

#77

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Page 3

Q1 Overall, do you agree or disagree with [standard 1] and proposed commentary? **Agree**

Q2 Please provide any comments on [standard 1] and the proposed commentary.

The primary focus of this Standard is on treating clients fairly. We believe the reference in the Standard to acting in clients' interests detracts from this primary focus, and has the potential to cause confusion by using the same concept as proposed section 431J of the Financial Markets Conduct Act in a different context. We would remove those words or, at the very least, relegate them to the commentary.

We believe the final bullet point in the commentary should be removed. An obligation to comply with the 'spirit and intent' of legal obligations creates unnecessary uncertainty. Assessing the 'spirit and intention' of legal obligations is not an exercise that financial advice providers should be expected to carry out.

Many of the concepts in this Standard are broad and subjective. While we appreciate this is largely by design, we think it would be helpful for financial advice providers if the commentary provided slightly more detail as to minimum standards the Code Working Group expects to be met.

Page 4

Q3 Overall, do you agree or disagree with [standard 2] and proposed commentary? **Agree**

Q4 Please provide any comments on [standard 2] and the proposed commentary.

No specific comments.

Page 5

Q5 Overall, do you agree or disagree with [standard 3] and proposed commentary? **Agree**

Q6 Please provide any comments on [standard 3] and the proposed commentary.

We believe the first and second bullet points should be reordered: conflicts need to be identified before they can be avoided. We suggest that the Standard should be expanded to require financial advice providers to mitigate conflicts of interest, where they cannot be avoided.

The potential conflict of interests associated with commissions is a topical issue. An example covering these arrangements may assist, perhaps with some examples of where the Code Working Group considers believes it would be 'practicable' to avoid the conflict. This would also assist financial advice providers in understanding the concept of 'practicality', which is particularly subjective.

Page 6

Q7 Overall, do you agree or disagree with [standard 4] **Agree** and proposed commentary?

Q8 Please provide any comments on [standard 4] and the proposed commentary.

We think the example, as currently drafted, risks sending the wrong message in terms of a product comparison on replacement insurance advice. While we recognise the Code is intended to outline minimum standards, we suggest a more aspirational example would be appropriate.

Clarity on way this Standard will apply to advice that is currently class advice is required. As drafted, we think the Standard is designed primarily for advice that is currently personalised advice, and will not necessarily work in the wider context.

Page 7

Q9 Overall, do you agree or disagree with [standard 5] **Agree** and proposed commentary?

Q10 Please provide any comments on [standard 5] and the proposed commentary.

This Standard, as currently drafted, focuses on situations where advice that is currently personalised advice is given. We believe additional commentary, and examples, need to be added to provide certainty around how the Code Working Group believes 'suitable' advice can be given in the context of advice that is currently class advice. The current wording in paragraph 2 is very brief and does not assist financial advice providers in understanding expectations.

Page 8

Q11 Overall, do you agree or disagree with [standard 6] **Disagree** and proposed commentary?

Q12 Please provide any comments on [standard 6] and the proposed commentary.

While we agree that customer information should be protected, we do not support it being covered in the Code. Protections already exist under the Privacy Act, and are likely to be strengthened under proposed law reforms.

If the Standard remains, then we believe the prohibition on the use of anonymised data for another purpose should be removed. Anonymised data has a range of practical uses and does not appear to raise any privacy issues.

Page 9

Q13 Overall, do you agree or disagree with [standard 7] **Disagree** and proposed commentary?

Q14 Please provide any comments on [standard 7] and the proposed commentary.

While we agree with the principles relating to complaint resolution, we do not think it needs to be set out in a separate standard. We believe it is an issue of 'fairness' that can be incorporated as part of the commentary to Standard 1.

Page 10

Q15 Overall, do you agree or disagree with [standard 8] **Agree** and proposed commentary?

Q16 Please provide any comments on [standard 8] and the proposed commentary.

We suggest the second bullet point should also reference 'omissions'. The current AFA Code of Conduct specifically addresses omissions. Given the similarities between the two documents, there is a risk an argument could be made that the Code Working Group specifically decided that 'omissions' ought not be covered by the Code. That would be undesirable.

Page 12

Q17 Overall, do you agree or disagree with [standard 9] **Agree** and proposed commentary?

Q18 Please provide any comments on [standard 9] and the proposed commentary.

The reference to 'alternative qualification' in the first paragraph of the commentary could be read as suggesting that only academic qualifications are sufficient to meet the Standard. Given the focus of the Standard itself is on qualification outcomes, it seems to us that the standard could potentially be achieved in ways that do not involve an academic qualification (for example, practical training and industry experience). We think the commentary should be rephrased as 'A person seeking to demonstrate that they have achieved the minimum standard in an alternative way should...' (or similar).

Commentary on the position of trainee advisers would also assist financial advice providers.

Page 13

Q19 Overall, do you agree or disagree with [standard 10] and proposed commentary? **Agree**

Q20 Please provide any comments on [standard 10] and the proposed commentary.

We think the reference to entities regularly reviewing their procedures should be removed, on the basis that this is a process requirement and better left for licensing.

Page 14

Q21 Overall, do you agree or disagree with [standard 11] and proposed commentary? **Agree**

Q22 Please provide any comments on [standard 11] and the proposed commentary.

We have no specific comments.

Page 15

Q23 Overall, do you agree or disagree with [standard 12] and proposed commentary? **Agree**

Q24 Please provide any comments on [standard 12] and the proposed commentary.

We have no specific comments.

Page 16

Q25 Is there anything missing from the draft Code? **No**

Q26 If you answered yes, what is missing? **Respondent skipped this question**

Q27 Do you have any feedback on the examples, or suggestions on other examples that should be included in the draft Code? **Respondent skipped this question**

Q28 Is there anything else you want to say?

Overall we strongly support the principles-based focus of the Code. We also support the consistency with many of the current AFA Code requirements, which we think will assist transition.

The downside of the principles-based approach is that financial advice providers will be left to make significant judgement calls about whether their processes meet the Code's requirements. We think this uncertainty could be partly mitigated with the use of more examples throughout the Code.

Page 17

Q29 Name

Nick Summerfield

Q30 Your role or professional title

Partner

Q31 Individual or organisational submission **This is a submission on behalf of an organisation (eg employer)**

Q32 If you give financial advice... **I am not an AFA, RFA or QFE adviser**

Q33 My organisation or I give the following types of advice... **My organisation or I do not give financial advice**

Q34 Organisation Name

Anthony Harper

Q35 Type of organisation

Law firm

Q36 Size of organisation

Large firm (50+ staff)

Q37 If there are other things we should know about you or your business that would provide context to your answers, please provide details below. **Respondent skipped this question**

Q38 Please indicate whether your submission contains any information that is confidential or whether you do not wish your name or any other personal information to be included in a summary of submissions.

This submission does not contain confidential information. We are happy for our name and other personal information to be included in the summary of submissions.

Q39 Please provide your contact details (email and/or phone number) This is the only question that requires an answer. This information would not be released publicly. We may get in touch with you in order to help us understand particular points from your submission.

s 9(2)(a)

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