

Guidance

Disciplinary system

Using this guidance

Occupational associations need effective strategies to manage the risk that their members could harm consumers while providing services. Your disciplinary system is part of your professional risk management strategies, and should guide your decision-making on what controls and mitigation activities are needed to reduce this risk.

This document details the requirements for this submodule and the information you need to provide in the 2 related templates.

When completing this submodule, we recommend that you also refer to:

- the materials for [Module 4 – Professional risk management strategies](#)
- our [Policy Statement on Complaints and Discipline Systems](#) (October 2020).

If your association cannot complete the submodule, please contact us. Part of our role is to advise, help and encourage associations with their professional standards and member regulation (see section 43 of the Professional Standards Act 1994 (NSW) for example).

Understanding the requirements for this submodule

System functions and outcomes

The aims of this submodule are to:

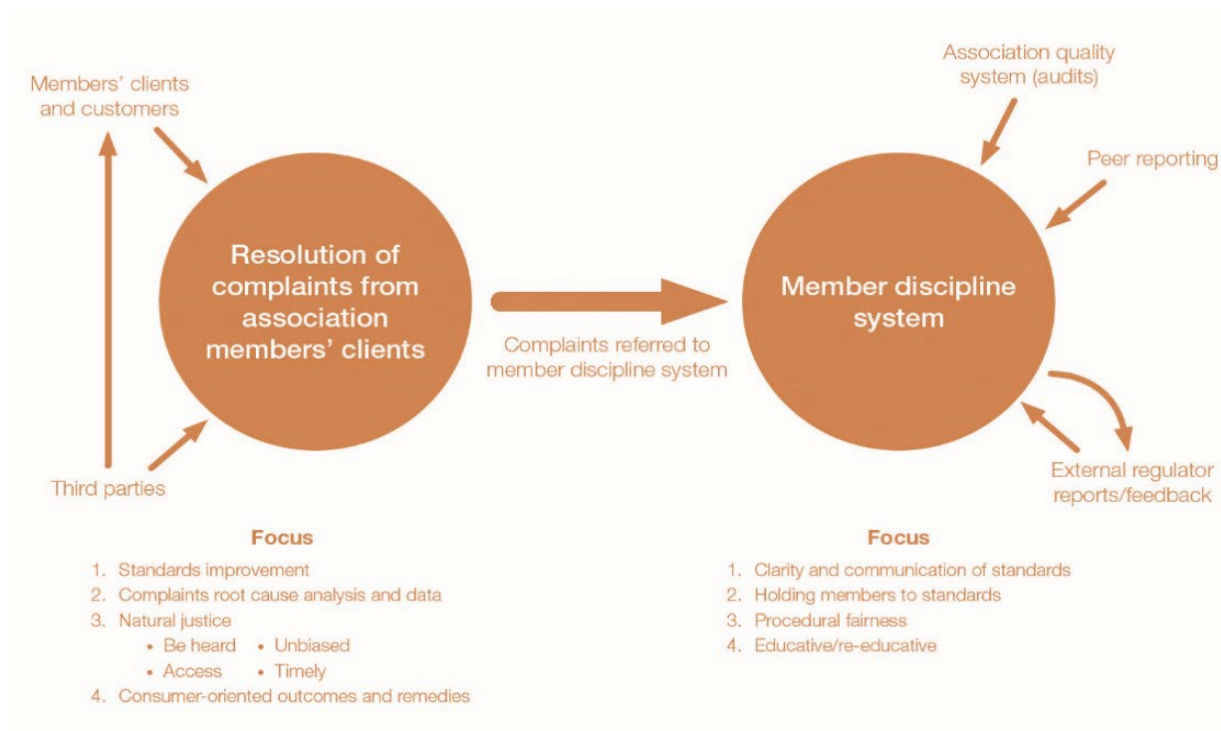
- encourage and support efficient and effective disciplinary systems
- improve association governance of disciplinary systems
- ensure disciplinary systems are integrated with professional risk management strategies
- ensure disciplinary systems provide effective information to the association's professional risk management systems about changing community expectations and emerging risks
- improve professional standards by helping associations and their members identify the need for changes in standards and/or in practice to mitigate risk and reduce consumer harm
- encourage associations to develop measurable, improved consumer protection outcomes
- raise awareness of significant issues facing schemes, associations and members
- promote good practices to effectively manage risks associated with disciplinary systems
- promote good practices to effectively mitigate consumer harm.

Your association must separately describe its customer complaints system, in line with [4.2 – Consumer complaints systems](#). This includes what aspects of your processes relate to a consumer's ability to make a complaint and, if a complaint leads to a disciplinary sanction:

- what sanctions are available
- how they are applied
- how the complainant is informed of this.



Disciplinary and consumer complaints systems are interlinked, as the following diagram shows:



You will provide more information about your consumer complaints system in [Submodule 4.2](#).

Our assessment of efficacy

We assess the efficacy of your disciplinary systems to help us consider the likely overall effectiveness of your professional risk management strategies and how you implement them.

Our assessment focuses on 3 questions:

1. Does the system address and reduce consumer harm?
2. Does the system improve professional standards?
3. Is the system integrated enough with other required elements of your professional risk management strategies to reasonably assure consumer protection and improved professional standards?

Legislative obligations

We ask for this information in line with the requirements of professional standards legislation. In the Professional Standards Act 1994 (NSW) (the Act), for example:

- sections 10 and 36 require associations to detail their professional risk management strategies for members and how they will be implemented
- section 37 requires associations to provide us with information on their risk management strategies if we request it.

This submodule is designed to help achieve the aims of the Act, which are (our emphasis):

- a) to enable the creation of Schemes to limit the civil liability of professionals and others,
- b) **to facilitate the improvement of occupational standards** of professionals and others,
- c) **to protect the consumers of the services provided by professionals** and others,
- d) to constitute the Professional Standards Council to supervise the preparation and application of Schemes and **to assist in the improvement of occupational standards and protection of consumers.**



The legislation does not require associations to have their own disciplinary systems as part of their risk management strategies. However, an effective discipline system is critically important. It is our policy that each association must have, or have access to, a disciplinary system.

Completing the questions: Template 1

This section explains the information we ask for in the Disciplinary system [Template 1](#), and how we use it to assess your disciplinary system.

This information should be freestanding. You can provide it to us with other modules or on its own. So when completing this module, please:

- add a table of contents for the documents, if needed
- avoid cross-referencing other modules you have prepared.

Structure

Question 1 asks about your association's current or proposed disciplinary system. We ask for a range of documents to support your response. These documents could include your association's policy or procedural documents about member discipline. They must show how your association will apply the system to protect consumers and continuously improve.

The documents we ask for should establish an evidentiary framework that we can use to assess the scale, depth, and consistent application of the disciplinary system. This will help us:

- understand the system and processes
- identify any gaps in it
- recommend appropriate actions to address those gaps.

Question 2 asks what the disciplinary system will be based on – a statutory system and regulator or your own system. See the guidance later in this document around template 2 Model Code comparison for more about a statutory system.

Your answer to this question will help us understand the legal context that your association and its members operate in. It also helps us ensure that your association will have an effective regulatory relationship with us, alongside the provisions required by other statutes.

Implementation

A clear implementation plan and supporting processes are vital to the effectiveness of your disciplinary system.

Question 3 asks you to clearly identify and explain the implementation approach, detailing the resources you will use and the implementation timetable.

Other statutory or regulatory requirements

Question 4 further expands on any other statutory or regulatory requirements that apply to your members. If there are none, you can skip this section.



Governance

The next section of the template covers how your association will govern and improve the disciplinary system to ensure it protects consumers. If you answered any of these questions earlier, you do not need to repeat the answers here. These questions are in line with Module 4's requirements.

Questions 5 to 7 will help your association demonstrate the scale and quality of the governance and improvement systems that underpin your disciplinary system. You should aim to show the dynamics of what makes your discipline system operate effectively.

New approaches to occupational discipline focus on improving members' standards, competency and conduct through education and other direct interventions. These positive modes of engagement with members support continuous improvement of professional standards. Punitive or excluding sanctions are a last resort.

Taking a principles-based approach, an effective and efficient consumer complaint system can best be described as:

- **data driven** – collecting, analysing, synthesising and reporting on disciplinary data to deliver critical benefits, such as identifying emerging trends to inform revisions to your strategies
- **risk integrated** – helping you and your members to identify and manage risks in the practice of the occupation
- **consumer responsive** – ensuring complainants are not adversely affected by making a complaint, and emphasising swift resolution and communication
- **root-cause responsive** – helping you and your members to understand, identify and remediate the root causes of poor practice and consumer harm
- **strategic** – informing strategies you may adopt to improve member conformance with professional standards, such as recommended changes in practice or professional standards to prevent consumer harm
- **educative** – informing changes to member practice and behaviour to reduce professional risk
- **adequately resourced** – providing the necessary association resources to identify and progress improvements.

A disciplinary system must also be transparent and easy to understand. Your disciplinary system should be published on your website, for example. This will help to address community expectations and keep your association accountable for the standards it sets – such as handling discipline actions fairly, promptly and without bias.

Monitoring and improvements

Questions 8 to 11 cover how your association will monitor and improve your disciplinary system. This includes ongoing activities as well as dedicated reviews.

Your association should use practical measures to ensure your system is effective. These could include:

- collecting and publishing data about conformance (compliance) activities
- holding members to account for non-conformance, including correcting their actions
- a proportionate focus on punishment or expulsion.

Detail these, including how each measure will show the effectiveness of the disciplinary system.

The information on your complaints system's continuous improvement is also linked to our annual reporting process, described in [Module 6 – Annual Professional Standards Report](#).



Completing the questions: Template 2

This section explains the Model Code comparison in [Template 2](#).

Associations can adopt the Occupational Associations (Complaints and Discipline) Code (the Model Code). This is included in professional standards legislation, such as in Schedule 1 of the Professional Standards Act 1994 (NSW). Section 38 of that Act allows organisations to adopt it.

Your association can change the Model Code, add to it or omit parts. Section 38(2) describes what can be changed. If you make any changes, we must approve them. Complete Template 2 to compare your association's code to the Model Code.

Related modules

We will assess your association's other professional risk management processes in the following modules or submodules:

- [1.3 – Enterprise risk management system](#)
- [2.2 – Insurance standards](#)
- [2.4 – Scheme compliance plan](#)
- [4.1 – Codes of ethics and practice](#)
- [4.2 – Consumer complaints system](#)
- [6 – Annual Professional Standards Report](#).

Copyright and document control

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Approved by	Chief Executive Officer, Professional Standards Councils

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1.0	PSC	18 June 2021	1 July 2021	This is new guidance

Disclaimer

This guidance applies only to an occupational association preparing a scheme for approval under professional standards legislation. It is not 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. Go to www.legislation.nsw.gov.au to access NSW legislation.



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