

# NEW ZEALAND SOCIETY OF ACTUARIES

## CODE OF PROFESSIONAL CONDUCT

### MANDATORY STATUS

EFFECTIVE DATE - 1 OCTOBER 2006

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# **1 INTRODUCTION**

## **1.1 Application**

This Code is made pursuant to the Rules and applies to all Members at all times.

## **1.2 Background**

The Society's Council established a comprehensive review of the Society's Code of Conduct which was undertaken in 2005. The review was conducted to ensure that this Code properly reflects and upholds the objects of the Society's Rules and continues to articulate high standards and principles of professional practice. Similar Codes and developments in other jurisdictions and professions were considered as part of the review.

## **1.3 Purpose**

The Code sets out minimum standards with which all Members must comply in both the spirit and the letter. The New Zealand Society of Actuaries has as one of its objectives "to establish, promote and maintain high standards of competence and conduct within the actuarial profession". In order to achieve this it is essential that high standards of professional conduct are maintained by all Members.

## **1.4 Previous Versions**

The Society's Code of Conduct was first adopted by postal vote in October 1991. This is the first review that has taken place.

## **1.5 Legislation**

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

# **2 EFFECTIVE DATE**

1<sup>st</sup> October 2006

### **3 DEFINITIONS**

“Actionable Conduct” has the meaning given to it in clause 7.1.1.

“Actuarial Advice” means written, electronic or oral Advice:

- (a) given by a Member in a professional capacity in areas of work in which actuaries are reasonably understood to have expertise; or
- (b) given by a Member and relied upon by the recipient because the recipient reasonably believes the Advice to be given in a professional actuarial capacity;

including, but not limited to, Advice:

- (i) in accordance with legislative requirements, or standards or guidelines set by a Government or statutory agency or regulator;
- (ii) in accordance with any standards or guidance issued by the Society;
- (iii) as an expert witness before a court of law or statutory tribunal;
- (iv) as a participant in the disciplinary scheme of a professional body;
- (v) in relation to liability or asset valuations, economic valuations, premium setting, investment strategy; or
- (vi) for the purpose of providing information needed to prepare financial reports for a business entity or government agency, or for the purpose of preparing such reports

and includes Advice provided on a pro bono basis.

“Actuary” means a Fellow of the Society.

“Advice” includes any conclusion, result, opinion or recommendation.

“Client” means the person or organisation, including an Employer, to whom a Member’s Advice is primarily directed.

“Code” means the Code of Professional Conduct adopted under clause 16 of the Rules.

“Council” means the Council of the Society.

“Disciplinary Procedure” means the Disciplinary Procedure of the Society.

“Employer” means a person or Firm employing any Member under a contract of service.

“Firm” means an entity of which a Member is an employee, contractor, director, partner or sole proprietor, and includes a sole trader, unless the context otherwise requires.

“Member” means a member of the Society.

“Nominated Member” means a Member nominated by the Members in a Firm as the Nominated Member for certain purposes under the Code.

“Professional Conduct Committee” means the committee established under clause 17 of the Rules.

“Professional Misconduct” has the meaning given to it in clause 7.1.1.

“Professional Service” means a service provided by a Member in a professional capacity, including Actuarial Advice, and including a service provided on a pro bono basis.

“Rules” mean the Rules of the Society.

“Society” means the New Zealand Society of Actuaries (Incorporated).

“Unsatisfactory Professional Conduct” has the meaning given to it in clause 7.1.1.

## **4 GENERAL**

### **4.1 Professional conduct**

- 4.1.1 The Code is not comprehensive or exhaustive and therefore considerable reliance is placed on the conscience of Members to maintain the highest standards of conduct.
- 4.1.2 The professional conduct of a Member is the Member's personal responsibility. Each Member has a responsibility to be familiar with this Code.
- 4.1.3 Professional conduct involves integrity in relationships with those to whom Professional Services are rendered as well as with other members of the profession and the public. In all these relationships Members must be concerned not only with their own behaviour, but also with the behaviour of other Members.
- 4.1.4 Members have a continuing duty to maintain professional knowledge and skill at a level required to ensure that their Clients receive competent Professional Services, based on current legislation and generally accepted practices and techniques.
- 4.1.5 The Society may issue professional standards or other guidance to Members from time to time. Professional standards may be either mandatory or recommended. Members must comply with any professional standards that are mandatory, and are expected to have due regard to professional standards that are recommended and to other guidance.
- 4.1.6 Members who are not permitted by their examining bodies to be called actuaries may not lead or encourage others to believe they are actuaries, or knowingly allow such a belief to continue.

### **4.2 Professional conduct and the public**

- 4.2.1 Even when Members are not providing Professional Services as a Member, the public may judge them as if they were. Members must conduct themselves at all times with integrity and in a way that does not bring the profession into disrepute.
- 4.2.2 When providing Professional Services, Members must act with courtesy, honesty and in a manner which maintains the dignity and reputation of the profession.
- 4.2.3 Members must not act against the public interest.

### **4.3 Nominated Members**

- 4.3.1 The Actuaries in a Firm must nominate one of themselves to the Society for the role of Nominated Member. Where there are no Actuaries in a Firm, the Members in the Firm must nominate one of themselves to the Society for the role of the Nominated Member.

4.3.2 Although a Nominated Member is not personally responsible for the conduct of another Member, Nominated Members must ensure that all Members of their Firm are aware that they have responsibilities under this Code and that the Firm is aware that Members have such responsibilities.

#### **4.4 Guidance under the Code**

4.4.1 A Member who has any doubt about the interpretation of the Code or any professional standard or guidance issued by the Society, or its application in particular circumstances should normally seek guidance as described in clause 4.4.2.

4.4.2 A Member seeking guidance under this Code must seek advice from an Actuary or Actuaries whom the Member believes will best be able to assist. However, the Member must seek guidance from a member of the Professional Conduct Committee:

- if it is not possible or would be inappropriate to seek advice elsewhere, for reasons of confidentiality or for other reasons, or
- if having sought advice elsewhere the Member has residual doubts about the course of action to be taken.

4.4.3 An Actuary whose guidance is sought in relation to this Code and matters of professional conduct must take reasonable steps to respond appropriately. Such steps may include, but are not limited to:

- offering advice to the Member on the interpretation and application of this Code and, where appropriate, any relevant professional standard or guidance from the Society; and
- suggesting that the Member should seek legal or other external professional advice.

#### **4.5 Confidentiality**

4.5.1 Information which is not publicly available and which is obtained by a Member in the course of professional activities, and the product of any Professional Services provided by a Member, must remain confidential and must not be used by the Member for any other purpose without the consent of the Client. If there are circumstances where the Member cannot be, and be seen to be, in a position to ensure that this information remains confidential, the Client must be made aware that this is the case.

4.5.2 In circumstances where:

- maintenance of confidentiality would cause a Member to act contrary to law or the Society's standards of integrity;
- maintenance of confidentiality would allow another Member to avoid or escape detection and/or a sanction for commission of an offence;
- a Member reasonably believes that maintenance of confidentiality would assist the Client to act contrary to law;
- a Member exercises a legal requirement or discretion to disclose certain information; or
- a Member is acting in accordance with judicial authority;

the Member may make an exception to clause 4.5.1 and make such disclosures as are necessary to any proper authority, including the Society, that has a recognised public interest in receiving the information in question.

4.5.3 Even in the absence of the circumstances described in clause 4.5.2 if a Member reasonably believes, in good faith, that a Client has behaved or is behaving in a dishonest way, and that maintenance of confidentiality is or could be damaging in a material way to third parties, the Member must seek guidance as described in clause 4.4.2. The Member must also consider seeking legal advice on the matter.

4.5.4 Any member of the Professional Conduct Committee who is approached for guidance under clause 4.5.3 must respect the confidentiality of the information that is imparted notwithstanding the provisions of clause 4.5.2.

## **5 ACTUARIAL ADVICE**

### **5.1 Provision of Actuarial Advice**

- 5.1.1 When providing Actuarial Advice, the Member must ensure that it is clear to all concerned the identity of the Member's Client and the Member's Firm, and the capacity in which the Member is acting.
- 5.1.2 Members must disclose in any report all information on which they have placed material reliance in preparing Actuarial Advice. This includes any situation where the Member has relied upon informal information provided by the Client, in which case the nature and significance of this reliance must be commented on in the report.
- 5.1.3 When providing Actuarial Advice, Members must exercise their professional judgment on all matters material to the Advice. Unless there are limitations on the data or the Client has instructed otherwise, Members must ensure that Actuarial Advice is based on sufficient and reliable data, on adequate and appropriate assumptions, and on sound actuarial principles. Where there are limitations on the data or the Client has instructed otherwise, this must be disclosed in any report containing that Advice.
- 5.1.4 Actuarial Advice given to a Member's Firm or to a colleague within the same Firm, whether or not the colleague is a Member, must meet the same standards as external Actuarial Advice.
- 5.1.5 Members must co-operate with others serving their Client.
- 5.1.6 If work which a Member considers necessary is precluded by cost or time constraints the Member must either decline to act or qualify the Actuarial Advice given.
- 5.1.7 If a Member has reasonable doubt about whether actions of a Client are legal and honest, the Member must consider his or her ongoing relationship with the Client.

### **5.2 Professional experience**

- 5.2.1 Many problems submitted to Members require considerable experience for their solution. If a Member does not have relevant experience in a particular area, the Member must provide Actuarial Advice only if he or she takes reasonable steps to obtain guidance in that area.

### **5.3 Impartiality of Actuarial Advice and conflicts of interest**

- 5.3.1 A Member giving Actuarial Advice which is formulated in the interests of a particular Client must ensure that:

- the Client is aware that the Advice is of no broader applicability than intended by the Member; and
  - the Advice is not presented as if it were the Advice that would be given to another Client or to a third party whose objectives and requirements may be different.
- 5.3.2 Actuarial Advice must be unaffected by interests other than those of the Client and any third party for which the Client has an identifiable professional or legal duty of care.
- 5.3.3 It is the responsibility of the Members in a Firm to ensure that there is a process to enable Members within the Firm to identify potential or actual conflicts of interest.
- 5.3.4 In circumstances where a Member might reasonably be perceived to lack impartiality, including where an actual or potential and material conflict of interest exists, the Member must not provide Actuarial Advice unless there has been a full disclosure to the Client of the cause of such a perception of lack of impartiality, and the Client has expressly agreed in writing to the Member providing Actuarial Advice. The Member must also disclose this cause in any Actuarial Advice and must take reasonable steps to ensure third party recipients who are likely to be materially affected by the Actuarial Advice are made aware of the circumstances.
- 5.3.5 If a Member is recommending the services of a third party, the Member must disclose any relevant connection between the third party and the Member or the Member's Firm.
- 5.3.6 For a Member in a particular situation to describe Actuarial Advice offered as independent the Member must be free, and must be seen to be free, of any influence which might affect the Advice or limit its scope.
- 5.3.7 If a Member is acting as an expert witness, the Member is an advisor to the court and should not act as an advocate for his or her Client. In this capacity, the Member must ensure that Actuarial Advice given is not affected by which of the parties the Member is acting for.
- 5.3.8 If a Member is providing Actuarial Advice regarding a transaction, the Member's Advice must be impartial unless the Member's Client has instructed the Member otherwise. If the Member has been so instructed, any Actuarial Advice provided by the Member must include a statement to this effect and details of the relevant instructions. When accepting such instructions, the Member must alert the Client to the fact that the Member's report will include such a statement, and the Member must also consider the application of clause 5.3.7 in the particular circumstances.
- 5.3.9 When providing Actuarial Advice, application of assumptions appropriate specifically to one party is not prima facie a breach of impartiality.

## **5.4 Nature of remuneration**

- 5.4.1 A Member must disclose to a Client prior to commencement of an assignment any direct or indirect compensation that the Member, or any party related to or associated with the Member, may receive from any source other than the Client as a consequence of the Member undertaking work for the Client.
- 5.4.2 A Member who has a financial interest in a Client, or receives any form of remuneration based on the financial results or share price of that Client, must ensure that this is disclosed in any Actuarial Advice to that Client. The Member must also take reasonable steps to ensure that this disclosure is included where the Member knows or reasonably believes that this Actuarial Advice will be provided, in whole or in part, to third parties who may rely on and be materially affected by it.
- 5.4.3 Members must exercise due care in accepting fees for the provision of Actuarial Advice that are contingent upon an outcome related to the Advice. Members must ensure that such fees are appropriate in the circumstances and must ensure that the fees will not impair, or could not be seen to impair, the impartiality of their Actuarial Advice. Where work is carried out on a contingent fee basis, the basis of the fee should be disclosed in any report. If a Member provides expert Actuarial Advice as a witness or otherwise before a court or statutory tribunal or as a participant in a disciplinary scheme of a professional body, the Member must not accept a fee based on the outcome of the proceedings.
- 5.4.4 A Member must not accept, from any person, anything of substantial value intended to influence his or her professional decisions.

## **5.5 Replacement of one Actuary or adviser with another**

- 5.5.1 A Client has the indisputable right to choose or to change professional advisers or actuaries, or to take a second opinion, or to retain separate advisers on different matters. The purpose of a new appointment, however, may be in conflict with the interests of those persons or organisations who rely on the advice.
- 5.5.2 A Member who is invited to advise a Client in a situation in which there are grounds for supposing that another Member is already acting for that Client in the same matter or has recently done so must, subject to firstly obtaining the Client's permission in terms of clause 5.5.3, inform that other Member of the invitation. The other Member must then advise whether there are any professional reasons why the invitation ought not to be accepted or any particular considerations which should be borne in mind before proceeding.
- 5.5.3 Prior to making contact with the other Member, the Member must first obtain the Client's agreement to do so. If the Client refuses permission, the Member must consider the reasons why permission was refused and whether there are any professional reasons why the new appointment should not be accepted.

5.5.4 If a Member concludes that there is a requirement to make contact with another Member in respect of the provision of Actuarial Advice, the appointment may be confirmed in principle before the other Member has replied. However the Member must ensure the Client is aware that acceptance is provisional and the Member may provide Actuarial Advice to the Client only after receiving an undertaking from the Client that the Advice will not be acted upon or communicated to others until the other Member has had sufficient opportunity to reply.

## **5.6 Commentary on another Member's work**

5.6.1 Members should recognise that there is room for differences of opinion in relation to Actuarial Advice and must avoid any action which would unfairly injure the professional reputation of any other Member. However, this is not intended to prevent criticism of another Member's work where this is properly reasoned and is justifiable.

5.6.2 A Member who is invited to review or comment on another Member's work should, as a matter of professional courtesy, inform the other Member of this, provided the Client's agreement has first been obtained.

## **5.7 Transmission of Actuarial Advice to third parties**

5.7.1 If a Member knows or reasonably believes that his or her Actuarial Advice, including any précis of or addendum to the Actuarial Advice, will be transmitted in whole or in part to a third party, the Member must take reasonable steps to ensure that authorship is acknowledged to the third party, that any material implications or limitations of the Actuarial Advice are stated, and that the Actuarial Advice is not presented in a way likely to give a misleading impression. In circumstances where the third party has been or is likely to be misled, the Member must consider the provisions in section 5.1.7.

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

## **5.8 Out of date Actuarial Advice**

5.8.1 If, shortly after providing Actuarial Advice, a Member becomes aware that the Advice is no longer relevant or applicable and the Member reasonably believes that the Advice is being relied on, then he or she must notify the Client of the status of the Advice.

5.8.2 If the Member knows that any report containing the out-of-date Advice has been provided to third parties who may rely on and be materially affected by the Advice in that report, the Member must take reasonable steps to ensure that the third parties are notified that the Advice is no longer relevant or applicable.

## **6 PUBLICITY**

### **6.1 Appropriate use of publicity**

- 6.1.1 Publicity which 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 is encouraged. However, Members must ensure that their publicity, and any publicity by others on their behalf, is appropriate to the profession.
- 6.1.2 Any form of publicity which is of a misleading nature, which might give a Member unjustified or unfair professional advantage or which is likely to detract from the standing of the profession is not permitted. A Member must be in a position to substantiate in an objective manner any content of any publicity for Professional Services provided by the Member including publicity by others on the Member's behalf. This applies particularly where the publicity could be taken as suggesting that for some reason it is preferable to obtain Advice from the Member rather than from other Members.
- 6.1.3 A Member must not use a title which is dependent on elective office in the Society unless acting in such a capacity on behalf of the Society.
- 6.1.4 A Member speaking in public or writing for publication must ensure that it is made clear in what capacity the contribution is made. A Member must not imply that what is said or written has any official standing with respect to the Society unless authorised to speak or write as a representative of the Society.
- 6.1.5 In publications, CVs, seminars or conferences, a factual description of work on behalf of the Society and the titles of positions held or previously held may be included. Statements must not be made that imply that this work provides the Member or the Member's Firm with any special or additional standing or expertise.

## **7 ACTIONABLE CONDUCT**

### **7.1 Actionable Conduct defined**

#### **7.1.1 For the purposes of this Code:**

- (a) “Actionable Conduct” means conduct (whether by act or omission) constituting:
  - (i) Professional Misconduct; or
  - (ii) Unsatisfactory Professional Conduct; or
  - (iii) conduct likely to bring discredit upon the Society or the profession of actuary;and includes:
  - (iv) aiding, abetting, counselling, procuring, inducing or attempting to induce, another person to engage in or commit conduct described in (i), (ii) or (iii) herein;
  - (v) knowingly being concerned in or a party to conduct described in (i), (ii) or (iii) herein engaged in or committed by another person.
  
- (b) “Professional Misconduct” includes:
  - (i) conduct occurring in connection with the provision of Professional Services which involves a substantial or persistent failure to reach or maintain a reasonable standard of competence or diligence;
  - (ii) conduct that would (if established) justify a finding that a member is not a fit and proper person to engage in the provision of Professional Services and includes but is not limited to dishonesty or misleading or deceptive professional conduct;
  - (iii) knowingly breaching, subverting or avoiding a mandatory requirement of any or all of the Rules, this Code, any relevant guidance from the Society or relevant standards imposed by statute or regulation.
  
- (c) “Unsatisfactory Professional Conduct” includes:
  - (i) conduct occurring in connection with the provision of Professional Services that falls short of the standard of competence and diligence that a member of the public is entitled reasonably to expect of a Member or an Actuary as the case may be;

(ii) a breach or breaches of or non-compliance with any of the Rules, this Code, any relevant guidance from the Society or standards imposed by relevant statute or regulation, which is or are either:

- negligent and substantial; or
- negligent and persistent.

7.1.2 The fact that a Member, whilst a Member:

- (i) subject to the Criminal Records (Clean Slate) Act 2004, is or has been convicted of an indictable criminal offence; or
- (ii) has been found to have acted fraudulently or dishonestly by any court or tribunal or professional body equivalent to the Society in New Zealand or elsewhere; or
- (iii) has been found to have engaged in misleading or deceptive conduct in civil proceedings by any court or tribunal or professional body equivalent to the Society in New Zealand or elsewhere; or
- (iv) has, in his or her professional capacity, been the subject of an adverse determination by a regulatory body in New Zealand or elsewhere; or
- (v) is or has become bankrupt; or
- (vi) has breached a determination under the Disciplinary Procedure

is prima facie evidence of Actionable Conduct by that Member.

7.1.3 The fact that a Member failed to disclose in the application process when applying to become a Member of the Society that he or she:

- (i) subject to the Criminal Records (Clean Slate) Act 2004 had been convicted of an indictable criminal offence; or
- (ii) had been found to have acted fraudulently or dishonestly by any court or tribunal or professional body equivalent to the Society in New Zealand or elsewhere; or
- (iii) had been found to have engaged in misleading or deceptive conduct in civil proceedings by any court or tribunal or professional body equivalent to the Society in New Zealand or elsewhere; or
- (iv) had, in his or her professional capacity, been the subject of an adverse determination by a regulatory body in New Zealand or elsewhere; or
- (v) had become bankrupt;

is prima facie evidence of Actionable Conduct by that Member.

## **7.2 Procedures when possible Actionable Conduct identified**

- 7.2.1 On becoming aware of any matter which appears to be Actionable Conduct by another Member, a Member must take appropriate action as set out in clauses 7.2.4 to 7.2.5 at the earliest opportunity.
- 7.2.2 In deciding whether the matter could constitute Actionable Conduct, the Member may need to exercise judgment. The fact that the action did not lead to a materially adverse outcome is not sufficient to establish that the matter was not Actionable Conduct. If the Member is unsure whether or not a matter could constitute Actionable Conduct, the Member must seek guidance as described in clause 4.4.2.
- 7.2.3 If the Member decides that the nature of the matter is such that action is called for, the Member must, in the first instance, consider discussing the matter with the other Member. Possible objectives of having such a discussion include:
- seeking more information about the matter, so as to form a view whether there could have been an Actionable Conduct; and or
  - to explore whether the matter is one which the other Member can either rectify or mitigate by appropriate action.
- 7.2.4 Before discussing the matter with the other Member or with the Professional Conduct Committee, the Member will need to consider whether the matter is protected by confidentiality (see clauses 4.5.1 and 4.5.2).
- In some circumstances, the Member may be able talk to the other Member without breaching confidentiality, but will be prevented from taking the matter any further.
  - A matter which is protected by confidentiality at the time it becomes known to a Member may cease to be confidential for many reasons, for example because it becomes a matter of public knowledge or because confidentiality is waived by the person to whom that confidentiality is owed. The Member must take reasonable steps to secure such a waiver, but if one cannot be obtained, the Member should keep sufficient information on the matter to enable appropriate action to be taken if the confidential status subsequently changes.
- 7.2.5 If the Member does not consider a discussion to be appropriate, or if the matter is not resolved as a result of such discussions, then (subject to clause 7.2.4) the Member should normally seek guidance as described in clause 4.4.2 and, if warranted, must make a complaint in accordance with the Disciplinary Procedure.