

#100

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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.

Comments

I support the proposed Code standard with minor suggestion for wording of the proposed standard and some changes to the commentary.

Comment on the Standard

I recommend amending the wording of the proposed standard to match the wording in proposed section 431J of the Financial Markets Conduct Act in order to remove any concerns that the Code duty is in any way different to the duty in that proposed section. Although including it in this section is duplication of the duty in the draft law, I feel that the benefit of highlighting that duty to both financial advice providers and their clients is valuable, but in order to be clear, it should match the wording in the draft law.

Comments on the commentary

I am aware that some submitters are proposing a duty to provide ongoing service. This desire is to avoid a situation highlighted by the recent Australian Royal Commission of advisers or companies receiving fees while providing no service. That is a laudable aim. I am concerned that a duty to provide a service would be either too vague to be useful, or too prescriptive to cope with the many variations in business and remuneration model.

Defining the service is a tough ask. I am not in favour of the Code requiring certain types of service, charge, or economic activity. That was rejected by MBIE in drafting the law and if you like innovation, flexibility, and freedom, then you probably think that was a good idea. I am also concerned as to how we would define the service, at what threshold level of renewal commission we might require it, and whether we might bind an adviser to a situation where they were required by the Code to provide a service that was uneconomic, in the case of very small renewal commissions.

But the problem is real, as illustrated from Australia, is when a financial adviser receives a payment for no service given. Plainly, this is wrong. But there is a solution, possible with relatively little complication to the admirably principles-based design of the Code. Here, in Code Standard One, in the commentary, we could add an illustration that it is never fair to receive a fee or commission when no service is provided and no reasonable attempt has been made to provide the service. That would leave the exact nature of the service, the value proposition, the form of charge and so on, with advisers. It would also clearly signal that fee for no service is unacceptable.

I also support the comments on the commentary by Rob Dowler.

I also support the proposed changes to the commentary detailed in the FSC submission.

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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.

I support the proposed changes to the commentary detailed in the FSC submission.

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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.

Overall, I agree with the draft Code Standard. My comments only apply to the commentary under the standard. I agree in general with the "Where practicable, avoid conflicts of interest" but suggest that this should not preclude delivery of a service provided on the basis that commission shall be taken.

I note MBIE's recent comments on the role of commission as a form of remuneration, and the International Association of Insurance Supervisors view on the matter too.

Perhaps it is the intention in Code drafting that every adviser should offer a fee-only alternative, but equally the priority given to avoiding the conflict of interest could be interpreted more strictly – that commission should never be taken. I feel that would result in a reduction in access to financial advice for consumers, and was probably why commission was retained as a valid for of compensation in the law.

The draft standard could usefully be balanced by commentary that supports the decision of our legislators to allow commission, but to require the conflict to be managed.

This could be dealt with by following the FSC suggestions for dot point one and four.

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

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

I agree with the Standard, but recommend the example is removed.

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

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

I have heard people question the use of the first dot point: "...the strategy underpinning the financial advice..." I must admit, this sounds like it emerges more from the concepts of investment advice, than risk, home loans, or other areas. Having felt that, after sitting with the text for a while, I am not unhappy with the requirement. I can imagine part of the statement of advice listing client goals, and then a statement of strategy which addresses them, and selections for actions and products which deliver on them. Get these three in alignment and the plan should easily meet the test. For strategy, think "main overarching approach". A client with a need to save money may see a "strategy of reduce cost and buy value" delivered in cutting out bells and whistles and increasing excess levels. So, on balance, I encourage you to retain this. The recommendations section of the SOA may break down as "Strategy, actions, products" in a series of headings.

My concerns are that there are two tests offered in the Code, one is the advice is suitable given the nature and scope of the financial advice being provided. The other is that of "...a prudent person engaged in the profession of giving financial advice would consider to be relevant to the financial advice". The first test is in the hands of the client and the adviser, the second is in the judgement of the FADC about what an industry professional who is 'prudent' would seek. Although, to some extent, that view is kind of implicit in the whole process of the FADC, I prefer the primacy of the client and adviser scope, and that one should have priority. I support the proposed changes to the commentary detailed in the FSC submission, and Rob Dowler's submission.

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

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

I note the comments made by those that believe the draft standard should be removed, as there are existing obligations in law. That is a suitable solution. On the other hand, should the Code Working Group wish to retain the standard for the value it offers clients and advisers in drawing attention to a closely-related duty then the solution is to more explicitly reference other legal obligations.

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

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

I note the comments made by those that believe the draft standard should be removed, as there are existing obligations in regulation, legislation and processes. That is a suitable solution.

Should the Code Working Group wish to retain the standard for the value it offers clients and advisers in drawing attention to a closely-related duty then the solution is to more explicitly reference those obligations. In which case I would modify:

- 1) The standard,
 - a. To narrow the definition, as it appears too broad at present
 - b. to encourage advisers to keep good records of complaints and contemplate ways of avoiding complaint situations, consistent with the FMA's recent work on conduct, linking management of conduct to the collection of good management information.
 - c. In addition, highlight the value in them quickly resolving complaints in the first instance.
- 2) Add commentary aimed at clients stressing their right to an independent dispute resolution service should they feel that they are unhappy with adviser attempts to resolve complaints

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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.

I agree with the Standard and commentary.

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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.

I support the proposed changes to the commentary detailed in the FSC submission, and Rob Dowler's submission.

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

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

I support Rob Dowler's comments with regard to the standard, and support the Code Working Group's aim to keep the Code at the level of the general principle applicable.

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

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

I agree with the Standard and commentary.

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

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

I support the proposed changes to the commentary detailed in the FSC submission

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Q25 Is there anything missing from the draft Code? **Yes**

Q26 If you answered yes, what is missing?

I agree with the FSC's submission that there should be some commentary on the use of the term 'independent' and that this could be dealt with in the commentary on Code Standard three.

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

No

Q28 Is there anything else you want to say?

No

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Q29 Name

Russell Hutchinson

Q30 Your role or professional title

Director

Q31 Individual or organisational submission

This is a submission on behalf of an organisation (eg employer)

Q32 If you give financial advice...

Respondent skipped this question

Q33 My organisation or I give the following types of advice...

Respondent skipped this question

Q34 Organisation Name

Chatswood Consulting Limited

Q35 Type of organisation

Other (please specify):

A company that provides consultancy services, and research services, mainly to large insurers, and financial advice businesses.

Q36 Size of organisation

**Small firm (1-10
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.

My particular expertise is in the sector providing insurance against ill-health, disability, and death.

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.

The information provided above is not confidential.

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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