

Guidance Note

Association Codes of Ethics: Part One

Important questions before preparing a code

For occupational associations operating professional
standards schemes under professional standards legislation

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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 association 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. Purpose

The guidance is designed to provide an easily accessible, phase-based learning tool to assist associations (scheme applicants or those seeking to re-make or amend a scheme) in how to build new or review a code of ethics oriented towards improving professional practitioner standards and consumer protection. This guidance is aimed at helping your code's continuous improvement over the life of your association's Professional Standards Scheme.

This is Part One of the Association Codes Guidance of the Professional Standards Councils. This Part, as set out below, focusses on important questions to consider before you embark on building a code of ethics.

Other parts of this guidance are located on the Councils' website under 'Research Library of Modern Professionalism' as follows:

- Part Two: developing a code (if you don't already have a code of ethics oriented towards improving professional practitioner standards and consumer protection)
- Part Three: implementing a code (if the substance of your existing code is appropriate, but the systems supporting it need improving)
- Part Four: revising a code (if your existing code needs improving).

2. Important questions an association needs to firstly consider

2.1 Why should your association have a code of ethics oriented towards improving professional practitioner standards and consumer protection?

1. A code of ethics is a critical part of your risk management.
2. You need to have such a code or be able to prove you are using a process to establish one, to qualify for a Professional Standards Scheme (Scheme).

The Councils need clear evidence that your association is working through your process rigorously and in good faith.

2.2 Why do all associations need one?

Every occupation offers promises and risks for professional services to its consumers.

- On the one hand, each occupation can fulfil the needs of its consumers in a way that leaves them respected, safe and satisfied.
- On the other, each occupation carries potential risks for consumers, through substandard services, over-servicing, breaching confidentiality, fraud, or exploitation.

One tool for improving consumer outcomes is a *code of ethics*. This code lays down standards that encourage best practice and ban wrongful conduct.

Usually, these codes are developed and implemented by the appropriate occupational association. They are accompanied by education, communication, and governance systems, and refreshed regularly.

Good codes can significantly reduce the risks of unsatisfactory consumer outcomes, and the undesirable consequences for that industry.

You will find outlined in the guidance a process to guide you as you develop or renew your own code of ethics.



- It offers a set of steps for developing and revising codes, noting risks and opportunities at each stage.
- It outlines key content in your code for you to consider, and offers ideas for improving the accompanying education, communication, implementation, governance, and review systems.

Working through the process can take anything from six months to two years, depending on the circumstances.

3. Understanding codes of ethics

This section contains information that explains the main features of a code of ethics, as follows:

- 3.1 A survey to find where you are at the moment
- 3.2 Recognising the consumer protection issues in your occupation
- 3.3 What is a code of ethics?
- 3.4 What is a code of ethics oriented towards improving professional practitioner standards and consumer protection?
- 3.5 What does a code of ethics do?
- 3.6 Understanding ethical decision-making
- 3.7 Acceptance by the occupation: how a code can result in higher standards
- 3.8 A code won't fix everything; it isn't a silver bullet

3.1 A survey to find where you are at the moment

This survey will help you to reflect on the existing state of your occupation, and how a code of ethics might improve your professional practitioner standards and consumer outcomes.

Task

Discuss the following questions with colleagues and keep notes. The notes will be helpful to you later in the process.

In the shaded areas below each question are other questions to help you guide the discussion. Possibly best not to share these additional questions, as they might turn the discussion into a quiz. Use them to clarify or prompt or refocus the discussion if you need to.

- *What do good professional practitioner standards and consumer outcomes look like in your occupation?*
 - What are the valuable goods or services provided by your occupation to consumers?
 - What does a fully satisfied consumer look like?
 - Why is society better off overall through the existence of your occupation?
- *What are the risks to consumers when they buy services from your occupation?*



- What do poor outcomes for consumers look like? These are the types of cases where there are dissatisfied consumers, complaints, scandals, or lawsuits.

- What are the causes of those poor outcomes?

Be as comprehensive as possible. Bad outcomes can come from poor skills, insufficient training or supervision, unreasonable expectations, risky decision-making, communication failures, misleading advertising and corner-cutting, as well as dishonesty or exploitation.

- Can you cite any cases where members' incentives (such as for greater remuneration or easier workload) might encourage them to risk bad consumer outcomes? These are cases where there is a 'conflict of interest'—where the service-provider's interests differ from the consumers.

- ***What would a code of ethics look like for your occupation?***

- Codes of ethics are public documents that lay down standards, encouraging, requiring, or prohibiting certain practices.

- What types of actions would a code for your occupation aim to ban?

- What types of best practices would it encourage?

- How might it communicate these requirements to your members?

- How could it educate consumers on the protections it offers them?

- ***How does your existing code compare to a code oriented towards improving professional practitioner standards and consumer protection?***

- If your occupation already has an existing code of ethics, there's a good chance that it wasn't designed to protect consumers.

Many statutory codes of ethics aim to protect, legally, occupations and industries by laying down standards to avoid legal liability. This is a legitimate purpose, but it doesn't prioritise consumer outcomes. Reflect on your existing code and the extent to which it offers genuine improvements to professional practitioner standards and protections to consumers.

- If the existing code of ethics has provisions that—if followed—would improve professional practitioner standards and protect consumers from risks, consider what real world impact these have.

Consumer protection provisions may be ignored or be too vague to provide real guidance.

Consumers may be unaware of the protections the code grants them or have little recourse when the code is breached.

Consider whether your code of ethics has provisions that are routinely ignored, and whether this might be a failure of communication, education, or accountability.



3.2 Recognising the professional practitioner and consumer protection issues in your occupation

You need a good insight into the consumer protection issues in your occupation, if you are going to have a robust code of ethics.

Here are some ideas about how to be sure you have a broad enough analysis of these issues so your code can manage them.

Make a list of the issues **your** consumers are concerned about.

- *Vulnerabilities:* Consumer protection is critical in areas where consumers are at their most vulnerable.

Do these vulnerabilities apply to your occupation?

- Does the occupation cater for people's fundamental or urgent needs, where some consumers will probably have to rely on the services of your members?
 - Can consumers suffer serious harm from exploitation or substandard services?
 - Can consumers find it difficult to know if they have received quality service?
 - Does the service require consumers to reveal sensitive information?
- *Media exposés:* Scandals often point you to major areas of risk for your members' consumers.
 - *Official proceedings:* Consider all the available information on legal investigations, findings, and outcomes, including court trials, mediation proceedings and civil settlements, as well as government reviews, commissions and reports.
 - *Consumer advocates:* Consumer advocates and public interest organisations may provide valuable information on common problem areas.
 - *Your members' experiences:* Your members will often have considerable information on consumer concerns. They may have had complaints, or they may be aware of the presence of low-standard competitors. Complaints hotlines will help you find out about complaints that did not lead to a sanction under the existing code.

Tips

Maybe your consumers aren't realistic

While it is worth including all consumer issues, this doesn't mean 'The customer is always right'. Sometimes consumer expectations are unrealistic, so your organisation needs to find ways to clarify those expectations.

You have to be realistic



A natural response to consumer complaints and media exposés is denial. Not all consumer issues, nor all media stories, are over-blown, isolated, or caused by a few bad apples.

3.3 What is a code of ethics?

Ethics are about how we should live and act. A code of ethics helps answers questions like:

What is the right thing to do? (for example, principles like ‘tell the truth’)

What sort of person should I be? (for example, virtues like patience and kindness)

What should I be aiming for? (for example, improving other people’s wellbeing).

Codes of ethics are official, public documents that declare a group’s values, principles, and standards.

Values are morally desirable qualities, for example, honesty, integrity, wellbeing, respect, security, freedom. *(For a helpful list of values, see: <https://www.ethics.org/resources/free-toolkit/definition-values/>)*

Principles are broad guidelines that show how people and organisation turn values into ways of working. For example, *financial advisers must respect their consumers’ right to make financial decisions based on informed choices.*

Standards apply principles to situations to deliver clear practical directives. For example, *before they provide financial services, financial advisers must have the client’s free and informed consent.*

Codes of ethics can include, or be accompanied by, documents that specify how the standards should be interpreted and applied.

One way this can be done is through **rules**.

Rules are precise requirements.

They may require that members to perform a specific action or prohibit them from performing an action.

Because they are explicit and specific, rules are more easily scrutinised and monitored. For example, *except in time-sensitive situations, a financial adviser should always ensure that a consumer has read and understood the Statement of Advice before the adviser takes any action on the consumers’ behalf.*

Figure 1 below illustrates how general principles give rise to precise obligations:

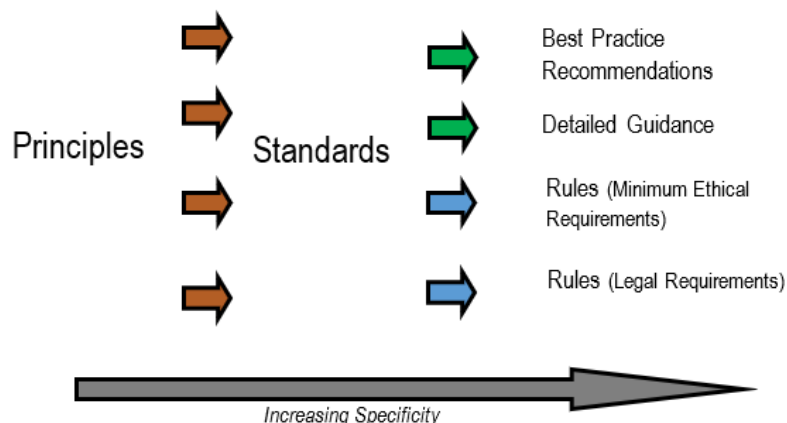


Figure 1: [How general principles give rise to precise obligations](#)

Once you have the principles and the standards, you can derive specific obligations from them. If these more specific obligations:

- cover minimum requirements, **they are rules**.
- show how high standards apply to specific situations, then **they are 'Detailed Guidance'**.
- show exemplary ethical conduct, then **they are 'Best practice recommendations'**.

The code and its supporting systems: This refers to the associated systems that support the code of ethics itself; the systems of education, communication, governance, and review that accompany it.

Even if the code of ethics has excellent content, it won't work without strong and integrated supporting systems. The education, implementation and review stages below describe these systems.

It is important to understand that a code of ethics can also be called a 'code of practice' or a 'risk management code'.

These kinds of codes operate at the level of minimum standards or rules. They are not based on high standards and broad ethical principles. They are often backed up with disciplinary systems that monitor compliance.

Such codes may be an independent statutory requirement or may be imposed by employing organisations.

3.4 What is a code of ethics oriented towards improving professional practitioner standards and consumer protection?

This code of ethics is a document that clearly states the values, principles, and standards of an occupation, related to the way it offers goods and services to the public. The code also works to lessen any associated risks to professional services and consumers.

This code of ethics has three key qualities:

1. It lays down standards that respond to *all* professional practice standards and consumer protection issues arising in the occupation (this is your list from:



Recognising professional practitioner and consumer protection issues in your occupation) AND

2. Its content includes the major professional standards that protect consumers (refer to 4.2 Part Two, **Code content: values, principles and standards**) AND
3. It has aspirational moral principles and high standards to guide ethical decision-making, rather than minimum standard rules.

3.5 What does a code of ethics do?

A code of ethics can do many things.

Inside your occupation, your code can:

- *provide ethical guidance*
 - The code guides your members' decision-making by clarifying the association's expectations, raising your members' awareness, and communicating best practice solutions to your members' real and relevant ethical problems.
- *inspire and motivate ethical action*
 - Your code can provide your members with stronger reasons to work ethically.
 - It can help individual members to resist pressures on their ethical work from, for example, employers.

Outside your occupation, your code can help to:

- *Distinguish high-standards members from lower-standards competitors*
 - Membership in an association with a consumer protection ethical code can be used for branding purposes, which gives those who are members a market advantage.
- *Improve the social status of the occupation*
 - High standards bring increased trustworthiness which brings higher social status to your members.
- *Increase self-regulation*
 - If you have an effective way to enforce your code, you are less likely to trigger intrusive government regulation.

You can see how parts of a code of ethics assist these functions, at <http://ethics.iit.edu/ecodes/codefunctions>.

3.6 Understanding ethical decision-making

There are stages a person goes through to get to a morally justifiable outcome. These are six generally accepted stages.

The member (in your case)

1. *Scans*: The member recognises that the situation poses an ethical choice.
2. *Gathers information*: The member gathers relevant information.



3. *Considers alternatives*: The member develops a list of alternative courses of action and considers their probable consequences.
4. *Deliberates*: The member reasons their way to a principled course of action.
5. *Implements*: The member acts in a principled way.
6. *Debrief*: The member reflects on the outcome and any lessons learnt.

Figure 2 below shows how the code can be helpful at each stage of the process.

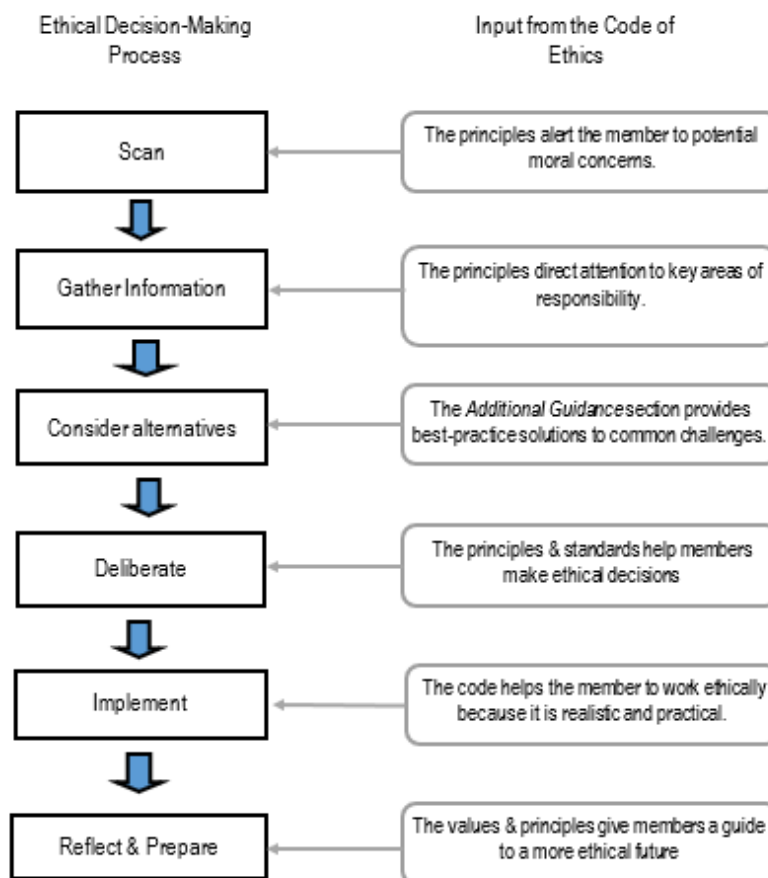


Figure 2: The way the code supports ethical decision-making

3.7 Acceptance by the occupation: how a code can result in higher standards

If your members are ethically motivated, then they are *already* treating their consumers well.

If they are not already committed to acting ethically, then how is a code supposed to change their behaviour?

The answer is acceptance by the occupation that this code declares who they are and what they aspire to be.

While no code can guarantee compliance, the more that members accept the code as realistic about the ethical challenges of their work, the more they are likely to endorse its principles and obey its rules.



The code can encourage 'buy in' if it is a useful and realistic source of moral guidance at work. Unrealistic codes give members an easy excuse to ignore or reject them.

Here are five everyday moral reasons a person might say they did something:

1. *It's the right thing to do.*
2. *I agreed to do it.*
3. *We talked it through and collectively decided to do it this way.*
4. *It effectively achieves good outcomes.*
5. *It's the way we do things around here.*

Codes can harness each of these five reasons for your members to act ethically.

1. Ethical content— 'It's right'

'Ethical content' refers to the substance of the code's principles and standards.

If the code provides common-sense ethical answers, or if the solutions it offers are obviously in the best interest of society, your members are more likely to accept the code and act in ways that it suggests.

2. Contractual fairness— 'I agreed'

Members may obey the code out of a sense of obligation.

The duties the code imposes may be accepted as a fair exchange for the status and trust that society places upon them, and the ways that it supports them. Or the member may have taken an oath to uphold the code.

3. Procedural fairness - 'We decided'

If all your members had a chance to contribute to the contents of the code, one way or another, and then voted on the final version, they are likely to accept it. The process validated the code.

4. Workability - 'It works'

A workable code is understandable, stable, and effective. Its rules can be followed and relied upon, without requiring unrealistic knowledge, time, or resources.

5. Ownership - 'It's ours'

When a code builds upon a group's identity and traditions, it will be more acceptable to them and adopted more readily than if it feels alien to their occupation's traditions. If you are refreshing a code: *Don't throw the baby out with the bathwater* may be a guiding principle here.

3.8 A code won't fix everything; it isn't a silver bullet

It is important to have realistic expectations about what a code can achieve.

Some institutions, cultures and organisations provide immense temptations, pressures, and opportunities for people to do the wrong thing. Society needs many tools to ensure satisfactory standards of behaviour, and a code of ethics with supporting systems specific to your occupation, is probably only one of them.



4. Other code types: need for caution

Different types of official documents can be called 'codes of ethics'. If your occupation has an existing code, it is important to find out if it is:

1. A code of ethics oriented towards improving professional practitioner standards and consumer protection.
2. An oath, declaration, or mission statement.
3. An organisation protecting code of ethics.
4. An occupation protecting code of ethics.
5. A code of conduct or practice (or ethical rules legislated in law).

- *Code of ethics*

As discussed above, a code of ethics has three key qualities:

- ✓ It lays down standards that respond to *all* professional practice standards and consumer protection issues arising in the occupation (this is your list from: Recognising professional practitioner and consumer protection issues in your occupation) AND
- ✓ Its content includes the major professional standards that protect consumers (refer to 4.2 Part Two, Code content: values, principles and standards) AND
- ✓ It has aspirational moral principles and high standards to guide ethical decision-making, rather than minimum standard rules.

- *Oath, declaration, or mission statement*

These brief declarations set down your organisation or occupation's social purpose, the goods that it aims to achieve, and the values to which it aspires.

These are useful resources when you are developing a code of ethics, but because they do not include principles and standards, they cannot give clear ethical guidance to your members nor reliable protections to consumers.

- *Organisation-protecting codes of ethics*

This kind of code would protect your organisation from legal, financial, and other sources of risks. It would typically have been written by your lawyers, and it would list, in detail, the obligations of your members or employees.

There is a legitimate place for organisation-protecting codes of ethics, but because their priority is to protect the organisation, they rarely offer genuine improvements for professional practitioner standards and protections for consumers.

- *Occupation-protecting codes of ethics*

Many occupations have codes of ethics - sometimes laid down by statute - whose core purpose is not consumer protection, but is instead to protect legally, the occupation and its members.

These codes provide important legal clarity to members by describing what they have to do to avoid legal sanction or civil liability, but are limited in the following areas:

- *The form it takes*



- An occupation-protecting code is typically a disciplinary code of conduct laying down technical rules that provide a minimum baseline of required conduct.

Above this baseline, everything is permitted.

Its provisions can be narrowly interpreted, and members sometimes exploit its loopholes.

- *The content it includes*

- An occupation-protecting code usually only offers weak protections to consumers, and ones that sharp operators find it easy to work around.
- The code may not address key areas of professional standards and consumer protection, such as over-servicing or whistleblowing.
- The code might not lay down professional practitioner and consumer protection standards that are easy to monitor.

For example, rather than prohibiting conflicts of interest (which are comparatively simple to police), the code might only require that services are provided in the customer's 'best interests' (a more subjective standard, so harder to police).

- *The governance systems it uses*

- The code may have weak and inaccessible systems of consumer complaint, feedback, and review. When customers complain, the code can 'shield' the member because, contrary to external expectations, the service-provider did nothing defined as wrong.
- The code's education practices centre on members complying with minimum standards, rather than guiding best practice. Its communications processes do not ensure that members of the public understand their rights.
- The code's governance processes only punish breaches, rather than helping members resist wider institutional pressures (such as skewed remuneration) which might be driving their members to act unethically.

Your current code can provide a detailed account of the minimum legal standards. The new code of ethics will encourage additional, and higher, moral standards.

- *A code of conduct or practice and/or legislated ethical rules*

Sometimes, occupational associations will have an existing regulatory code of conduct or practice. This may be an occupation or organisation-protecting code. However, sometimes an existing code does not fall into either of these categories. For example, the code may be legislated for the purpose of consumer protection, but only through minimum standards rules and legal requirements.

In this case, it is recommended that you develop a code of ethics that is clearly oriented towards improving professional practitioner standards and consumer protection - extending beyond minimum legal standards. Despite this, your **existing code will be an important** document when you draft the new code (refer to 6.1 Part Two, Working with pre-existing legislated obligations and codes).



- *You need one coherent document*

Your occupation's **ethical duties may appear in different pieces of legislation**, without ever being explicitly drawn together in one coherent document (for example, in some parts of the legal profession).

In this case, it is important that you develop a new code because:

- The legislated duties usually will be minimum requirements, rather than inspiring ethical principles and guiding high standards.
- The duties might be read legalistically, with loopholes members can exploit.
- Legislation is slow, and its detailed rules can struggle to respond to new challenges that come with changes in society.
- It is hard for laypeople and consumers to find out their entitlements.

- **Fake codes of ethics**

Some organisations have fake codes of ethics.

These are documents produced for public relations purposes, that serve as smokescreens for exploitative, immoral, or illegal practices. Such documents often invoke glowing ethical standards, but they are not based in reality and outline no way of enforcing the ethical behaviour they pretend to embody.

Enron's glossy 64-page 'Code of Ethics', released only a couple of years before its collapse, is perhaps the most infamous example of this hypocritical type of code.

Occupations, and occupational associations, are less likely than corporations to have fake codes of ethics, but they should be aware that consumers and the public are suspicious of a code of ethics if it isn't supported by rigorous education and governance systems.

5. Does your code's existing content offer effective protection to consumers?

If you have a code of ethics, it is important to know if it needs to be revised.

You will probably need to revise your current code if:

- It was copied from another code, without it being adapted it to the local context.
- It is more than five years old.
- It is not widely used.
- It doesn't have a feedback or review process.
- It doesn't adequately state professional practitioner standards and consumer protections. You will know this if: some behaviour that is currently permitted is widely held to be self-serving; and if consumers **routinely** pursue their grievances through complaints lines, the occupational organisation, ombudsman, or legal avenues.
- It doesn't respond to *all* consumer protection issues in your occupation because it is missing several key ethical principles and standards.
 - To see more detailed information on what the typical content of a consumer protection code of ethics looks like, refer to 4.2 Part Two, Code content: values, principles and standards. If your existing code doesn't contain



most of these principles and standards, then we recommended you revise your code.

6. Next steps

Having looked at and considered the issues outlined above, the following Parts of this guidance will assist on your journey (located on the Councils' website under 'Research Library of Modern Professionalism'):

- Part Two: developing a code (if you don't already have a code of ethics oriented towards improving professional practitioner standards and consumer protection.
- Part Three: implementing a code (if the substance of your existing code is appropriate, but the systems supporting it need improving); and
- Part Four: revising a code (if your existing code needs improving).