

GUIDANCE NOTE 1 CODE OF CONDUCT GUIDANCE NOTE

APPLICATION

All members

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CLASSIFICATION

This is a Guidance Note issued to illustrate the application of the principles underlying the Code of Conduct to particular situations.

A. INTRODUCTION

- A.1 This Guidance Note is intended to assist members in applying the Code and should not be read in any manner which would sanction a departure from the principles of the Code.
- A.2 The Code itself is expressed in formal language which is intended to be relied on by members, Professional Guidance Committees, disciplinary tribunals and, if necessary, parties other than the Institute. This Guidance Note does not have the same force. In serving its function of helping to interpret the Code, it cannot be regarded as any more than a guide, nor can it cover every practical situation which is likely to occur. Thus many instances will continue to arise where reference has to be made to the President for specific interpretation of a section of the Code.
- A.3 The notes following are arranged under two main headings:

- B. Notes relating to the general application of the Code and to matters which are not contained in the Code but on which guidance may be needed.
- C. Notes relating to specific Sections of the Code, numbered to correspond with the Sections.

B. GENERAL GUIDANCE NOTES

- B.1 The principal purpose of the Code is, in the public interest, to ensure the proper provision of actuarial advice. This subject is covered in Sections 11 to 26 which apply only to Fellows or Accredited Members. The remaining Sections however apply to all members, and thus the same standards of conduct are expected of Students and Associates.
- B.2 Section 5 places a duty on experienced actuaries to guide the less experienced and Section 7 places a duty on all those in doubt to seek advice from an experienced actuary; Section 10 places a duty on all members to bring any apparent breach to the attention of the President. Thus all actuaries have positive functions in ensuring the maintenance of professional standards by the profession as a whole.
- B.3 The emphasis in the Code is on the quality of the advice given by an actuary and on the ability to trace the responsibility for advice to a particular actuary. The Code applies equally to all members, whether acting as directors, partners, sole practitioners, employees, or in any other capacity.
- B.4 The word "actuary" denotes an individual Fellow or Accredited Member. The Institute would object to a firm describing itself as "an actuary". Where possible an actuary should ensure that any document that states that actuarial advice is required does so in a form that describes the actuary as a natural person and not an organisation.
- B.5 While the Code relates to the activities of individual members, each member is expected to ensure that standards are indeed observed, where the Code requires them, by firms which make actuarial advice available to the public. The use of the term

"actuarial advice" in promotional or informative literature should as far as possible be controlled by members. Accordingly a firm may state that it offers "actuarial advice" (subject in particular, to Sections 11 to 14 of the Code) as one of its services if its Senior Actuary has made a statement in writing to the Chief Executive Officer of the Institute certifying that the Senior Actuary accepts responsibility on a continuing basis for the actuarial standards of the firm. The Institute would object to a firm claiming to offer "actuarial advice":

- (a) whose Senior Actuary had not made such a statement, or
 - (b) which did not employ an actuary to carry out that work, or
 - (c) which merely passed on actuarial advice received from a consulting actuary.
- B.6 An actuary must not be party to any claims or inferences by a firm (other than a firm approved under Section 30) to the effect that it is offering, or is able to offer, independent actuarial advice.
- B.7 For the purposes of the Code and the Guidance Note the senior operating actuary will normally be the Senior Actuary. In organisations where such a position is not readily identified it will be necessary for one actuary to be designated Senior Actuary for the purposes of the Code.
- B.8 The Code applies to all members employed or practising in Australia. The Code also applies where a member is employed or is practising outside Australia unless replaced, with the agreement of both the Council of the Institute of Actuaries of Australia and the professional body, if any, of the country in which the member resides, by guidance issued in that country or by the Code of a third country.
- B.9 A client has the right to choose or to change a professional adviser, or to take a second opinion, or to retain separate advisers on different matters. In the case of changing advisers, the purpose of a new appointment may conflict with the

interests of parties, other than the client, who rely on the advice of the incumbent actuary, or there may be specific professional matters familiar to the existing adviser that should be considered before any action is taken under the new appointment.

The actuary should exercise judgement as to whether it is necessary to speak to the previous actuary. If it is considered necessary, the client's agreement must first be obtained, and, if the client refuses permission, the actuary should determine whether there are any good reasons why permission was refused and whether in those circumstances the new appointment should be accepted. The purpose of this action is not to protect the incumbent actuary's position but to ascertain whether there are any professional reasons why the new appointment should be terminated or any particular considerations should be borne in mind.

- B.10 An actuary who is advising a client on the same matter as a previous actuary has a duty to become acquainted with the previous advice, and, where the second actuary's advice differs significantly from the previous actuary's advice, to explain to the client the reasons for the difference.

C. SPECIFIC GUIDANCE NOTES

In respect of Section 4

- (1) The Senior Actuary in an organisation is the person to whom the Institute will look to ensure that:
 - (a) all members in the organisation are aware of their responsibilities under the Code,
 - (b) guidance exists within the organisation for the provision of actuarial advice and actuarial services in accordance with the Code, and
 - (c) the organisation is aware of the requirements that all members in the organisation must abide by the provisions of the Code and that the organisation itself must avoid taking action which might prejudice the position of those members in relation to the Code.

In respect of Section 6

- (1) No Code of Professional Conduct can be exhaustive in all circumstances. This Section refers to the Institute's reliance on members' consciences in applying the principles and in this sense it is important that members conform to the spirit of the Code.
- (2) A general description of Professional Standards, Guidance Notes, and Mandatory Guidance Notes is contained in the Institute's standards handbook.

In respect of Section 9

- (1) It is not the intention of this Section to prevent criticism to a client or within the profession by a member of another member's work where this is properly reasoned and justifiable.

In respect of Section 11

- (1) A member other than a Fellow or Accredited Member cannot give actuarial advice or be represented as an actuary.
- (2) Actuarial advice cannot be defined precisely for the purposes of the Code. Some advice given by actuaries is based on their experience or knowledge as actuaries, or on knowledge obtained while undergoing actuarial training, but could nonetheless be given by persons who are not actuaries. Where such advice is included in a report prepared by an actuary, it is "actuarial advice" for the purposes of the Code. Advice on a subject which is not commonly understood to be within an actuary's normal field of practice is not, when given in isolation, regarded as "actuarial advice". However, if such advice is included in a report which otherwise constitutes actuarial advice, the report as a whole must be regarded as constituting actuarial advice. Members are subject to the sections of the Code other than those dealing with actuarial advice whenever they give advice or otherwise deal with the public.

In respect of Section 12

- (1) It is important for an employed actuary and the employing organisation to appreciate that the weight of the actuary's professional responsibility is considerably increased by the application of this Section.

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- (2) In order that this Section can be effective, each report or letter conveying actuarial advice must clearly indicate the name of the actuary (or actuaries) responsible for the advice. It is not sufficient to show only the name of the organisation in which the actuary is a partner or employee.

In respect of Section 13

- (1) Disclosure of the capacity in which an actuary is acting requires that an actuary acting in the capacity of an employee must state the name of the employer and an actuary acting as a partner in a partnership or director of a body corporate must state the name of the partnership or body corporate.

In respect of Section 14

- (1) Any personal bias must not influence advice given.
- (2) Actuarial advice is personal and an actuary must put forward advice which is honestly believed to be best for the actuary's client. Where however the actuary's views differ from those held by the majority of those actuaries who specialise in the practice area in question, the actuary must make this clear.
- (3) The ability to provide advice which is independent is fundamental to the public's regard for any profession. It follows that for an actuary in a particular situation to describe the advice offered as independent the actuary must be free, and must be seen to be free, of any influence or constraint which might affect the advice. Influences which preclude independence would be those which furthered the interests of any other person, or other occupation or business in which the actuary or one of the actuary's partners or fellow directors, or employer, had an interest. For employed actuaries, such interests extend to any person, corporate or otherwise, associated with or substantially interested in the actuary's employer; in addition constraints might be imposed by directions from the employer. An employed actuary must consider carefully the extent to which advice offered can be properly claimed as independent or solely in the client's interests.
- (4) It is expected of an Appointed Actuary employed by a life insurance company, and a Superannuation Actuary advising his or her employer's superannuation fund, that, notwithstanding the fact he or

she is an employee, he or she will advise the company impartially and objectively and ensure, so far as is within the authority given to the actuary, that the business or fund is operated on sound financial lines.

- (5) It is perfectly proper for an actuary to provide advice as to value or other matters on behalf of a client in a situation of advocacy (e.g. in litigation or commercial bargaining). Assumptions should not, in general, be taken to the limit of an acceptable range but if, in such a situation, the actuary's advice as to value is at one end of the acceptable range it must be made clear the other values may be justified from other perspectives. In litigation the actuary will usually be called upon to give evidence as an expert witness and, in doing this, must present an unbiased view unaffected by consideration for which party the actuary appears.

In respect of Section 15

- (1) It is recommended that wherever possible advice be addressed and forwarded direct to the actuary's employer or client. In cases where this is not practicable, the actuary should appreciate that a third party with no actuarial training may fail to understand the finer points of the advice and may pass it on to the ultimate client in a misleading manner; the actuary should therefore take all reasonable steps to ensure that the report will be forwarded to the client without modification.

In respect of Section 16

- (1) The requirement for confidentiality means that an actuary must not disclose the client's affairs without authority except when properly required to do so under statutory or judicial authority.

In respect of Section 18

- (1) In determining whether the actuary has sufficient practical experience in relation to a particular problem, the actuary should bear in mind that as a matter of law his or her duty of care extends to all persons or

organisations who rely on the advice given. Even if the necessary guidance is obtained, the actuary remains responsible for the advice.

- (2) The Institute strongly recommends that adequate professional indemnity insurance be in place at all times.

In respect of Section 20

- (1) It is not possible to set out all the instances in which a conflict of interest might arise. Examples include:
- (a) two of an actuary's clients or clients of the actuary's firm involved in a particular matter,
 - (b) advising two clients who are in competition with each other,
 - (c) an approach to an actuary by a trade union whose members form a significant part of the workforce of an employer already being advised by the same actuary,
 - (d) for an employed actuary, a conflict between the interests of the employer and the client,
 - (e) an actuary to a superannuation fund of which the actuary is also a trustee or of whose Board the actuary is a member,
 - (f) an actuary advising both the trustee and the employer in relation to a superannuation fund, and
 - (g) separate actuaries advising the trustee and employer respectively in relation to the same superannuation fund.

Much depends on the nature of the advice and judgement of the actuary as to whether there could be a conflict; if in any doubt the actuary must discuss the problem with the parties concerned. The actuary must make sure that all parties know in which capacity the actuary is acting.

In respect of Section 22

- (1) Direct or indirect compensation comprises remuneration (including any commission or introductory fee) and any other direct or indirect benefits to an actuary or the actuary's organisation. It is highly desirable for fees to be reduced by any commission received so that the client obtains the benefit of the terms available. It is also important

that the client is aware of any financial links between the actuary and the organisation or service recommended, particularly where the actuary's firm has a subsidiary or associated company providing the relevant services.

In respect of Section 23

- (1) Each actuary must ensure that sufficient detail is available in the relevant working papers which would enable another actuary to determine whether or not the standard was followed. Actuaries are strongly advised to prepare a summary document which readily shows how the actuary complied with the standard where the standard is a detailed one or one which involves a substantial element of professional judgement.
- (2) All actuarial reports and advice must be expressed clearly and should be intelligible to the persons to whom they are addressed. If technical terms or symbols are used, they should be clearly defined.
- (3) All actuarial reports must include an introduction containing a statement describing its purpose and any terms of reference or instructions agreed with the client.
- (4) An actuary often provides alternative figures for advice, such as contribution rates for a defined benefit superannuation fund, based on alternative assumptions, before proceeding to a specific recommendation. Whenever this is done particular care must be exercised by an actuary whose firm is providing or seeking to provide ancillary services either directly or through a related firm, to ensure that the recipient of the advice cannot assume that figures based on less conservative assumptions are indicative of the firm's competitive position in relation to the other services being offered.

In respect of Section 28

- (1) The purpose of this Section is to allow members and their firms to promote and advertise actuarial services, but to do so in a manner which does not detract from the standing of the profession. A member must be able to substantiate in an objective manner the content of any publicity for professional services including publicity by others on the member's behalf.

In respect of Section 29

- (1) A title bestowed by the Institute or a description of responsibilities within the Institute must not be used in promotional material in a way which indicates that the member concerned has particular or specific expertise, or to imply that the member is acting on behalf of the Institute where this is not the case. The wording used in such promotional material should be unemotional and should not be a highlighted part of the material.
- (2) No exception is likely to be taken to a member referring, in a curriculum vitae or public announcement of appointment to a particular post, to an Institute title or Institute responsibilities, so long as the principles in this Section are followed.

In respect of Section 30

- (1) This Section serves only to prescribe which firms can call themselves "Consulting Actuaries" or "Actuaries". It does not prevent actuaries from providing actuarial advice as members of firms, whether corporate bodies, partnerships, or otherwise, whose members comprise actuaries and other members of the actuarial profession and/or members of other professions or callings. However, where mixed membership is involved, extreme care is necessary to ensure that actuarial advice is not provided by, or not seen to be provided by, members of the firm who are not actuaries as defined in Section 5.
- (2) A firm whose Senior Actuary has made the statement described in B.5 and also a further statement (supported in the following manner) may expect that Council will approve the firm describing itself in such terms as "Consulting Actuaries" or "Actuaries". The further statement must contain a certificate from the Senior Actuary:
 - (a) that the Australian operation of the firm acts in accordance with the principles set out in the Institute's Code of Professional Conduct,
 - (b) that the ownership of the Australian operation is such that no conflict is expected to occur between (a) and the objectives of the owners of the Australian operation, and

- (c) that the Australian operation is effectively under the control of Fellows and Accredited Members who are working for it on a full time or close to full time basis.

As an illustration of the meaning of 'effectively under the control...', an Australian operation would be deemed to be effectively under the control of actuaries who are working for it on a full time basis if:

- (i) there is a "management group" such as a Board of Directors or an Executive Committee, which effectively controls the activities of the Australian operation, and
- (ii) if the number of members of the "management group" is three or more, more than 50% of those members are Fellows or Accredited Members, or if the number of such members is less than three, all of those members are Fellows or Accredited Members, and
- (iii) the Senior Actuary is a member of the "management group".

The Senior Actuary's statement under this heading should be supported by statements from the other actuarial members of the "management group" collectively or individually, indicating that they agree with the terms of the Senior Actuary's statement.

END OF GUIDANCE NOTE 1