



**Actuaries
Institute**

Conflicts of interest in superannuation

Andrew Boal & Matthew Burgess

Melbourne – 28 May 2013

Conflicts of interest in superannuation

Andrew Boal & Jeff Humphreys

Sydney – 31 May 2013

Background

- May 2008: Financial Services Forum
- May 2012: Discussion Note
- November 2012: APRA prudential standards
- May 2013: Information Note (exposure draft)
 - Feedback due by 5 June

Code of Conduct

- Public interest
- Professional conduct
- Impartiality
- Conflicts of interest
- Confidentiality

Conflicts of interest

Real conflicts: A situation where, in acting for the benefit of one client, you might need to work to the detriment of another

Potential conflicts: Conflicts of interest which have not yet arisen but may potentially arise in the future need to be treated with the same degree of care

Perceived conflicts: Situations where other parties (such as clients, the press, a regulator) might perceive there to be a conflict (even if you do not consider there to be a conflict) also need to be treated with the same degree of care as it might affect your reputation

Identifying conflicts of interest

- Client versus client (or former client)
- Client versus associated client
- Client versus actuary's firm
- Client being conflicted
- Professional conflicts
- Personal or family interests
- Client versus own employer

Duties of confidentiality and disclosure

- Advisers have a duty of confidentiality
 - Except where permitted or required by law
- Advisers also have a duty of disclosure
 - To act in the best interest of the client
 - To disclose the existence of a conflict
- Advisers have a duty to their employer
- These duties may be in conflict
 - Therefore, they need to be managed

Conflicts of interest in superannuation

- Conflicts of interest between trustees and employer sponsors are not common
- Usually there is an alignment of interests of both parties
- There will generally be cost and other advantages in using the same actuary
- Nonetheless, conflicts of interest can arise from time to time

Managing client conflicts of interest

- Disclose any potential or actual conflicts
- Mutual understanding of the issues and risks
- Comply with regulatory and legal requirements
- Recognise any confidentiality agreements
- Satisfy yourself that any conflicts can be managed (if not, avoid the conflict)
- Agree on a Conflict Management Plan

Managing professional conflicts of interest

- Explicitly identify any conflicts
- Consider how to manage them
 - Use internal or external peer review
 - Rotate responsibility
 - Consult other actuaries or professionals
 - Maintain a register
- Determine if that is appropriate

Case study 1

- You are the actuary for company X's pension plan
- You have an excellent relationship with the plan's trustee directors as well as several key individuals of the sponsoring employer
- You are asked to provide some advice to the company about the valuation of the plan's liabilities
- **Is there a conflict?**

Case study 1 (cont.)

“I will only be providing figures; it’s fairly objective really”

“I have provided advice to both trustee and the employer in the past without any problems”

“It is obviously in the best interests of both parties that they use one expert who knows the situation really well”

“The employer and the trustee both agree with me working for the other party”

“I will not do anything that is unprofessional and they both understand that”

- **Should you accept the assignment?**
- **If so, is there anything you should do?**

Case study 1 (cont.)

- In a meeting with the company to discuss your figures, the Finance Director inadvertently tells you that the figures are very important for the possible sale of the business
- As the plan's actuary, you know that the pension plan is currently in an unsatisfactory financial position
- The sale of the business potentially has huge implications for the plan members and the trustee has an ongoing obligation to always act in the member's best interests
- **Can you tell the trustee about this latest news? Can the employer sue you if you do?**
- **Should you tell the trustee about this latest news? Can the trustee sue you if you don't?**
- **What do you do now?**

Case study 2

- You are married to the finance director of a competitor to one of your clients
- **Is there a conflict?**

Case study 2 (cont.)

- You are married to the finance director of a competitor to one of your clients
- **Is there a conflict?**
- **What if you attend a business function of your partner and overhear a conversation which is of relevance to your client?**

Case study 3

- You own shares in one of your clients
- **Is there a conflict?**
- **What should you do, if anything?**

Case study 3 (cont.)

- You own shares in one of your clients
- Through your dealings with the Finance Director, you become aware of confidential information that is likely to affect the share price
- **What should you do?**

Case study 4

- You are working on a team advising company X about the acquisition of company Z
- You change jobs and are asked to join the team working on the bid for company Z by another company Y
- **Is there a conflict?**
- **What should you do?**

Case study 5

- You are the actuary for company X's pension plan
- Company Y approaches you to provide advice on a hostile bid for company X
- **Is there a conflict?**
- **What should you do?**

Case study 5 (cont.)

- You are the actuary for company X's pension plan
- Company Y approaches you to provide advice on a hostile bid for company X
- Later, the Finance Director of company X contacts you seeking your advice on the acquisition by company Y
- **What do you do?**

Case study 6

- You have been assigned by your employer to be the actuary for one of your employer's key client's pension plans and the trustee has appointed you
- You find when completing the triennial review that there are member data errors that mean your review cannot proceed until they are corrected and your report will not be delivered on time to the trustee
- Your CEO says you must nevertheless complete the review and deliver the report by the deadline even if it is inaccurate as your company will lose the client if your report is late
- **What do you do?**

Case study 6 (cont.)

- You have been assigned by your employer to be the actuary for one of your employer's key client's pension plans and the trustee has appointed you
- You find when completing the triennial review that there are member data errors that mean your review cannot proceed until they are corrected and your report will not be delivered on time to the trustee
- Your CEO says you must nevertheless complete the review and deliver the report by the deadline even if it is inaccurate as your company will lose the client if your report is late
- **What do you do?**
- **What if the client is not a key client?**

Case study 7

- One of your employer's key clients wants to divorce itself of the its stand alone fund and use a master trust or industry fund alternative
- The employer has asked you to run the tender
- Your company offers master trust services
- **Should you put forward your company as one of the alternative providers?**
- **Should you decline to run the tender?**

