

PRACTICE GUIDELINE 499.07

ADDITIONAL CONFLICT OF INTEREST GUIDANCE FOR ACTUARIES WORKING IN SUPERANNUATION

September 2020

1. Introduction

The issue of conflict of interest has always been part of the Code. The purpose of this Practice Guideline is to provide additional Member guidance in the superannuation area, where conflicts of interest are possible because the Member, as RSE actuary, may be asked to advise both the RSE licensee and another party associated with the superannuation fund.

1.1 Application

- 1.1.1 This guidance applies to Members who are RSE actuaries advising an RSE licensee in respect of its registerable superannuation entity.
- 1.1.2 This guidance also applies to a Member who is requested by the RSE actuary to review the RSE actuary's work.
- 1.1.3 This version of the Practice Guideline updates the first version (issued December 2018) to incorporate additional conformance changes to align with the Institute's new Code (effective 31 March 2020).

1.2 About this Practice Guideline

- 1.2.1 This Practice Guideline:
 - a. has been prepared in accordance with the Institute's Policy for Developing Professional Practice Documents; and
 - b. is to be applied in the context of the Code.
- 1.2.2 Members' attention is drawn to the conflict of interest sections of the Code Guidance (Guidance to support the principles and amplifications of the Actuaries Institute Code of Conduct).
- 1.2.3 This Practice Guideline is not mandatory. Even so, if this Practice Guideline covers the Services a Member provides, then the Member should consider explaining any significant departure from this Practice Guideline to the RSE licensee (and the Principal if not the RSE licensee), and record that explanation.

1.2.4 This Practice Guideline does not constitute legal advice. Any interpretation or commentary within this Practice Guideline regarding specific legislative or regulatory requirements reflects the expectations of the Institute but does not guarantee compliance under applicable legislation or regulations. Accordingly, Members should seek clarification from the relevant regulator and/or seek legal advice in the event they are unsure or require specific guidance regarding their legal or regulatory obligations.

1.3 Other relevant documents

1.3.1 This Practice Guideline must be applied in the context of the relevant law, and relevant accounting and auditing standards.

1.3.2 A reference to legislation or a legislative provision in this Practice Guideline includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision. Similarly, a reference to a Professional Standard or Practice Guideline includes any modification or replacement of that Professional Standard or Practice Guideline.

1.3.3 Apart from the Code or a Professional Standard, from legislation or from regulatory standards, no other document, advice or consultation can be taken to modify or interpret the requirements of this Practice Guideline.

1.3.4 If there is a conflict between this Practice Guideline and any legislation, then the legislation takes precedence. In this context, legislation includes regulations, prudential standards, subordinate standards, rules issued by government authorities and standards issued by professional bodies which have the force of law.

2. Commencement date

2.1.1 This Practice Guideline commences on 1 November 2020.

3. Definitions and interpretation

3.1.1 In this Practice Guideline:

'Advice' means opinion or statements provided in relation to the Fund which involve a material element of judgement, including judgement in relation to funding, matters impacting benefits, transfers to or from the Fund and the wind-up of the Fund. For the avoidance of doubt, Advice is unlikely to include provision of information to an employer-sponsor pursuant to a recognised accounting standard.

'Code' means the Code of Conduct of the Institute.

'Conflict of Interest' has the same meaning as set out in the Code.

'Conflict Management Policies' means a set of procedures, policies or protocols which are designed to prevent the sharing of information or knowledge that may give rise to a Conflict of Interest.

'Fund' means the superannuation fund (as defined in SPS 160 as "defined benefit fund" and includes a "defined benefit sub-fund" as also defined in SPS 160) to which the Member has been appointed by the RSE licensee as RSE actuary.

'Principal' means the Client who is the primary recipient of a Service provided by a Member and the primary party for whom that Service has been performed.

'RSE' means a registerable superannuation entity.

'SIS Act' means the Superannuation Industry (Supervision) Act 1993 (Cth).

'SPS 160' means Superannuation Prudential Standard 160 (issued by APRA under section 34C of the SIS Act).

'SPS 521' means Superannuation Prudential Standard 521 (issued by APRA under section 34C of the SIS Act).

Other capitalised terms used in this Practice Guideline have the same meaning as set out in the Code.

3.1.2 The terms **employer-sponsor, registerable superannuation entity, RSE actuary** and **RSE licensee** have the same meanings as the same terms in the SIS Act. For the purposes of this Guideline, the meaning of **employer-sponsor** is extended to include any parent company as well as associated employers and their parent companies.

3.1.3 Where the RSE actuary is appointed in respect of one or more defined benefit sub-funds within an RSE, but not to the RSE itself, in this guidance Fund only refers to the relevant defined benefit sub-fund(s).

4. Conflict of Interest

4.1 RSE actuary

4.1.1 The RSE actuary has a primary duty to the RSE licensee in respect of the beneficiaries of the Fund.

4.1.2 Where the RSE actuary undertakes any material work (but not Advice which is covered in 4.1.5) for the employer-sponsor or provides any Advice for another party other than the RSE licensee, the RSE actuary is expected to inform the RSE licensee of the nature of that work as soon as possible. If the work is regarded as immaterial and not disclosed, then generally accepted practice is for the RSE actuary to record the reasons for regarding the work as immaterial.

4.1.3 Where a Member is requested, by the RSE actuary, to review the Advice of the RSE actuary then the Member should disclose to the RSE actuary any Conflict of Interest

in respect of the work being reviewed. The RSE actuary will then manage that Conflict of Interest in accordance with this Guideline.

- 4.1.4 Where the RSE actuary becomes aware that another person from the RSE actuary's firm is providing Advice to an employer-sponsor, the RSE actuary is expected to inform the RSE licensee, unless the RSE actuary is not involved in the provision of that Advice and is satisfied that the firm has an effective set of Conflict Management Policies.
- 4.1.5 The provision of Advice by the RSE actuary to an employer-sponsor could involve, or be perceived to involve, a Conflict of Interest. Therefore, subject to 4.1.7, the generally accepted practice is that the RSE actuary may only provide Advice to an employer-sponsor, with the informed consent of the RSE licensee. In doing so, the RSE actuary is expected to agree with the RSE licensee how to manage any Conflict of Interest, or perceived Conflict of Interest, and advise the employer-sponsor that any information provided to the RSE actuary may be shared with the RSE licensee.
- 4.1.6 On the wind up of a Fund, expected practice is that the RSE actuary will provide Advice on matters that affect the amounts paid by the Fund to its beneficiaries only to the RSE licensee.
- 4.1.7 SPS 521 sets out the requirements for the RSE licensee in relation to developing a conflicts management framework. The Member is expected to understand and comply with the RSE licensee's conflicts management framework.
- 4.1.8 Where the relevant governing rules of the Fund require the RSE actuary to provide Advice to an employer-sponsor, the RSE actuary is expected to inform the RSE licensee of the scope of the Advice to be provided.
- 4.1.9 Where the RSE actuary is providing Advice to an employer-sponsor in relation to a matter, and the RSE actuary determines that a Conflict of Interest has arisen, or may be likely to arise, the RSE actuary is expected to determine whether it is appropriate to cease acting for the employer-sponsor or to cease acting for both parties.
- 4.1.10 In undertaking any work for an employer-sponsor, the RSE actuary is expected to observe any confidentiality or privacy requirements established by the RSE licensee in relation to the RSE and the membership and financial data.

4.2 Documentation Requirements

- 4.2.1 Where the RSE actuary has agreed to manage a Conflict of Interest under this Guideline, the communication with the RSE licensee would typically include, as a minimum:
- The identity of each party.

- A description of all known Conflicts of Interest, setting out how they are to be addressed.
- Any limitation on the extent of any Advice which may be provided to the employer-sponsor and on who may provide that Advice.
- The confidentiality requirements of each party.
- The agreed communication processes.
- Termination of the arrangement.

End of Practice Guideline 499.07