

Background

1. In 2016, Council agreed to review the Code of Professional Conduct dated November 2009 ('Previous Code'). The Code of Conduct Taskforce ('Taskforce') was formed to consider whether the Previous Code should be amended in light of experience with its operation since 2009.
2. The Taskforce reviewed professional and ethical codes of conduct for other professions and for overseas actuarial professions. In March 2017, an Issues Brief was released by the Taskforce inviting comments from Members on various aspects of the Previous Code. Several submissions were received.
3. On 23 March 2017 (Sydney) and 12 April 2017 (Melbourne), Insights sessions were held to discuss the proposed changes with Members. The Taskforce asked for feedback from Members on areas to focus on with several responses received. Annexure 1 to this Explanatory Memorandum provides an overview of the feedback received at those sessions and how the feedback was initially addressed in the Code.
4. During the course of its review, the Taskforce considered whether a high-level principles-based Code would be appropriate or whether a more prescriptive rules-based approach should be retained. This consideration took into account the work of the UK Institute and Faculty of Actuaries (IFoA) that concluded:

“that the use of high-level principles supplemented by ‘amplifications’ remains the most appropriate structure for the Code, in particular, because a more rules-based approach might restrict the types of situations to which the Code would apply and because it might discourage the exercise of professional judgement by Members” (paragraph 2.03, Proposals for changes to the Actuaries’ Code by the Regulation Board, October 2017).
5. The Taskforce agreed with these conclusions and considered that a legalistic reading of a rules-based approach could cause some Members to consider misconduct appropriate as long as the letter of the rule is not breached and could lead some Members to consider poor behaviour to be appropriate if it is not clearly called out not to be so by a rule.
6. The Taskforce also therefore concluded that the use of high-level principles, supplemented by guidance, would be a more appropriate structure for the Code.
7. In July 2018 the Taskforce requested Members’ views on the proposed principles-based Code and Guidance Material. An Insights session was held on 31 July 2018 in Melbourne and Sydney for Member discussion and written feedback was encouraged. Annexure 2 to this Explanatory Memorandum provides an overview of the feedback received at those sessions and how the feedback was addressed in drafting the Code.
8. This Explanatory Memorandum has been prepared to assist Members in understanding the changes to the Code as compared with the Previous Code. It has been derived from the Explanatory Memorandum circulated to Members in January 2019 as part of finalising the Code.
9. Draft Guidance Material was provided in July 2018 for Members to comment on and to highlight areas where further guidance may be necessary. The first edition of “Guidance to support the principles and amplifications of the Actuaries Institute Code of Conduct” was issued on 20 March 2020 and the current version is available on the Institute website.

Framework of Code

10. The Code is principles-based and draws much from the IFoA Code of Conduct.
11. In summary, the Code has been updated:
 - ▶ to be principles-based with fewer rules and detailed directions to Members (the aim of this is to avoid over-codification and the potential for disciplinary processes to become bogged down in technical legal argument);
 - ▶ to include all conduct that might reflect poorly on the profession and not just professional conduct;
 - ▶ to remove certain requirements such as that to have indemnity insurance where these matters are covered by legislation; and
 - ▶ to remove the distinction between 'prescribed actuarial advice' and other actuarial work.
12. When drafting the Code, the key considerations were to create a document that should:
 - ▶ be easy to understand by the public and by Members, using brevity wherever possible;
 - ▶ be consistent with a growing profession and encourage continuing diversity into new areas; and
 - ▶ reflect other changes being implemented by the Institute (i.e. with respect to the Disciplinary Scheme) as well as trends being adopted by other similar organisations (such as the IFoA).

Commencement date

13. The Code was adopted by Council at its March 2019 meeting and came into effect from 31 March 2020.

Key changes from the Previous Code

14. The following sets out a summary of the key changes in the Code compared with the Previous Code.

Removal of 'Professional' Qualifier

15. The qualifier 'professional' has been removed from the discussion of conduct (including the title). This is intended to make it clear that the Code covers all conduct that might reflect poorly on the profession and not just professional conduct. This is consistent with the Disciplinary Scheme where actionable conduct includes misconduct likely to bring discredit upon the Institute or the profession of actuary.
16. The view of the Taskforce is that the public will take a holistic view of the work and conduct of an actuary and hence the Code should take a similar broad perspective. A legalistic definition of professional may cause some Members to think that the Code does not apply to work that does not meet some narrow definition of actuarial work while the public will see it simply as the work of an actuary.

A Principles-Based Code

17. The Code is a short statement of principles that Members are expected to observe, whatever their qualifications and areas of practice. The Code also provides a vehicle to succinctly promote the values of actuaries. Where possible, the Code is expressed in the positive sense of conduct that is promoted rather than the negative sense of misconduct to be avoided.
18. To the extent that there is the potential (and expectation) that the requirements of the Code will form the basis of any action under the Disciplinary Scheme, the 'status and purpose' was amended to avoid any potential inference that the Institute must and may only be able to have regard to the Code under the Disciplinary Scheme.

Application of the Code

19. The Code applies to all Members. The Previous Code had a carve-out to deal with actuaries practicing in other jurisdictions, allowing them to use a local code of a full member association of the International Actuarial Association. On the basis that the Code is principles-based, that Australian specific language is removed and that the scope is expressed as it is, this carve out is no longer needed.
20. The Previous Code specifically differentiates between prescribed actuarial advice and other professional services, with tougher standards being applied in relation to prescribed actuarial advice. On the basis that the Code is principles-based this distinction is no longer needed within the Code. However while references to prescribed actuarial advice have been removed from the Code, the Institute's Professional Standards Committee separately considered whether any of the related requirements needed to be retained within individual Professional Standards .
21. The Code avoids referring to specific legislative requirements as Members are expected to comply with all relevant legal requirements. Calling out specifics in the Code could lead Members to consider some legislative requirements to be more relevant than others to their work. It would also make the Code more Australian centric.
22. The Code uses the auxiliary verb 'will' (i.e. 'Members will comply with ...') rather than 'must' or 'should'. In the context of a principles-based code, 'will' and 'must' have the same legal meaning. Given the Code is a prominent public document of the Institute, a less legal sounding term is considered more appropriate. Consideration was given to removing auxiliary verbs entirely (i.e. 'Members comply with ...'), however a stronger degree of direction was thought appropriate.

Purpose of the Code

23. The purpose of the Code has been updated to better align to the Constitution. The Code makes it clear that the protection of the public is foremost for the Code while acknowledging the shared interests of Members in this objective.

The Principles

24. The six key principles in the Code are:

- ▶ Integrity;
- ▶ Compliance
- ▶ Competence and Care;
- ▶ Objectivity;
- ▶ Speaking Up; and
- ▶ Communication.

The Taskforce recommended that guidance material be prepared to provide details and examples of expectations for each of the six principles. The Code Guidance Group was established to develop and maintain this guidance material.

Integrity

25. The Previous Code covered Integrity under sections 4.2.1, 4.2.2 and 4.2.3.
26. Section 1 of the Code notes that integrity applies to how Members interact with others, not just other Members (and the Institute) as required under the Previous Code.
27. Section 1 also covers confidentiality obligations which were covered under sections 4.6.1 and 4.6.2 of the Previous Code.

Compliance

28. The Previous Code covered Compliance in several sections, including 4.1 and 4.7.
29. The Code has been simplified by stating in Section 2 that Members will comply with all relevant laws, regulatory requirements and Professional Standards.
30. Section 5 separately deals with Members' obligations to act (that is, to speak up) in the event of non-compliance.

Competence and Care

31. The Previous Code covered Competence and Care under sections 4.2.4, 4.3.1, 4.3.2, 4.8.1 and 8.1.2. This has been replaced by Section 3 of the Code.
32. Section 3 of the Code notes that Members will only provide Services where they have an 'appropriate' level of knowledge and skill to provide the Services. 'Appropriate' may differ in extent or depth in a new area of practice, but still requires the Member to make suitable enquiries and to learn enough about the background of the area to be able to provide reliable advice.
33. Section 3 also highlights Members' particular obligations when replacing another Member in a statutory role.

Objectivity

34. The Previous Code, in sections 4.4 and 4.5 requires advice to be impartial, other than when circumstances mean the Member is acting other than impartially (e.g. when performing an advocacy role for a principal).

35. The Code recognises that the key requirement is that there is no undue influence on a Member that could result in the Member's professional judgement being compromised, whether in fact or in perception. Accordingly, Section four of the Code clarifies this and provides direction as to how to achieve this.
36. Section four focuses particularly on objective advice, conflict of interest and the obligations on a Member in this regard.

Speaking Up

37. Section five deals with Members' obligations to act (speak up) in the event of non-compliance by others.

Communication

38. The Previous Code contained detail around reporting, the use of the designation of 'actuary' and transmission of prescribed actuarial advice to third parties in sections 6.1, 7, 8.1 and 8.2.
39. The Code has been simplified but Section six still reminds Members that they will communicate appropriately.

Guidance Material

40. Feedback from Members emphasised the need for adequate guidance to accompany a principles-based Code. As such, a taskforce called the Code Guidance Group was established to develop Guidance Material to help explain the intent of each of the key principles in the Code and to provide examples to guide Members in their interpretation of the Code. This taskforce welcomes feedback from Members on where specific guidance may be needed and examples of circumstances that could form the basis for case studies.

Annexure 1: Feedback from Sydney and Melbourne Insights Sessions – March/April 2017 and response explaining how these points have been addressed in the Code

Do you agree with the proposed change to the purpose of the Code?

Audience Feedback: further guidance on 'protection of public interest' would be appropriate as this has different meanings to different people.

Response: The Code notes that Members are expected to observe the principles in the Code in the public interest and to build and promote confidence in the Services provided by actuaries and in the actuarial profession.

Do you agree with the proposed change to the definition of Professional Service?

Audience Feedback: Suggestion to change the proposed wording from 'pursuit of the profession of actuary' to 'using the skills and experience of an actuary'. There was concern over how to define the 'skills and experience' of an actuary.

Response: Professional Service is not used in the Code. Instead, 'Services' is defined as any engagement, work, findings, advice or act of a Member as an actuary and includes services that are provided on a pro-bono basis.

Should the Code require all advice to be provided impartially?

Audience Feedback: General consensus that providing partial advice is ok, as long as it is clear to the intended audience that it is not impartial. Prescribed Actuarial Advice needs to be impartial.

Response: Impartiality (renamed Objectivity) is one of the six Principles in the Code. The focus is on conflicts not impeding professional judgement. The Guidance Material will provide further details and examples regarding when advice should be provided impartially/objectively. If a member is engaged to advocate for a certain point of view, then they would be expected to take steps to manage this conflict and to still provide objective advice. As a point of comparison, the CFA Institute requires its members to 'Have a reasonable and adequate basis, supported by appropriate research and investigation, for any investment analysis, recommendation, or action' which would align with the concept of providing objective advice.

Should the Code prohibit the granting of editing permission?

Audience Feedback: General consensus that the guidance in the Previous Code is ok, just need to use your best endeavours to prevent misrepresentation of your advice.

Response: Communication is one of the 6 Principles in the Code. The Guidance Material will provide further details and examples regarding this point.

Should the Code be changed to a shorter, simpler principles document?

Audience Feedback: Some members had hesitations about moving to a principles-based code due to increasing diversity of our membership (and therefore diversity in the view of what's right) however others were in favour of a principles-based code. There was a lot of discussion on the pros and cons of each approach, noting that neither approach is perfect. It was clear from the audience that if a principles-based approach is adopted, it would need to be accompanied by guidance.

Response: The Code is principles-based and is accompanied by Guidance Material, examples and case studies and accompanying training to ensure a common understanding/interpretation of the Code. Consideration was given to whether it is appropriate to have ongoing training requirements to ensure Member familiarity with the Code. Council amended PS1 to require all members to include 5 CPD points annually that address 'professionalism training' with effect from the 2020 CPD year.

Annexure 2: Feedback from exposure draft Code – July 2018 and response explaining how these points are addressed in the Code

The Taskforce did not respond to every item of feedback received for reasons of brevity. In addition to the specific points noted below, the Taskforce also adopted Member feedback that improved how the Code reads (e.g. to split the sentence on Scope into two separate sentences).

Application, Scope, Status and Purpose

Feedback: If a person is not using their actuarial identity should their behaviour be restricted.

Response: The reputation of the profession can be impacted by an action of a Member even if not acting as an actuary.

Integrity

Feedback: Use of the words 'honestly' and 'honest' are not required - if someone is acting with integrity and they are being truthful, they must be acting honestly.

Response: Taskforce agreed to delete the duplicate references to 'honesty'.

Feedback: The Code requires that 'Members will show respect for others in the way they conduct themselves.' There was some concern that the Code should not mandate how a member of the profession should behave outside of a professional work situation.

Response: Taskforce considers the Code should apply outside a professional work situation if the Members' conduct may reflect on the Institute or actuarial profession.

Guidance material will be prepared to explain expectations around Members' conduct.

Competence and Care

Feedback: In the intro '...having due regard to all professional regulation material' seems too vague – some professional regulations might not be relevant.

Response: the word 'all' has been deleted

Feedback: Members should not be required to take into account the 'needs' of their clients.

Response: reference to 'needs' has been deleted;

Feedback: Members would not always be able to agree with their Client the scope of their engagement and the statement appears to be only relevant to consultants.

Response: the requirement to agree scope of an engagement has been deleted.

Feedback: Code restricts innovation in non-traditional fields

Response: references to policy holders and super fund members removed. Further guidance material will be provided in relation to expectations for Members working in developing or non-traditional fields.

Impartiality (renamed Objectivity in final version of Code)

Feedback: It is not clear whether an advocacy role for a principal is allowed under the new Code.

Response: The Code is clear that an advocacy role is allowed with a requirement that this be disclosed and the reference to providing objective advice is removed. Guidance material will be prepared to explain when an advocacy role may be appropriate.

Feedback: the requirement to disclose conflicts in writing is too onerous and listing some conflicts may limit the conflicts that members consider.

Response: the requirement to disclose conflicts in writing was removed from the Code, but there is still a requirement to consider conflicts and three examples have been provided. Further, in the case of a conflict that compromises or can be reasonably perceived to compromise a Member's professional judgement, there is a requirement to communicate to a client the actions taken to reconcile the conflict. Guidance material will be provided.

Compliance

Feedback: Code lacks a 'speaking up' to counterbalance confidentiality.

Response: Compliance principle has been split into two separate principles 'Speaking Up' and 'Compliance'.

Feedback: The words 'and will respond to non-compliance by others' is very general and places a burden on Members.

Response: Added 'appropriately' before '.... respond to....' In the speaking up section.

Feedback: Institute should be made aware of potential breaches of the Code before a Client is made aware.

Response: The taskforce feels the current wording is appropriate as it gives members the discretion to consider the specific circumstances and decide on the best course of action. Guidance Material will be provided.

Communication

Feedback: There was a concern that this section did not highlight the requirements of Professional Standards when a member reports on what are currently termed 'Prescribed' matters.

Response: The taskforce decided not to separate out statutory roles. Specific requirements for 'prescribed matters' are covered in relevant Professional Standards. Further guidance can be provided.

Feedback: There was a view that 'Members will demonstrate that they accept accountability and responsibility for their services....' may be too explicit for internal communications and may be too onerous for many members to comply with.

Response: The taskforce considered the wording and agreed to delete as it was adequately covered in 6.1 e) which notes 'Members will have regard to the capacity in which they are acting'. Guidance Material will be provided to put this in a context of formal advice to a client or third party, rather than internal communications.

Glossary of Terms

The Taskforce added a definition of the Code itself for clarity.

Feedback: Define the 'actuarial profession'.

Response: The Taskforce decided that the word profession has a commonly accepted meaning and there was little value to be added in attempting to define an actuary.

Feedback: Define the 'public interest'.

Response: The Taskforce determined that the appropriate definition of public interest will be a matter of judgement and will depend on context. We note the Constitution uses similar terms without definition.

Feedback: Retain the current Code's statement as to the profession's expectations of public interest.

Response: The Taskforce did not consider that the current Code statement captured all items relevant to the public interest and noted that the public interest is not determined by the actuarial profession.