



Institute of Actuaries of Australia

**Institute of Actuaries of Australia
Professional Conduct Committee**

Practice Note No 1

**ONLY APPLICABLE UNDER DISCIPLINARY SCHEME IN FORCE UP TO
28 FEBRUARY 2006**

Introduction

1. The Constitution of the Institute of Actuaries of Australia includes a Disciplinary Scheme which comprises:
 - (a) a Professional Conduct Committee (PCC) which is required to establish an Investigating Sub-Committee (ISC) to investigate a particular Complaint;
 - (b) a Professional Conduct Tribunal Panel from which a Tribunal is appointed to determine a particular Complaint; and
 - (c) an Appeal Board Panel from which an Appeal Board is appointed to determine an appeal in relation to a determination of a Tribunal.
2. This Practice Note has been issued by the PCC, with a view to achieving greater transparency in relation to the work of the PCC and any ISC. The PCC intends to either amend this Practice Note or issue further Practice Notes from time to time as it considers necessary. Nothing in this or any further Practice Note is intended to modify or override any provision in the Institute's Constitution.
3. The person making the Complaint shall be referred to as the Complainant and the person against whom the Complaint has been made shall be referred to as the Respondent.

Nature of the proceedings

4. The ISC is required to investigate a Complaint. Whilst the ISC is not a judicial body and is not bound by the rules of evidence, the PCC accepts that an ISC should act in conformity with the principles of natural justice so that the investigation is conducted fairly and by applying a standard of proof when considering the Complaint.

Natural justice

5. The ISC should wherever possible ensure that the conduct alleged in the Complaint is sufficiently specific to enable the Respondent to know the nature of the case he or she must meet.
6. The ISC should not normally act on any document, statement or submission from either the Complainant or the Respondent without providing an opportunity for a response. Exceptions to this may occur. For example, if confidential information is to be withheld from the Complainant under Rule 81 of the Disciplinary Scheme, or if the ISC is bound at law to treat certain material in a confidential way.

7. In particular, so as to comply with Rule 35 of the Disciplinary Scheme, no determination under Rule 34(b), 34(c) or 34(d) of the Disciplinary Scheme shall be made without informing the Respondent and providing the Respondent with an opportunity to make representations or submissions to the ISC.

Standard of proof

8. As the investigation of a Complaint does not amount to criminal proceedings, the civil standard of proof, that is, proof on the balance of probabilities, will apply.

9. In considering whether that standard has been met, the ISC should have due regard for both the severity of the Complaint and the severity of the consequences for the Respondent should that Complaint be upheld.

Usual Procedure

10. The ISC will normally consider the Complaint on the basis of written material. Any application for oral submissions to the ISC from either the Complainant or Respondent should be made in writing and will be considered by the ISC having regard to the particular circumstances of the Complaint.

11. The normal sequence for the investigation by the ISC should be the Case in support of the Complaint from the Complainant followed by the Response from the Respondent and the opportunity for a Reply (confined to matters raised in the Response and not raising fresh material) from the Complainant. In accordance with Rule 10, such material should be presented by all parties in the form of written submissions.

Variations in Professional Standards or Disciplinary Scheme

12. Recognising that the wording of Professional Standards, Guidance Notes or the definition of 'Actionable Conduct' in the provisions of the Disciplinary Scheme relevant to a Complaint may have been amended between the time when the conduct is alleged to have occurred and the time when the Complaint is heard, the ISC intends, in the absence of any submissions to the contrary, to proceed as follows:

(a) The conduct alleged shall be considered by reference to the wording applicable at the time of that alleged conduct. For example, if a Professional Standard has been amended since the date of the alleged conduct then the former wording would be applied.

(b) The procedure to be followed shall be the provisions of the Disciplinary Scheme applicable at the time when the Complaint is made.

13. In the event that either the Complainant or the Respondent considers that course should not be followed, written submissions should be provided to the ISC as soon as possible after the Complaint is made.

Disqualification of ISC members

14. Each person appointed to an ISC should consider whether he or she should disqualify himself or herself from that ISC. Whilst no definition can be expected to cover every possible situation, the general approach should be that no person should sit on an ISC if he or she feels they might be biased or if, by sitting on an ISC, a reasonable observer might have a suspicion of bias on the part of that person.

15. Upon the appointment of any person to an ISC (either when the Complaint is made or at any time thereafter) the Respondent will be informed, in writing, of the name(s) of the person(s) so appointed without delay. Any application by the Respondent for a person to disqualify himself or herself from sitting on that ISC should be made in writing within one week thereafter. If such an application is received then the person concerned would then disqualify himself or herself unless both that person and the Convenor of the PCC agree that the application should be refused.

Secretary to the PCC

16. The Convenor of the PCC may at any time nominate a person, normally an employee of the Institute, as Secretary to the PCC. The functions of the Secretary shall be to send correspondence from an ISC and receive correspondence sent to an ISC. The Secretary shall observe the Confidentiality requirements set out below and, in relation to Complaints initiated by or on behalf of the Institute, maintain the necessary separation between the Institute and an ISC.

Particular circumstances

17. This Practice Note is intended to provide guidance and should not be followed if, in particular circumstances, that would be unfair or impractical. In the event that either the Complainant or the Respondent believes that this Practice Note should not be followed, a written submission with reasons should be provided to the ISC as soon as possible.

Confidentiality

18. It is expected that the Complainant, the Respondent, and any legal representative of either the Complainant or the Respondent, and any other person who attends a meeting of an ISC, will maintain confidentiality and observe the provisions of Rules 81-83 of the Disciplinary Scheme relating to confidentiality.

Issued on 7 April 2003

Amended: 11 June 2003, 3 February 2005