PROFESSIONAL STANDARDS COUNCILS

Draft for discussion

Guidance Note

Association codes of Ethics: Part Three Implementing a code

For Schemes operating under Professional Standards Legislation

August 2021

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Revision History

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1.0	Reference Group (endorsed)	TBA	TBA	This is a new guidance
1.0	Professional Standards Councils	TBA	TBA	This is a new guidance

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 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. 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 Three of the Association Codes Guidance of the Professional Standards Councils. This Part, as set out below, focusses on implementing a code if the substance of your existing code is appropriate, but the systems supporting it need improving.

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

- Part One: important questions to consider before preparing a code of ethics oriented towards improving professional practitioner standards and consumer protection
- Part Two: developing a code (if you don't already have a code of ethics)
- Part Four: revising a code revision (if your existing code needs improving).

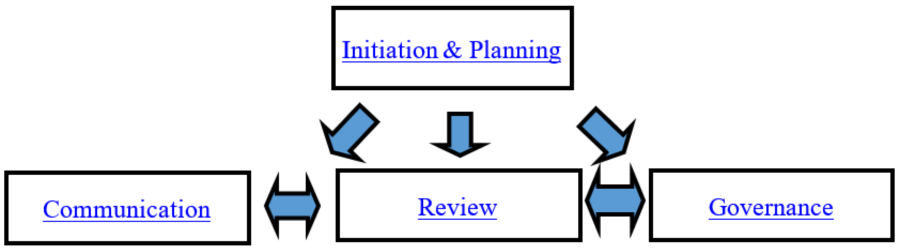
2. Code implementation process

The critical question is how to get to a complying code of ethics that is oriented towards improving professional practitioner standards and consumer protection.

The first steps involve checking and providing evidence based on the following Guidance Part sections:

- ✓ *Does your existing code need revision? (refer to 2.1 Part Four)*
- ✓ *Code Content: Values, Principles & Standards (refer to 4.2 Part Two)*

When you are sure that your current code of ethics meets these standards, then you can begin the process as set out below:



Code Implementation Process

3. Beginning and planning

In the first stage you will need to do two things.

1. **Decide formally,** as an association, that you will have a new implementation process.

2. **Select an ethics committee** (if you don't already have one). This group will supervise the process.

The committee will need to make decisions about the timing and the rollout of the new process.

Recommended practices

- ✓ Make sure the committee is **representative of the full range of members,** not just the full-time staff of the association. The volunteer members are critical to the decisions of the committee being accepted by the association as a whole.
- ✓ Make sure the committee has relatively easy access to **a lawyer who understands the standards and regulations** that are appropriate to your occupation. An ethicist can also be useful. These experts can be on the committee or be a Consultative Advisory Group.
- ✓ **Build stability** in the committee right from the beginning. It really helps you achieve your long-term reforms.
- ✓ Members must be **fully informed** about the timetable for change to ensure they understand and are involved in the process. This will help build acceptance of the process and help to avoid unrealistic expectations. Other stakeholders should also be kept informed.
- ✓ Strategic decision-making should ensure the **inclusion of all stakeholders** during the process, acknowledging that some groups may have specific obstacles to contributing (for example, time poor members, early-career members, those with little status or few networks within the occupation).

You can do the following stages in any order you like. You will probably do some simultaneously. Usually, people do the communication and education activities early on, and then the governance initiatives.

Once these practices are underway, you can begin to review them.

4. Education and communication

A code is irrelevant unless the members use it.

To do that they need to:

- know it exists
- know its basic principles
- find it helpful.

As you already have a functioning code of ethics your members are familiar with it, it is probably going to be harder to get your members as interested and involved with your new systems than they might have been if you were to start with a completely new code.

This means that it is important for your planning to focus on helping the members see the benefits to them of the new systems that support them through their code.

Recommended practices

1. **Consider having an 'ethics hotline' or 'helpline'. This is arguably the most important thing you can do to help your members with their ethical dilemmas.**

This will encourage

- **your members** (perhaps anonymously) to seek guidance on ethical matters. Ethics codes work best when people have access to advice from outside the normal chain of command.
- **your consumers** (customers, clients) to use your complaints processes. Consumers can play a vital role in up driving professional standards, but only if they are made aware of their rights under the code.

2. **Choose wisely how you communicate with your members.**

   Do not flood them with communications from you. The association and the new code are rarely your members' top priority – their clients are.

   Make it easy for them to read your message quickly and efficiently. Consider working with your marketing colleagues to work out what ways work best with your members.

   Traditional channels

   ✓ Emails, newsletters, internal memos

   ✓ Your website, bulletin boards and the intranet.

   ✓ Posters of the code's principles for the office walls.

   ✓ Articles about your new code in journals or e-zines your members often read.

   Newer ways

   ✓ Podcasts, YouTube clips, vlogs, blogs

   Systemic ways

   ✓ Integrating ethics education into all continuing professional development activities, including seminars in universities and other tertiary settings.

   ✓ Using formal ethics exams as one requirement for membership.

   ✓ Requiring senior members to be mentors on ethical as well as conventional professional matters.

   ✓ Having as public commitment to your code of ethics. For example, having new entrants take an oath at a public ceremony: requiring existing signing a similar affirmation.

   ✓ Using brochures, *You, and the Law!* or *How to Keep out of Trouble!*

   ✓ Working with major employers while they are developing their own ethical codes.

   ✓ Showing how the code's principles are embedded in the decisions made by senior management.

   ✓ Making sure all your members are aware of how their actions may be monitored and investigated.

   ✓ Making sure all your members know their rights and responsibilities under the code.

- ✓ Using case studies to help members and major employers see the consequences of poor ethical behaviour. Include success stories of high standards of ethics, not just tales of where the standards haven't been met.

5. Governance stage

To be effective, a code needs a governance process that embeds its principles in everyday practice. At minimum, it is important for you to have a way that responds to serious violations of your standards and rules.

Sanctions are serious and must always follow the rule of law. They can only be applied when the rules are

- clear
- consistent
- accessible
- prospective and
- when any allegation of a member breaking these rules is judged impartially.

You must ensure defendants are properly represented and have their cases heard by independent people.

Recommended practices

There is no one perfect way to build a governance system around a code of ethics. You can do it alone or with government regulators and employing organisations.

Possible initiatives include:

- Having a sliding scale of offences linked to a sliding scale of punishments.
- Setting up
    - an internal 'whistle-blower hotline' (perhaps as part of an ethics hotline), allowing people to report wrongdoing anonymously.
    - a complaints hotline, allowing consumers to report incidents they feel broke the ethical rules of your association.
- Providing guidance on methods for integrating the code of ethics into the reward system used by employers.
- Auditing the degree to which the occupation is living up to the code's values.
- Using awards and rewards to encourage exemplary ethical practice and innovation.

Tips

Not too lenient; not too tough.

Striking a balance between trusting your members to behave ethically and ensuring those who behave unethically are likely to be caught, is hard. No one has come up with a perfect way to get that balance right.

If you let too many people behave unethically and get away with it, the code will look like window dressing. If the code is unreasonably harsh, members will resist all of it and challenge it at every opportunity.

Usually, it is acceptable to monitor carefully

- members in their first year of service and
- members found guilty of a breach of the code of ethics.

Try to work with major employers by proving to them the benefits of providing a service which embodies high ethical principles.

Traps

1. **Avoid** the *single greatest threat* to code functioning, that is the possibility where '**the process is the punishment'.**

   The stress and uncertainty about the consequences added to an unclear or drawn-out disciplinary process can prove a traumatic experience, and one that may be out of all proportion for the alleged wrongdoing.

   It is important for your disciplinary processes to respect those accused of ethical breaches, most especially first-time offenders.

2. **Be careful to support members in difficult ethical situations**. For example, if a lawyer has duties to report evidence of clients' potentially dangerous criminal activity, then you must have systems already in place to manage this process. An example of support in that context would be a confidential meeting of the ethics committee which could give practical advice to the lawyer.

6. Feedback, measurement, and review stage

No ethical code is ever perfect, and changing circumstances mean that provisions and principles can become outmoded or counterproductive. You need to evaluate how the code is performing.

Recommended practices

- **By the end of the first year** after you implement the new code systems and processes, you need to review the code and its impact.

  That means both the content in the code and how it is affecting the practices of your members. To help with this, invite your members and other stakeholders to make submissions on any aspect of the new code.

  Usually, they are concerned about:

  - tensions between the principles.
  - ambiguities in interpretation.
  - areas where they impose unrealistic duties.
  - unintended consequences.

- **You can prevent some issues with implementation.** You could include worked examples of best practice and show clearly how to interpret the principles in an *Additional Guidance* section to your code.

If you haven't got such a section already, it is possible for you to add one after the evaluation.

- Record all authoritative rulings on the correct interpretation of the code's standards. Tell your members about these decisions.
- Run workshops and conference streams on the code's operation, and how it works in new contexts or alongside new technologies, like social media.
- Ask those who teach the code to make submissions on areas of the code they struggle to teach, or that their students find hard to understand.
- Keep records of all the complaints made through complaints hotlines and other processes (such as mediation proceedings).

Don't just keep records of cases where there were infringements.

Complaints that did not lead to infringements can help your members to learn about consumer expectations.

Where there are a lot of complaints without infringements maybe you need to educate the public or perhaps realign the code to meet your customers' expectations.

- Monitor the media.
- Manage the data you keep appropriately and legally.

6.1 Measurement

You are required by the Professional Standards Councils to regularly measure your code's efficacy. You are also required to tell the Councils of the results of these measurements.

It can be hard to measure the code's impact. For example, increased complaints might mean:

- there is more wrongdoing by your members (a bad thing).

  or

- it is easier for people to complain (a good thing).

Some ways to get good quantitative data on your code of ethics.

- You might be able to get access to the results from tests of people's knowledge of the content of the code (for example, at continuing professional development activities).
- You can survey the views or knowledge of members during other professional development activities – a more indirect method which could be valuable over time.
- You can count the popularity of activities focussed on the code.
- You can record the amount of traffic to the code's website. You may be able to distinguish members' visits from other visitors to the site.
- You will get metrics on the advice hotline and other feedback mechanisms.
- You could run consumer satisfaction surveys.

- You could structure a survey to show the relationship between different groups of members and different elements of the code.

Tips

The code should be considered a 'living document'. As the world changes, the ethical challenges to your members change; so does the impact of new legislation, court decisions and consumer expectations. All these factors show how important it is for the code to adapt if it is to remain relevant and useful to your members.

You may need to do a major review every few years.

Between major reviews, strengthen the code.

- Add extra recommended 'best practices.'
- Add up to date interpretation of complex rules.
- Welcome ideas from new members.

Traps

You must balance the big picture with the detail.

The code itself is usually best to be as concise as workable.

The supporting information can be arranged so that readers are not so flooded with detail. Your code's website can easily be designed to balance these competing needs.

Your members are busy. They also may have to be on top of multiple other codes and guides, laws, and contracts. Respect that. Your code of ethics is almost certainly not the centre of their working lives. **Make it easy for them to find and use your help.**

Your code must be:

- easy to find
- easy to use and
- comply with all appropriate legal and ethical requirements of your members.

7. Acceptance check-in

Here are 10 questions your members may ask of their code of ethics. Would you get the answers you want?

1. *Is it the right thing to do?*
2. *Is it fair?*
3. *Will it work?*?
4. *Is it coherent*?
5. *Did we all have a role in developing it?*?
6. *Did we vote for it*?
7. *Did I personally commit to it*?
8. *Is it realistic about the way we work now and for the foreseeable future?*
9. *Does the code respect us*?

10. *Does the code come from a trusted source?*

Further information about what these questions are about

Do the code's obligations accord with common sense moral principles like honesty and benevolence?

1. *Is it the right thing to do?* Do the code's obligations match common sense moral principles like honesty and benevolence?
2. *Is it fair?* Are members appropriately supported and recompensed for shouldering challenging obligations?
3. *Does it work?* Is it possible to obey the obligations and still run a productive, sustainable, and profitable enterprise?
4. *Is it coherent*? Are the obligations contradictory, impossibly vague or written in impenetrable legal terminology? Does the interpretation of the obligations change so regularly that it's impossible to plan ahead?
5. *Did we all have a role in developing it?* Were all members able to provide genuine input into the code's content? Or was it just decreed from above?
6. *Did we vote for it*? Did members or their representatives have the opportunity to democratically endorse the code?
7. *Did I personally commit to it*? Was there a ceremony where each service provider undertook to live up to the code, or was it incorporated into a (employment or service) contract they signed?
8. *Does it represent our local occupation and what we aspire to be*? Do the code's standards and principles reflect how local members practice and what they value?
9. *Does the code respect us as intelligent decision*-makers? Do the code's obligations try to micro-manage every move, or trust that members can make ethical decisions guided by the code's principles?
10. *Does the code come from a trusted source?* Do members trust the integrity, impartiality and expertise of the code drafters and their leadership?

8. Pressures that can weaken your code

There will be ongoing challenges to protecting your consumers, even after your code and its supporting systems have been written, reviewed, and adopted.

It is never finished. You will have to monitor and refresh it regularly.

Even if the code you wrote and the processes you used were perfect, there are forces at work which may weaken it.

The list below is to alert you to them and reassure you that you are not the only association that has faced these issues.

- Every occupation includes corrupt and exploitative people, and those who would happily cut corners to make their jobs easier or more profitable. These people benefit from pushing back against the code's requirements.

- Many occupations face pressure from other sources - such as employers, licensees, or colleagues from other occupations - to weaken the code's consumer protections.
- It is natural for people to resist accountability systems. The feeling of being 'watched' can make people feel like they are not trusted.
- It will take members time they may feel they do not have, to prove they are complying with the obligations imposed by the code. Make this as easy as sensible for them.
- It can feel like a waste of time to invest resources and energy into the code when its obligations are pretty universally accepted by the membership.
- New market pressures or opportunities and technological innovation all may make the code feel old fashioned.
- New initiatives will usually attract funding. Once the code is established it may be difficult for it to compete for the continuing professional development dollar.

For all these reasons, **the code requires constant monitoring and resourcing.**

9. 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 One: important questions to consider before preparing or revising a code oriented towards improving professional practitioner standards and consumer protection
- Part Two: developing a code (if you don't already have a code of ethics)
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