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## CODE OF PROFESSIONAL CONDUCT

November 2009

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## 1 INTRODUCTION

### 1.1 Application

1.1.1 Subject to clause 1.1.2, this Code applies, in its entirety, to all Members.

1.1.2 Where a Member is practising outside Australia, the Member must:

(a) if he or she is a member of the local association in the jurisdiction of employment or practice ("Local Association") and that Local Association is a Full Member of the International Actuarial Association ("IAA"), comply with that Local Association's equivalent of the Code; or

(b) if:

(i) the Member is not a member of the Local Association; or

(ii) the Local Association is not a Full Member of the IAA,

then the Member must either:

(iii) comply with this Code; or

(iv) comply with an alternative to this Code prescribed by the Council of the Institute; or

(v) seek the written consent of the Council of the Institute to be made subject to an alternative to this Code.

### 1.2 Classification

All Members of the Institute of Actuaries of Australia must comply with this Code of Professional Conduct. Non-compliance with this Code by a Member is or may be *prima facie* Actionable Conduct and may lead to penalties under the Institute's Disciplinary Scheme.

### 1.3 Background

1.3.1 The Institute's Council established a comprehensive review of the Institute's Code of Conduct which was undertaken in 2005. The review was conducted to ensure that the Code properly reflected and upheld the objects of the Institute's Constitution and continued to articulate high standards and principles of professional practice. Reports of relevant Institute taskforces and developments in other jurisdictions were considered as part of the review.

1.3.2 In 2007, the Professionalism Review Taskforce was formed to consider whether the Code should be amended in light of experience with its operation since its introduction in March 2006, as well as possible amendments arising out of designations changes then proposed and subsequently adopted. This November 2009 version of the Code was introduced following that review.

## 1.4 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.

## 1.5 Previous versions

1.5.1 The Institute's Code of Conduct was first issued in November 1976. Revisions were made in April 1998 and December 2001.

1.5.2 In March 2006, the Code of Conduct was substantially amended and re-issued as the "Code of Professional Conduct". The Code was further amended in February 2007 with respect to draft reports.

## 1.6 Legislation

In some areas of professional practice there is specific legislation that sets out statutory duties and responsibilities for Members. In the event that there is or may be a conflict between such statutory requirements and this Code, the statutory requirements override this Code to the extent of the inconsistency.

## 2 COMMENCEMENT DATE

This Code takes effect from 1 January 2010.

## 3 DEFINITIONS

'**Act**' means the Corporations Act 2001 (Cth) and any regulations made thereunder, as amended or replaced from time to time.

'**Code**' means this Code of Professional Conduct of the Institute.

'**Constitution**' means the Constitution of the Institute.

'**Disciplinary Scheme**' means the Institute's Disciplinary Scheme, as set out in the Schedule to the Constitution.

'**Eligible Actuary**' means:

- (a) a Fellow or Accredited Member of the Institute; or
- (b) a Member who is eligible to act in an actuarial capacity pursuant to a requirement under Legislation.

'**Institute**' means The Institute of Actuaries of Australia (ABN 69 000 423 656).

'**Legislation**' means any law, regulation, by-law, standard or rule in force within Australia (as amended from time to time) and made by a Commonwealth, State or Territory government or authority.

**'Material'** means important or essential in the opinion of the Member. 'Materially' has a meaning consistent with 'Material'.

**'Member'** means a Fellow, Accredited, Associate or Affiliate (including student) Member of the Institute.

**'Prescribed Actuarial Advice'** means:

- (a) any conclusion, result, opinion or recommendation required to be performed, under Legislation, by either an actuary or a person with actuarial qualifications and experience; or
- (b) any thing deemed to be prescribed actuarial advice by being:
  - (i) specified as such in a Professional Standard; or
  - (ii) declared to be such by the Council of the Institute.

**'Principal'** means the client or employer, as the case may be, who is the primary recipient of a Professional Service provided by a Member and the primary party for whom that Professional Service has been performed.

**'Professional Service'** means 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.

**'Professional Standard'** is a document setting out practice requirements in a particular situation or area that has been prepared in accordance with the Institute's *Policy for Drafting Professional Standards* and has been issued by the Institute.

## **4 GENERAL**

### **4.1 Responsibility of Members in serving the public interest**

- 4.1.1 The Institute is a professional body that seeks to enhance the actuarial profession and to serve the public interest. In order to achieve this, it is essential that Members maintain proper standards of professional conduct and performance. The Institute therefore establishes and maintains Professional Standards and this Code to govern the provision of Professional Services by its Members.
- 4.1.2 When taken together the law, the Constitution, this Code and the Professional Standards, both in general and as they relate to specific roles and responsibilities, define a Member's professional responsibility. In particular, provided that a Member meets the requirements of the law, the Constitution, this Code and the Professional Standards, then he or she will have met the expectations of the profession with respect to the public interest.
- 4.1.3 The Institute relies on the conscience of each Member, and the collective conscience of all Members, to ensure that this Code and any Professional Standards are applied effectively and that perceived breaches are dealt with in accordance with clause 4.1.4.

4.1.4 A Member who reasonably believes that another Member may have committed a breach of this Code or of a Professional Standard must first consider discussing the matter with the other Member with a view to resolving it. If the matter cannot be resolved, or if either Member does not consider such a discussion to be appropriate or constructive, the concerned Member must seek the guidance described in clause 4.2.4. Following such steps the concerned Member, if warranted, must consider his or her duty to make a complaint in accordance with the rules of the Disciplinary Scheme.

## **4.2 Professional conduct**

4.2.1 A Member must act with integrity, honesty and due care, and in a manner that seeks to uphold the reputation of the profession.

4.2.2 The obligation in clause 4.2.1 extends to requiring that a Member, in engaging in conduct, or providing advice, a report, communication or other information, does so in a way which is not knowingly false, misleading or deceptive.

4.2.3 There is room for honest differences of opinion between Members on many professional matters. Where such differences of opinion are held, a Member may express a view on such differences, provided that the Member does so in a measured and reasonable manner which avoids improper criticism or malicious injury to the reputation of another Member.

4.2.4 A Member who is in doubt as to what constitutes appropriate professional conduct in a particular situation must seek guidance on the interpretation and application of this Code and, where appropriate, the Professional Standards from a Fellow or Accredited Member whose opinion he or she values and must, if necessary, obtain legal or other relevant professional advice, and take the appropriate action required in the circumstances.

## **4.3 Professional experience**

4.3.1 In accordance with the Professional Standard set by the Institute on continuing professional development, all Members have a continuing duty to maintain professional knowledge and skill at a level required to ensure that a Principal receives the advantage of competent Professional Services, based on current legislation and generally accepted practices and techniques.

4.3.2 In providing a Professional Service, a Member must take reasonable steps, taking into account the nature of the Professional Services to be provided, to ensure that they have appropriate knowledge and skills in the relevant area and at the level required in order to provide competent Professional Services.

## **4.4 Impartiality**

4.4.1 A Member who provides Prescribed Actuarial Advice must exercise his or her independent professional judgment and give impartial advice.

4.4.2 Except as set out in clause 4.4.3 of this Code, a Member who provides a Professional Service (other than Prescribed Actuarial Advice) must exercise his or her independent professional judgment and give impartial advice.

4.4.3 Subject to clause 4.4.4, a Member who provides a Professional Service (other than Prescribed Actuarial Advice) which involves acting other than impartially (including, but not limited to, fulfilling an advocacy role for a Principal) must:

- (a) comply with the requirements laid down in clause 4.2; and
- (b) take such steps as are generally considered reasonable in the particular circumstances to ensure all parties who will receive the product of such Professional Service or be Materially affected by it are aware of the capacity in which the Member is acting and of any constraints imposed on the Member's independent professional judgment.

4.4.4 In any case, a Member must not act or give advice if there are constraints imposed on his or her professional judgment which the Member considers would result in engaging in conduct that would breach the standards of conduct set out in clause 4.2.

#### **4.5 Conflicts of interest**

4.5.1 A conflict of interest arises if a Member's duty to a Principal conflicts with:

- (a) the Member's own interests;
- (b) an interest of the Member's firm; or
- (c) a duty to another Principal.

4.5.2 A potential conflict of interest may arise in a number of circumstances, including accepting remuneration that is contingent upon a particular outcome related to the provision of a Professional Service.

4.5.3 A Member must manage actual or potential conflicts of interest so as to avoid a breach of the requirements set out in clause 4.4 of this Code. This may lead to different courses of action in different circumstances, including (but not limited to) making full disclosure or declining to act.

4.5.4 A Member must disqualify himself or herself from providing a Professional Service where there is a conflict of interest that cannot be managed in accordance with clause 4.5.3.

4.5.5 A Member must document the steps taken to manage any conflict of interest and agree such steps with all Principals whenever such agreement is necessary for the proposed resolution of a conflict of interest to be effective.

4.5.6 A Member must, as soon as practicable, disclose to his or her Principal the nature of Material compensation or income to the Member or a related party from a source other than the Principal that is related to the Professional Service provided to the Principal.

#### **4.6 Confidentiality**

4.6.1 A Member must have proper regard for the trust that is implicit in the relationship between the Member and his or her Principal. The Member must take reasonable

steps to ensure that the information used and the result of any Professional Services provided remain confidential to the extent expected by the Principal and that the Principal is made aware if there is a breach of confidentiality.

- 4.6.2 Notwithstanding clause 4.6.1, obligations may be imposed on a Member by law that require the Member to breach confidentiality in certain circumstances.

#### **4.7 Potential misuse of Professional Services**

- 4.7.1 A Member must not provide, or continue to provide, Professional Services to a Principal when the Member reasonably believes the result of any Professional Services provided will be used to evade the law or in a manner that is likely to mislead third parties.

- 4.7.2 If a Member reasonably believes that the result of any Professional Services provided is or has been subject to such misuse, the Member must, in the first instance, immediately alert the Principal that he or she believes there has been misuse, and clarify in writing the purpose for which the result was to be used. The Member must also consider whether it is appropriate to offer to provide assistance to the Principal to rectify any misuse.

- 4.7.3 In circumstances where the Principal does not address and, if necessary, rectify any misuse within a reasonable time, and maintenance of confidentiality is or is likely to be Materially damaging to third parties, the Member must obtain legal or other relevant professional advice, and take the appropriate action required. Also, in such circumstances the Member must consider whether, in the context of his or her legal obligations, there is a greater obligation to such third parties than the maintenance of confidentiality.

- 4.7.4 If a Member has reasonable doubt about whether the actions of a Principal are legal and honest, the Member must consider his or her ongoing relationship with that Principal.

#### **4.8 Co-operation with others**

- 4.8.1 A Member must, in a manner consistent with the Member's obligations under this Code, co-operate with third parties providing services to the Member's Principal.

- 4.8.2 In circumstances where a Principal is replacing an appointee to any role which is required by Legislation to be performed by either an actuary or a person with actuarial qualifications:

- (a) the new appointee (if a Member) must, where practicable, speak with the incumbent or previous appointee. Before doing so, the Member must notify the Principal unless the Member is otherwise constrained by a legal or professional requirement from doing so. The incumbent or previous appointee (if a Member) must take reasonable steps to cooperate with the new appointee; and
- (b) if the new appointee Member is aware that his or her advice differs Materially from that of the incumbent or previous appointee, then the new appointee Member must endeavour to explain the reasons for the differences to the Principal.

- 4.8.3 In other circumstances where a Member is replacing another person, the Member must consider whether it is appropriate to consult with the other person to ensure that there are no professional reasons to decline taking on the new role.

## **5 PROFESSIONAL INDEMNITY INSURANCE**

- 5.1 In certain instances, the law prescribes requirements for professional indemnity insurance.

- 5.2 In circumstances where a Member provides a Professional Service:

- (a) in respect of which the law does not impose a requirement to hold professional indemnity insurance; and
- (b) to a Principal who, if that Professional Service had constituted the provision of a financial product or financial service under the Act, would have been classed as a "retail client" (as defined under the Act),

then the Member must hold professional indemnity insurance that is adequate in relation to that Professional Service.

- 5.3 The obligation under clause 5.2 may be met through cover provided through other parties such as the Member's firm.

## **6 COMMUNICATIONS**

### **6.1 Professional qualification and status**

- 6.1.1 A Member must not describe himself or herself as an "actuary" unless he or she is:

- (a) a Fellow or Accredited Member of the Institute; or
- (b) a Member who has satisfied the requirements laid down by the Institute from time to time pertaining to the use of the designation "actuary".

- 6.1.2 A Member entitled, by virtue of clause 6.1.1, to use the designation of "actuary" must disclose his or her qualification in the following circumstances (as relevant):

- (a) prior to entering into an employment agreement or a retainer agreement as an actuary with a prospective Principal; and
- (b) in circumstances (including giving any written advice or report) where the Member is acting as an actuary and, were the Member's qualification not to be disclosed, an intended third party recipient would be, or would be likely to be, misled or deceived as to such.

### **6.2 Publicity**

- 6.2.1 Publicity that increases public awareness of the nature of Professional Services provided by Members, the training and skills of the actuarial profession and the value and scope of the work that Members perform is desirable and in the public interest.

6.2.2 Members are permitted to advertise or obtain publicity for their Professional Services provided that the content and nature of such advertising or publicity is not false, misleading or deceptive, or otherwise contrary to law.

6.2.3 A Member is permitted to convey an elective or appointive position within the Institute, such as "President" or "Member of Council", as part of a curriculum vitae or for a similar purpose, but not so as to use such position to promote or to advertise Professional Services or otherwise for the express commercial advantage of the Member or the Member's firm.

## **7 REPORTING**

A Member must ensure that his or her reporting (whether oral or written) in respect of Professional Services provided:

- (a) is appropriate, having regard to:
  - (i) the intended audience;
  - (ii) its fitness for the purposes for which such reporting may be required or relevant;
  - (iii) the likely significance of the reporting to its intended audience;
  - (iv) the capacity in which the Member is acting; and
  - (v) any inherent uncertainty and risks in relation to the subject of the report;
- (b) complies with any relevant Professional Standards.

## **8 PRESCRIBED ACTUARIAL ADVICE**

### **8.1 Provision of Prescribed Actuarial Advice**

8.1.1 Prescribed Actuarial Advice may only be provided by an Eligible Actuary.

8.1.2 All Prescribed Actuarial Advice must be, and be seen to be, the responsibility of an Eligible Actuary or Eligible Actuaries. An exception occurs where part of the advice relies upon the advice of an expert for which responsibility is not or cannot be taken by the Eligible Actuary but is being formally taken by the expert. In this case, any Prescribed Actuarial Advice provided by the Eligible Actuary must identify the advice received from the expert, name the expert and, where appropriate, provide details of the advice received. Where the Eligible Actuary assumes responsibility for the advice received from the expert, no mention of the source of that advice need be made.

8.1.3 In communicating Prescribed Actuarial Advice, an Eligible Actuary must:

- (a) identify the Principal for whom the Prescribed Actuarial Advice is being provided;

- (b) state the capacity in which the Eligible Actuary serves; and
- (c) indicate how any further explanation can be obtained.

## **8.2 Transmission of Prescribed Actuarial Advice to third parties**

8.2.1 If an Eligible Actuary knows or reasonably believes that his or her Prescribed Actuarial Advice will be transmitted in whole or in part to a third party in a way which would, or would be likely to, mislead such third party, the Eligible Actuary must take reasonable steps to ensure that:

- (a) any Material implications or limitations of the Prescribed Actuarial Advice are transmitted; and
- (b) the Prescribed Actuarial Advice is not presented in a way likely to give a misleading impression.

8.2.2 In circumstances where the third party has been, or is likely to be, misled because of inadequacies in the transmission of the Eligible Actuary's Prescribed Actuarial Advice, the Eligible Actuary must consider the provisions in clause 4.7.

8.2.3 Even if an Eligible Actuary has no specific reason to believe that his or her Prescribed Actuarial Advice will be transmitted to a third party, the Eligible Actuary must clearly state any restrictions on the broader application of the Prescribed Actuarial Advice.

## **END OF CODE OF PROFESSIONAL CONDUCT**