



**Actuaries
Institute**

Code of Professional Conduct Review 2017

Discussion with Members
March/April 2017

Code of Professional Conduct Review Taskforce
March 2017



Agenda

- Brief background
- The Code and the Disciplinary Scheme
- Proposed changes – TF consensus
- Feedback sought – no TF consensus
- General discussion

Background

- Current Code released 2009
 - first review of original (2006) Code
- Taskforce established 2016
- Feedback sought from members and committees
- 2009 Code working reasonably well but some change warranted
- General TF consensus but some issues

The Disciplinary Scheme

Actionable conduct defined as:

*... conduct (whether by act or omission)
constituting:*

- (i) professional misconduct; or*
- (ii) unsatisfactory professional conduct; or*
- (iii) conduct likely to bring discredit upon the
Institute or the profession of Actuary*

Code could underpin this but doesn't

TF Consensus Reached

1. Purpose of the Code
2. Definition of Professional Service
3. Definition of Professional Matters

1. Purpose

This Code of Professional Conduct sets out the minimum standards of professional conduct to be observed by Members of the Institute of Actuaries of Australia. [1.4]

Proposed to reflect the Constitution by replacing with:

The purpose of this Code is to set out the minimum standards of professional conduct to be observed by members for the protection of the public. In doing so, the Code maintains and promotes the good standing and reputation of the profession of actuary in the interest of the public and Members.

Q1 – Do you agree with the proposed change to the purpose of the Code?

2. Professional Service

... a service provided by a Member in a professional capacity, including Prescribed Actuarial Advice. A Professional Service includes such a service provided on a pro bono basis. [3 - Definitions]

To be replaced by:

... a service provided by a Member, for payment or on a pro-bono basis, which a Principal reasonably considers to be in pursuit of the profession of actuary.

Q2 – Do you agree with the proposed change to the definition of Professional Service?

3. Professional Matters

There is room for honest differences of opinion between Members on many professional matters.
[4.2.3]

“professional matters” is undefined, so propose:
There is room for honest differences of opinion between Members on many matters involving the exercise of professional judgement.

Q3 – Do you agree with the proposed change to the definition of professional matters?

TF Consensus Not Reached

4. Consideration of Impartiality
5. Profession's stance when principals (e.g. government agencies) seek to change the format of material
6. Should the Code be changed to a shorter, simpler principles document?
7. Definition of (Prescribed) Actuarial Advice

4. Impartiality

Code requires advice to be impartial

- a) except when circumstances dictate partiality; **but**
- b) Prescribed Actuarial Advice **must** be impartial.

*Maybe **any** partiality could be bad for the Profession?*

Q4.1 – Should the Code require all advice to be provided impartially?

Q4.2 – Should the Code require all Prescribed Actuarial Advice to be provided impartially?

5. Principals changing format

A Member must not provide ... Professional Services to a Principal when the Member reasonably believes the result ... will ... mislead third parties.
[4.7.1]

Increasingly common that Principal (e.g. Federal Government agency) requires contractual right to alter material (generally to avoid IP suit)

- sufficient guidance in Code?
- make clear that consent could be provided?
- make clear that consent may **not** be provided?

Q5 – Should the Code prohibit the granting of editing permission to Principals?

6. Principles only?

Code referenced in Disciplinary Scheme matters

- details of wording known to cause issues
- Disciplinary Scheme does not depend on Code
- but Code could underpin Disciplinary Scheme

Opportunity to use Code to promote “actuary” brand

1. *Demonstrate integrity*
2. *Practise competently*
3. *Exercise leadership*
4. *Promote sustainability* [Engineers Australia Code of Ethics]

6. Principles only? (2)

UK Code underpins UK disciplinary scheme

1. *Integrity*
2. *Competence and Care*
3. *Impartiality*
4. *Compliance*
5. *Communication* [Actuaries' Code: IFoA]

Q6 – Should the Code be changed to a shorter, simpler principles document?

7. (Prescribed) Actuarial Advice

... required to be performed, under Legislation, by either an actuary or a person with actuarial qualifications and experience; or ... specified as [PAA] in a Professional Standard; or declared to be [PAA] by the Council of the Institute. [4.7.1]

Intended to avoid over-strict obligations on members providing actuarial services of a more general nature

TF has consensus about definition but not the need for a separate category

Q7 – Should the Code continue to require different standards for Prescribed Actuarial Advice and other Professional Services?

Consensus Questions

Q1 – Do you agree with the proposed change to the purpose of the Code?

Q2 – Do you agree with the proposed change to the definition of Professional Service?

Q3 – Do you agree with the proposed change to the definition of professional matters?

Feedback Questions

Q4.1 – Should the Code require all advice to be provided impartially?

Q4.2 – Should the Code require all Prescribed Actuarial Advice to be provided impartially?

Q5 – Should the Code prohibit the granting of editing permission to Principals?

Feedback Questions (2)

Q6 – Should the Code be changed to a shorter, simpler principles document?

Q7 – Should the Code continue to require different standards for Prescribed Actuarial Advice and other Professional Services?

Q8 – Apart from minor drafting issues, what else should be changed in the Code?

Current & Next Steps

- Cross Practice Committee (March)
- Disciplinary Scheme Review TF (March)
- Member discussion sessions (March/April)
- Further consultation
- Exposure Draft & Explanatory Memorandum
- Further consultation
- Recommendation to Council
- New version of Code released

Discussion Time!



A flaw in our Code?

Actionable conduct is the sole trigger for investigation of an actuary's conduct

⇒ Its meaning derives from

- prescriptive definitions of *professional misconduct* and *unsatisfactory professional conduct*
- being recognised as a *fit and proper person*

⇒ Requires codification

⇒ Codification is problematic

- will not cover all unacceptable behaviour
- creates a *boundary or jurisdictional* problem: likely to generate distraction and legal argument about coverage, cracks and unintended consequences.

⇒ Out of step with other professional organisations who have modernised their codes using a principles-based approach, including –

- IFoA
- CAANZ
- Institution of Engineers

In Support of a Principles-based Approach

⇒ **Benefits:** A principles-based approach –

- avoids the pitfalls of attempts to define exhaustively the scope of unsatisfactory conduct
- can accommodate and reflect diverse and changing circumstances of practice
- can be a more useful and accessible guide to the profession and its values

⇒ **The opportunity:**

- modern codes emphasise *protection of the public interest* as a principal aim
- a principles-based approach anticipates that *personal conduct* as well as *professional conduct* may fall foul of the principles and standards of the profession
... a highly desirable attribute.

⇒ **The challenge:**

- does not give the appearance of *certainty*, contains few *rules*
... can be ameliorated by guidance from the Institute
- depends on informed assessment and sound judgement within the disciplinary process

