

**NEW ZEALAND SOCIETY OF ACTUARIES**  
**PROFESSIONAL STANDARD NO. 92**  
**PROVISION OF ADVICE UNDER THE HUMAN RIGHTS ACT 1993**  
**MANDATORY STATUS**  
**EFFECTIVE DATE: 1 APRIL 2019**

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## **1. Introduction**

### **1.1 Application**

- 1.1.1 This standard applies to every Member providing Prescribed Actuarial Services as defined in Professional Standard No. 90 – General Actuarial Practice.

### **1.2 Background and purpose**

- 1.2.1 The Human Rights Act 1993 (“the Act”) prohibits discrimination on the grounds of sex, marital status, religious or ethical belief, colour, race, ethnic or national origin, disability, age, political opinion, employment or family status and sexual orientation in certain areas of public life including in employment and in the provision of goods and services.
- 1.2.2 The Act also sets out exceptions that allow for different treatment in specified circumstances. Two of these exceptions relate to different treatment on the grounds of sex, age or disability in the provision of insurance and superannuation schemes, based on actuarial data, advice or opinion.
- 1.2.3 This Standard sets out considerations that bear on the Member’s professional work in providing data, advice or opinion under these two exceptions.
- 1.2.4 In this context those that the Member is advising may include the Member’s employer, a consulting client, a party justifying or opposing different treatment, the Human Rights Commission, or as an impartial expert witness.
- 1.2.5 Such advice may be required when launching new products, revising the terms of existing products, or in the rating of individual cases.
- 1.2.6 Members must take appropriate steps to satisfy themselves whether or not the particular situations on which they are advising or reporting are covered by the exceptions specified in the Act. If in doubt, the Member must either seek to clarify the situation or qualify his or her advice, opinion or report accordingly.

### **1.3 Previous versions**

- 1.3.1 This standard was first issued as Guidance Note 3 in April 1997 and modified in August 2002. It is now being changed to a mandatory Professional Standard.

## 1.4 Legislation

- 1.4.1 This standard concerns Actuarial Advice related to the Human Rights Act 1993 (as of 28 September 2017).
- 1.4.2 Direct discrimination occurs under the Act when a person is treated differently to others in the same circumstances, on one of the prohibited grounds set out in section 1.2.1, and is materially disadvantaged.
- 1.4.3 Discrimination may also be indirect. Indirect discrimination occurs when a policy or practice that appears to treat everyone the same includes requirements or conditions that have a detrimental effect on one of the groups protected by the Act. Indirect discrimination is addressed in section 65 of the Act and allows a defence of good reason if the person or organisation that is discriminating can show that the requirement or condition is reasonable in the circumstances.

## 1.5 Changes to Referenced Documents.

Where this Professional Standard refers to another document, the reference relates to the document as it was as at the effective date of this Professional Standard. The referenced document may be amended, restated, revoked, or replaced after the effective date. In such a case, the Member must consider the extent to which the modification is applicable and appropriate to the guidance contained in this Professional Standard.

## 2. Effective date

This standard takes effect from 1 April 2019.

## 3. Definitions

**The Act** and the **Human Rights Act** means the Human Rights Act 1993.

**Member** means all members of the New Zealand Society of Actuaries

**Actuarial Advice:** means written, electronic or oral Advice:

- given by a Member in a professional capacity in areas of work in which actuaries are reasonably understood to have expertise; or
- 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:

- in accordance with legislative requirements, or standards or guidelines set by a Government or statutory agency or regulator;

- in accordance with any standards or guidance issued by the Society;
- as an expert witness before a court of law or statutory tribunal;
- as a participant in the disciplinary scheme of a professional body;
- in relation to liability or asset valuations, economic valuations, premium setting, investment strategy; or
- 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.

#### **4. Materiality**

There are no relevant materiality standards.

#### **5. Overview of Requirements**

- 5.1 When providing Actuarial Advice in relation to the Act, Members must take steps to ensure they are familiar with the legislation, the guidelines issued by the Human Rights Commission including the 2007 Guidelines on Insurance and the Human Rights Act ([https://www.hrc.co.nz/files/1014/2423/6897/06-Dec-2007\\_21-05-40\\_Insurance\\_Guidelines.pdf](https://www.hrc.co.nz/files/1014/2423/6897/06-Dec-2007_21-05-40_Insurance_Guidelines.pdf)), and relevant case law.
- 5.2 There are two situations where the Act permits different treatment on the grounds of age, disability or sex if it is based on actuarial or statistical data, or if such information is not available in respect of persons with a disability, reputable medical or actuarial advice or opinion. These are set out below along with a discussion of the likely issues involved in a justification for exception.
- 5.3 In both cases the different treatment must be reasonable having regard to the applicability of the data, advice or opinion (and any other relevant factors) to the particular circumstances. What is reasonable must be considered in relation to the circumstances of the individual case, and where possible should include an objective test.

#### **6. Overview of Exceptions Based on Data**

- 6.1 The Act permits different treatment on the grounds of age, disability or sex if the treatment is based on actuarial or statistical data. The data relied on must relate to life-expectancy, accidents, or sickness and it must be reasonable to rely on such data.

- 6.2 The Member must be prepared to justify his or her reliance on, and the relevance of, the data to the Human Rights Commission or before a Court or Tribunal. In assessing whether it is reasonable to rely on the Member's justification, the Human Rights Commission may request the views of an actuary.
- 6.3 The Member may be required to justify whether there should be a difference in treatment at all, and the extent of any difference in treatment.
- 6.4 Justification must comprise both quantitative and qualitative aspects.
- 6.5 In setting out quantitative arguments the Member must have regard to relevant local conditions. Generally, the use of generic data will be reasonable but an effort should be made to tailor decisions to individual cases and conditions. The Member must also have regard to published tables and overseas experience of which the Member would reasonably be expected to be aware.
- 6.6 The Member must be aware, particularly in the case of disability, that not only is experience in certain areas changing rapidly but that local data collection and analysis is increasing both in quantity and quality. In any particular case the Member can be expected to justify why available local statistics were or were not taken into account.
- 6.7 The Member must have regard to the credibility of the data being used both in a statistical and in a qualitative sense. In particular the Member must be able to quote the source of the data or table and have appropriate regard to:
- the composition of the group giving rise to the data
  - the period to which the data relates
  - any qualifications on the collection or analysis of the data
  - the size of the data sample
  - the construction methods employed in deriving smoothed rates from data
  - any projections used in the table construction
- 6.8 Justification must be provided as to why the Member considers it to be reasonable to apply particular statistics or tables to a group other than that included in the underlying experience of those statistics or tables if that is the case.
- For example: (i) a Member may use relationships between population and insured life tables in order to draw conclusions about insured lives experience at older ages, (ii) qualitative arguments may also be required to justify the application of overseas experience to New Zealand.
- 6.9 Credible local, office or scheme experience or particular circumstances may be used either in their own right or to adjust published statistics or tables if the use of such data can be reasonably justified. The Member may also wish to take account of trends in the data.

## **7. Overview of Exceptions Based on Advice or Opinion**

- 7.1 Where there is no actuarial or statistical data available in relation to persons with a disability, the Act allows for different treatment if it is based on reputable medical or actuarial advice or opinion, upon which it is reasonable to rely, whether or not contained in an underwriting manual.
- 7.2 Members providing advice or opinion on which others may rely in relation to persons with a disability may be asked to justify their advice and opinion in a similar manner to that outlined in Section 6.
- 7.3 Members relying on such advice or opinion must take such steps as necessary to satisfy themselves that data as outlined in Section 6 is not available and must ensure, as far as possible, that the provider of such advice or opinion understands the purpose for which the advice is sought and that it may reasonably be relied on when justifying an exception in relation to insurance or superannuation schemes under the Act.
- 7.4 Members must take such steps as necessary to ensure that they are satisfied that it is reasonable for them to rely on such advice or opinion for the purposes of the Act.
- 7.5 If reliance is placed on information contained in underwriting manuals, care must be taken to establish that the information is up to date and can be demonstrated to be reasonable, and also whether adjustments are required to take account of local conditions and experience.
- 7.6 In justifying different treatment, and thus an exception under the Act, it is up to the Member to use his or her professional experience and judgement. Any justification must be documented.
- 7.7 It is possible that opinions on another Member's work in this area may be required from time to time. Section 5.6 of the Code of Professional Conduct must be adhered to in such cases.