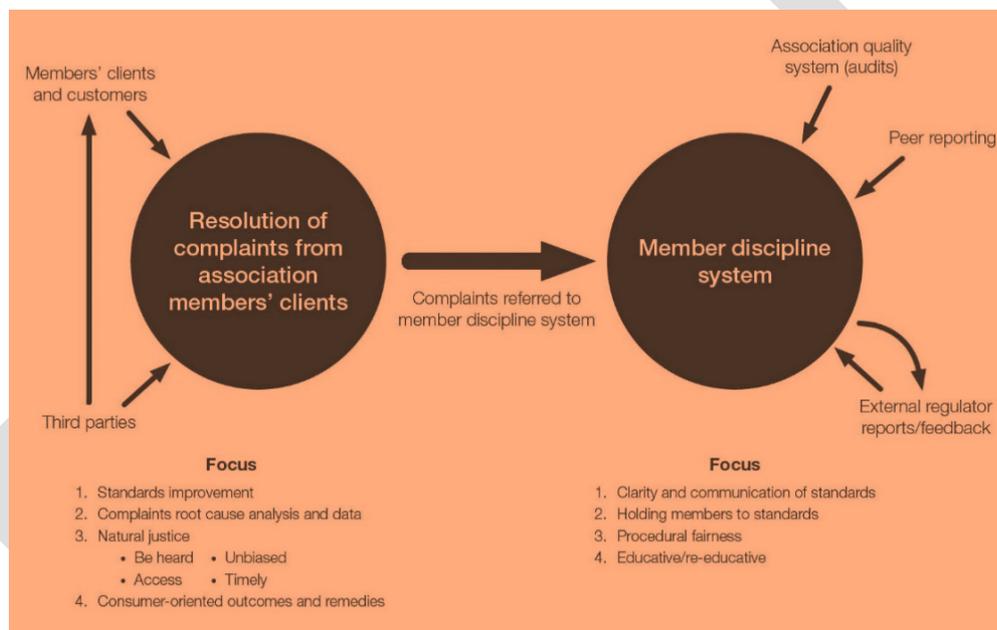


complaints system is a relevant consideration and should be addressed in conjunction with an association's professional risk management strategies.

Section 38 of the NSW Act permits a Scheme applicant to adopt the *Occupational Associations (Complaints and Discipline) Code* (the Model Code), which is set out in Schedule 1 to the Act. There are equivalent provisions in each other jurisdiction. Where the Model Code is adopted, the Act provides that any additions, omissions, or other modifications made to it require Council approval. (In the ACT Act, a scheme may adopt the provisions of the Model Code with any changes recommended by the Council.)

Note that the Model Code also provides that the Council may make a complaint to the association. Further, the Model Code requires that the association notify the Council of each complaint made to it.

The direct linkages between complaints and the discipline of members are well recognised, as illustrated in the diagram below:



For the Scheme application process, your association will need to describe the aspects of its processes that are pertinent to a consumer's ability to make a complaint and, where the outcome of a complaint is a disciplinary sanction, what sanctions are available, how they are applied and how the complainant is apprised of this. (For detail in respect of member discipline, see Submodule 4.3 *Discipline of members system*).

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



a) QUESTIONS: Documentation evidence

Firstly, the Submodule Template asks that you provide and explain your association's current, or proposed, consumer complaints system by providing materials or documents such as:

- *relevant constitution elements*
- *approved policy, procedures, processes*
- *forms, templates, internal or external standards*
- *oversight by executive bodies or committees and their terms of reference*
- *standing communication to members*
- *relevant extracts from the association's own Annual Report*
- *relevant website content.*

• **Commentary**

The above list of materials and documents seeks to establish an evidentiary framework by which the Councils can assess the scale, depth, and consistent application of the consumer complaints system that you currently or propose to apply.

This documentation is practice-focused, input based evidence of how the complaints system is applied by an association to protect consumers and continuously improve. The value of this documentation is that it assists the Councils to understand the system and processes which you have in place or are proposed, to help in identifying any gaps and to make recommendations to the applicant association on actions that are considered appropriate to address those gaps.

b) QUESTIONS: Implementation and other statutory or regulatory requirements

Moving on, the submodule's template asks the following questions about how your complaints system is implemented and whether your association or members are subject to other statutory or regulatory requirements for all or part of the complaints system:

- *where a consumer complaints system is being proposed, or in development, or being amended, discuss how your association will implement the consumer complaints system, including the association's resources (e.g. staff, financial, IT) and implementation timetable.*
- *where your association, or members, are subject to a statutory or regulatory requirement for all or part of a consumer complaints system, provide the Councils with references to the relevant statutory provisions, the regulator, and explain the interaction, liaison, or coordination between the association (as a professional standards co-regulator) and the statutory Regulator. Examples of liaison or coordination may include formal advice and referrals between the association and the regulator, delegations of certain types or specific matters from the regulator to the association, scheduled meetings or consultation and membership of panels or committees).*



- **Commentary**

Consistent with the requirements outlined in Module 4.0 *Professional risk management strategies*, a clear implementation plan and supporting processes are vital to the effectiveness of your consumer complaints system. It is important that you clearly identify and explain the implementation approach, including setting out your association's resources (e.g. staff, financial, IT) and implementation timetable.

The question about whether your association or members is subject to a statutory or regulatory requirement for all or part of the strategies is important. Answering this question will help the Councils to better understand the statutory context in which your association and members operate and, importantly, to ensure an effective regulatory relationship with the Councils alongside the provisions required by other statutes.

- **c) QUESTIONS: Governance, improvement & consumer protection outcomes**

The Submodule's template asks that you provide information about how your consumer complaints system is governed, improved, and delivers consumer protection outcomes. Areas covered in the Submodule's questions include the following:

- *your association's published consumer complaints policy, its administration and governance*
- *consumer representation in designing, operating, and providing feedback on the complaints system*
- *independence in considering complaints*
- *human, technological, and financial resources deployed to support the complaints system*
- *how the complainant is apprised of the outcomes*
- *how the system is improved*
- *data collection including that on procedural fairness*
- *any review/audit report concerning the consumer complaints system.*

- **Commentary**

The purpose of this information is for your association to demonstrate the scale and quality of the governance, improvement and consumer protection outcomes that underpin your consumer complaints system.

Consistent with the requirements outlined in Module 4.0 *Professional risk management strategies*, the questions being asked are directed to showing the dynamics of what makes your complaints system operate effectively:

Contemporary approaches to complaints handling emphasise the positive impact that complaints feedback can have on continuous improvement and systems development. In addition, analysis of complaints data can support identification of systemic issues and clarification of the root causes of poor practices giving rise to consumer harms and complaints.

Making the complaints system easy for the consumer to find and use, for example on your website, is a major positive for the association, along with providing support to disadvantaged complainants.



Addressing community expectations plays a major role for facilitating association accountability and promoting public recognition. One example is that the complaints system ensures complaints are handled fairly, objectively and in an unbiased manner.

Looking from the perspective of a principles-based approach, effective and efficient consumer complaint systems can best be categorised as:

- **data driven** enabling the collection, analysis, synthesis and reporting of complaints data such as in the critical area of identifying emerging trends that inform revisions of your strategies
- **risk integrated**: assisting the association and its members to identify and manage risks in the practice of the occupation
- **consumer responsive**: ensuring that complainants are not adversely affected by making a complaint and there is emphasis on early resolution of complaints and communication
- **root cause responsive**: assisting the association and its members to understand, identify and remediate the root causes of poor practice and consumer harm
- **strategic**: informing strategies the association may adopt to improve member conformance with professional standards including whether changes in practice, or in professional standards are recommended to prevent consumer harm
- **educative**: informing changes to member practice and behaviour to reduce professional risk, together with systems to minimise the escalation of complaints into disputes
- **adequately resourced**: providing the necessary resources assigned by your association to identify and progress improvements.

Practical measures showing the effectiveness of consumer complaints systems are vital to demonstrate their success. Such measures may include data on complaints, including root causes of complaints, information on continuous improvement over time, and measures of consumer sentiments and feedback. In addition, you need to state how they are going to measure the effect of the complaints system.

Note that the information on your complaints system's continuous improvement is also linked to the Councils' annual reporting process. For details, see the Module, titled '*6.0 Annual reporting capacity & capability against annual reporting requirements*'.

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 or submodules, as indicated below:

- Codes (code of ethics or code of practice)
- Discipline of members
- Association insurance standards
- Notification of limitation of liability (disclosure of the Scheme by members)



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- Enterprise risk management
 - Compliance plan for complying with the Professional Standards Legislation and corporation requirements.

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