



Extracts (suitably amended) from President's Newsletters – "Actuarially determined"

Summer 2010: note on professional responsibilities around "Actuarially determined" items under tax legislation

The concept of "actuarially determined" has been introduced into tax legislation through the Taxation (International Taxation, Life Insurance and Remedial Matters) Act 2009. This new life insurance tax legislation requires a number of items to be "actuarially determined". This approach of allowing professional judgment, rather than setting out the detail of the calculation to be made, is unusual in New Zealand tax legislation and places a professional responsibility upon members to act and advise appropriately in this area.

The following definition is set out in the legislation:

actuarially determined, for an amount, means a requirement that is met when an actuary has calculated the amount using relevant actuarial standards and a proper and reasonable calculation methodology.

The concept and definition raise several issues for members, for example:

- should NZSA develop new actuarial Professional Standards?
- what is meant by the words "proper and reasonable"?

Council currently has no plans to issue any new Professional Standards in this regard, but is happy to receive suggestions from Members as to matters which should be covered by Professional Standards. It is understood that the Inland Revenue policymakers intended that the reference to "actuarial standards" would go wider than purely Professional Standards and would encompass recognised actuarial approaches, in the nature of generally accepted actuarial principles.

The NZSA Professional Conduct Committee is the primary group within the profession assigned to taking an active interest in what constitutes a proper and reasonable methodology in the eyes of the profession. Any professional complaint to the NZSA would of course follow the complaints procedure, but it is also possible that action could (alternatively or as well) be taken by a third party through the Courts.

Council cannot comment on the approach that either the PCC or the Court would take in practice should any question arise as to whether an actuary's work is proper and reasonable. However, Council offers the following thoughts on the questions members might ask themselves in considering their own work.

- What have other actuaries done in making these sorts of calculations?
- Is what I propose to do well within the range of what others have done, or is it an outlier?
- If it is an outlier, what are the reasons?
- Are the reasons sufficient to persuade other actuaries who are experienced in the field that what I propose to do can be justified in the specific circumstances?

There is of course no history of what actuaries have done in this particular context and given the nature of the work it seems unlikely that any details will become publicly available. Council suggests that, if Members are in any doubt at all, they discuss the matter with other actuaries who they know undertake this sort of work and ensure that those discussions are well documented.

Of course, documentation of the approach taken and the reasons for the approach is a key step in each area where actuarial judgment is applied, especially where monetary payments such as tax are involved. Members will be aware that the Commissioner of Inland Revenue has extensive powers of information discovery under the Tax Administration Act.