

#99

**COMPLETE**

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**Q1** Overall, do you agree or disagree with [standard 1] and proposed commentary? **Respondent skipped this question**

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**Q2** Please provide any comments on [standard 1] and the proposed commentary. **Respondent skipped this question**

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**Q3** Overall, do you agree or disagree with [standard 2] and proposed commentary? **Respondent skipped this question**

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**Q4** Please provide any comments on [standard 2] and the proposed commentary. **Respondent skipped this question**

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**Q5** Overall, do you agree or disagree with [standard 3] and proposed commentary? **Respondent skipped this question**

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**Q6** Please provide any comments on [standard 3] and the proposed commentary. **Respondent skipped this question**

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**Q7** Overall, do you agree or disagree with [standard 4] and proposed commentary? **Respondent skipped this question**

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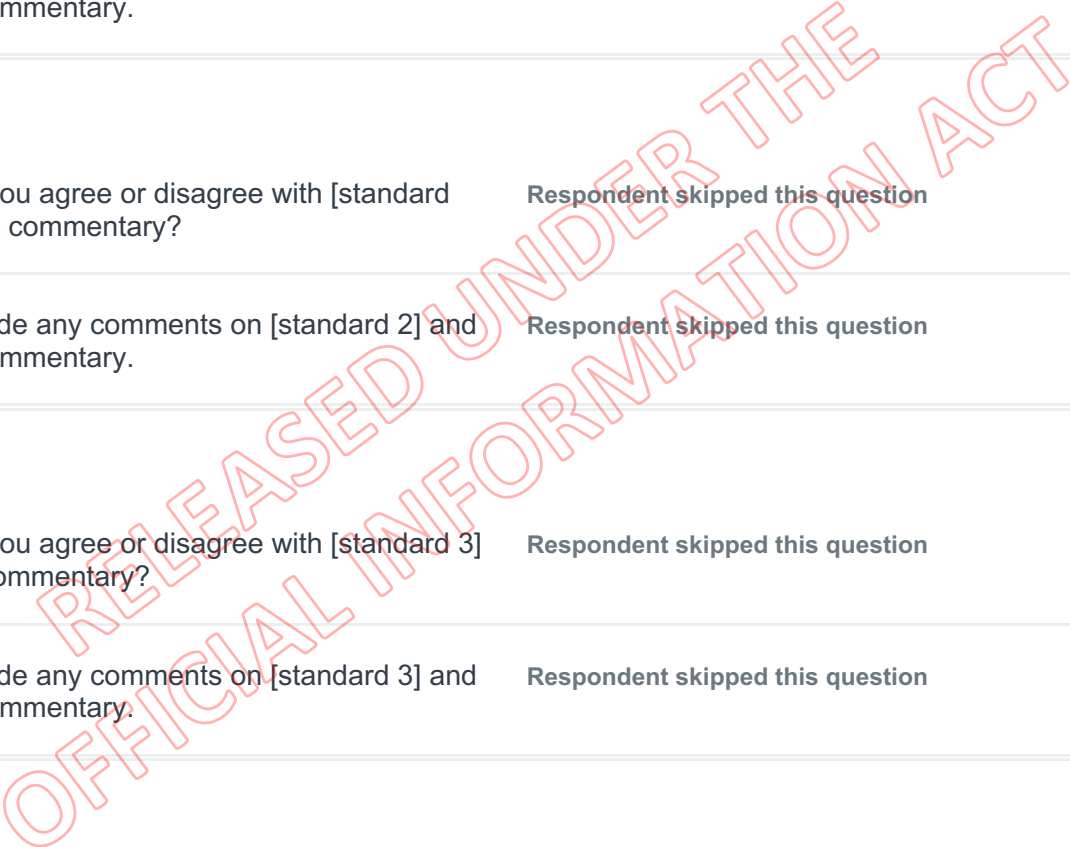
**Q8** Please provide any comments on [standard 4] and the proposed commentary. **Respondent skipped this question**

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**Q9** Overall, do you agree or disagree with [standard 5] and proposed commentary? **Respondent skipped this question**

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**Q10** Please provide any comments on [standard 5] and the proposed commentary. **Respondent skipped this question**

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

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

In the area of financial advice, whether investment or insurance related, the impact of faulty advice only becomes evident when adverse circumstances arise. This could be many years after the advice was given. Standard 6 requires client records to be held' as long as required'. This requirement should tie the time restriction on any liability or prosecution for faulty advice given. To do otherwise would be a breach of natural justice as the adviser would no longer have the records required to adequately defend themselves.

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**Q13** Overall, do you agree or disagree with [standard 7] and proposed commentary? **Respondent skipped this question**

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**Q14** Please provide any comments on [standard 7] and the proposed commentary. **Respondent skipped this question**

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**Q15** Overall, do you agree or disagree with [standard 8] and proposed commentary? **Respondent skipped this question**

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**Q16** Please provide any comments on [standard 8] and the proposed commentary. **Respondent skipped this question**

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

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

Massey disagrees with the proposed arrangement of the proposed competency levels

The existing and the new NZQA level 5 curricula have been created with a restricted level of advice complexity in mind. Within the NZQA pedagogical framework, level 5 requires the understanding of advice within preframed concepts rather than the ability to handle advice situations which do not fit within pre-framed concepts.

In practice this means that NZQA financial advice level 5 is aimed mainly at administrative staff, or at advisers who have the availability of senior, higher-trained, staff to refer more complex clients to. NZQA level 5 was careful created to ensure that the syllabus referred to the ability to handle 'standard, and non-standard but non-complex' cases. The pedagogy is focused on teaching of knowledge with a limited amount of conceptualization and application. The reason for this is that a level 5 qualification has a very

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low theoretical content and is more suited to staff involved in routine back-office procedures than expert advisers. Teaching style is repetitive and recall driven rather than the exercise of independent judgement. Level 5 is the lowest class of sub-degree diploma. Examples of areas where level 5 would be acceptable would be a Kiwisaver adviser who is restricted in their activities.

Level 5 graduates are thus specifically seen as unable to handle client situations involving or requiring complex or skilled conceptual; thinking. This means that level 5 visualizes clients as middle-income families with limited complications, and no business or commercial situations. All complex or customized advice cases are visualized as being referred to a more skilled advisers within that organisation or referred outside. In practice this means that level 5 graduates will not be able to handle areas like; business insurance, commercial property insurance, insurance involving complex underwriting, or large investment sums, foreign investments, the selection of shares or the creation of portfolios, commercial lending, etc.

A key aspect of level 5 graduates is ensuring the ability to recognize what they do not know. Thus being aware if clients have needs which require more advanced advice and therefore should be referred. A current issue in the industry is advisers or QFE staff not being aware of what they are not advising on, especially if an issue only occurs within a limited number of clients (The unknown unknowns). Even organization trainers are often unaware of the complications.

Any code which accepts level 5 graduates as the accepted level will therefore ensure that advice remains at the very basic level. The idea of level 5 graduate offering outside the confines of the curricula is fraught with danger, as they are not aware of what they do not know, of what additional advice may be required.

Within a university setting of levels 5 to 7, (years 1 to 3) we create a ladder of skills; starting with teaching basic subject knowledge, including terminology in year 1, teaching specialist skills and concepts at year 2, and then using that acquired expertise to develop application skills to case studies in year 3. Even at year 3 (level 7) an implicit assumption is made that markets work well and exceptions can be ignored. It is only within a Masters course (level 8/9) is discussion of areas of market failure and how to handle these by referring to current research introduced. Note the evolution from knowledge to conceptualization to application to unusual situations.

Any attempt to expand the range of skills taught at level 5, to include areas like conceptualization, would move it outside the boundaries of level 5 as defined by the NZQA framework.

What this means is that the kind of conceptualizing skills required to be a successful financial adviser and to be able to handle advanced analysis has to be taught at level 7. Any attempt to teach conceptualization of non-standard cases at level 6 runs into NZQA restrictions on what that level means, and does not match what is actually taught at level 6. For example portfolio creation is only taught at level 7, so a level 6 graduate would only be able to compare mutual funds. Any attempt by a level 6 graduate to exceed this is problematic as they have not been taught the exceptions to the general rules. Only a level 7 graduate has the conceptualization skills to oversee a team of level 5 or 6 staff, and see the more rare issues their staff may be missing. There is an obvious need for a level 9 graduate within larger organizations.

Therefore the concept that a graduate who has a level 7 financial advice degree can be matched by a degree graduate in any other area who has a level 6 diploma is non-viable, as the skills taught within the level 6 diploma papers are not comparable to the skills taught with the level 7 major papers of the FA degree. A non-FA graduate would need a level 7 graduate diploma or level 8 post-graduate diploma. The level 7 university graduate diplomas are composed of year 2 and 3 papers from a degree so graduates achieve the same level of complexity as a degree holder (as distinct from a 'diploma' which is composed of level 6 papers), without the added cost of the additional first year and optional papers.

One of the lessons of the recent financial crisis and the collapse of finance companies is that the level of theoretical expertise required of an investment and/or financial advisers is at a high level. The level of technical competency displayed by NZ advisers has in general been low. Examples of this were the inability of some advisers to understand the relative performance of assets over a business cycle or to tell the difference between a fixed interest rate mutual fund and a CDO mutual fund. Another example is the requirement of a Business Insurance adviser to be able to run cash-flow event scenarios on a firm's accounts so as to be able to ascertain event-based weaknesses in finances.

One of the main points which Massey wishes to make is that current discussion around the code or around financial adviser training in general, implicitly assumes that there should only be one level of qualification required. In practice this meant that since level 5 is prescribed as the minimum for AFA's, it has also become the maximum. The impact of this is that the industry has gradually

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deskilled since regulation was introduced, as prior to that regulation the better Financial Advisers were aiming to obtain a level 7 qualification, via a Graduate Diploma and CFP/ CLU. The base requirement of Level 5 has meant that very few new entrants continue onto the Level 7 qualification.

Massey strongly wishes to draw the code committee's attention to the fact that within a complex field of study, there is always a hierarchy of qualifications. The explicit thinking behind the conceptualization of these levels is that there cannot be any simple code requirement. There needs to be an explicit layering of skills, with an explicit requirement to refer up the chain if required. This can be compared to that operating in medicine, of GP, general specialist, advanced specialist, expert. Similarly within the financial advice profession, there needs to be a recognised, explicitly laid-out, progression, from level 4 for administrative staff, to level 5 for routine advisers, to level 6 for routine advisers in specialist areas, to level 7 for team leaders or solo advisers, to level 8 or 9 for leaders of larger organisations. Legal liability for advice given by level 5 advisers should be held by the supervising level 7 leaders. The creation or supervision of advice procedures with multi-adviser organisations, should be led by level 7 advisers.

Imposing a sole level 5 requirement which becomes a de-facto maximum and then imposing a legal/regulatory liability for the correctness for that advice is unfair to the level 5 graduate, as they are not fully aware of the areas of complexity which are outside the scope of their education. Imposing a sole level 5 requirement would also lead to clients who need more than routine advice being denied the opportunity to consult an adviser who is adequately trained to deal with their situation. An analogy would be basing the medical advice profession solely on nurses with a first year diploma.

Nearly all advanced economies have imposed, or plans to impose, a level 7 qualification as the base standard. For NZ to use a level 5 as the de-facto standard would place us well outside the international norm, leaving us amongst the lowest skilled countries internationally. Note that NZ industry comment is normally focused not on the competency of a level 5 qualification, but on the transition arrangements. Massey wishes to emphasise its opinion is that an ideal arrangement would be for a transition timetable to be explicitly laid-out. The end point of this should be a range of qualifications used with the profession, but with a core of level 7 graduates.

Massey offers a level 7 graduate diploma and can offer financial advice degree when required. This requirement, however, ideally be phased in over a long period as specialist teaching staff are required, so we cannot cope with a surge in numbers followed by a slump. Also note that Massey's financial planning papers are modelled on the international CFP syllabus rather than any local specification.

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**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.

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Massey agrees with the requirement for ongoing upskilling.

Within a profession, "competence" is not just a matter of obtaining a one-off qualification. It is about having up to date skills and practising a professional approach. The NZQA financial adviser level 5 qualification is thus inadequate by itself, as it does not cover significant areas. For example, for client advisers there is a requirement for a combination of theoretical knowledge, technical skill, practice management, and commitment to ethical and professional behaviour. These should be obtained via other avenues.

The advice sector is changing fast, and skills can become out-dated. There this needs to be an explicit requirement for continued professional training credits. There should be an explicit hours requirements of ongoing training for all participants in the industry, including junior staff. A proportion of this should be provided by trainers/ presenters from outside the adviser's company/franchise, so that an internal "group think" is not created which misses issues obvious to external parties.

An implication is that even passing a level 7 diploma by itself, therefore should only be recognised as meeting theory requirements. Therefore the Level 7 qualification needs to be joined to training in other areas, particularly professional practice. One avenue to this is via gaining a professional qualification.

Qualifications which are relevant are:

(i) Certified Financial Planner and Chartered Life Underwriter.

The Certified Financial Planner (CFP) is a high quality international qualification, which is based on internationally agreed curriculum. The CFP is administered outside the US by the Financial Planning Standards Board.

The theoretical content in NZ is met by a level 7 diploma. Massey provides the Graduate Diploma in Personal Financial Planning, which leads to the CFP. The NZFA then imposes industry case-study and mentoring requirements as well as on-going continuing education requirements.

These CFP holders should be granted automatic recognition of basic level competence as these qualifications are in excess of suggested requirements.

CFP holders should be recognised as more suited to investment competence and/or comprehensive. It needs to be noted that the full range of skills required to provide full financial advice, client assessment, budgeting, investment, insurance, tax, estates, etc, are only met by CFP holders. No other industry certification is focused on financial advice.

The CFP international body has imposed an international curriculum to ensure consistent international standards. Thus foreign CFP holders who gained their CFP post 2010 and who wish to register in NZ should be granted the same recognition as NZ holders subject to localisation requirements (generally tax and estate law), subject to mapping of the level 7 theory.

(ii) Chartered Life Underwriter (CLU) was a previously existing high quality international qualification. Massey used to provide the Graduate Diploma in Personal Risk Management, which leads to the CLU. CLU holders should be granted automatic recognition of basic level insurance competence as these qualifications are in excess of suggested requirements. The CLU has however, experienced recent issues in terms of international regulation. MBIE and FMA could consider offering financial support to efforts to recreate an internationally recognised insurance qualification.

(iii) Certified Financial Analyst (CFA) qualification. This is a highly regarded internationally recognised qualification in the area of investment advice, with level 7/8 exams and a strong ethics component. Holders of this qualification should automatically be granted recognition as competent in the theoretical requirements in specialist area of investments. However the CFA qualification is limited in terms of adviser industry practise and broader aspects of client advice, e.g.; it has no budgeting, personal risk management, etc. The recognition for CFA should thus be restricted to the investment linked units.

(iv) Holders of Degrees with a major in Finance. These exceed level 5 qualifications so holders should be exempt investment unit standards.

(v) Holders of foreign qualifications (incl Aust) - holders of foreign financial adviser qualifications which meet or exceed NZ standards should be granted recognition once they meet localisation requirements – principally regulation and legal. In particular applicants who meet ASIC requirements for Class I should be accepted as meeting all but localisation requirements.

The current qualifications which DO NOT meet automatically expected competence levels are;

(vi) Chartered Accountants, Lawyers and other degree graduates. While these are often members of high level professional associations with strong ethics rules, there is nothing in their training which meets the requirements of personal financial advice, and the professional bodies do not currently offer relevant CPD credits. These professions should not be granted exemptions outside areas strictly defined as within their pre-2007 level of competency.

(vii) Insurance Qualifications. The insurance sector has a range of high-level qualifications, which meet or exceed the level 5 requirements. Many of these are Australian based and have been certified under their regulations.

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

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

All financial advisers need to have particular competence, knowledge and skill for designing financial plans in the differing strand they engage with. This includes investment, insurance, property, lending, banking and trustee services. There is no justification to single out the investment strand. For example; many areas of insurance are more complex than investments. In each strand, the required qualifications should differ based on the complexity of the advice. As noted above, using Level 5 as the accepted level will therefore ensure that advice remains at the very basic level. The NZQA level 5 curriculum was aimed mainly at administrative staff or advisers who have the availability of senior staff to refer difficult clients to. Only a level 7 graduate can handle advanced analysis and has the conceptualization skills to oversee a team of level 5 or 6 staff, and see the more rare issues their staff may be missing.

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

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

All financial advisers need to have particular competence, knowledge and skill for designing financial plans in the differing strand they engage with. This includes investment, insurance, property, lending, banking and trustee services. There is no justification to single out the investment strand. For example; many areas of insurance are more complex than investments. In each strand, the required qualifications should differ based on the complexity of the advice. As noted above, using Level 5 as the accepted level will therefore ensure that advice remains at the very basic level. The NZQA level 5 curriculum was aimed mainly at administrative staff or advisers who have the availability of senior staff to refer difficult clients to. Only a level 7 graduate can handle advanced analysis and has the conceptualization skills to oversee a team of level 5 or 6 staff, and see the more rare issues their staff may be missing.

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

**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?

Professionalism

The key aspect of legislative regulation has to be the development of financial advice as a profession – similar to accountants and lawyers. The giving of quality financial advice is a complex business which will only be successful if financial advisers feel an inbuilt need to adhere to professional ethics. They need a professional body with standing equivalent to the accounting and legal professions. International evidence is clear that this cannot be achieved by imposing rules from outside the profession. The primary aim of the legislation must have the creation of such a mind shift. A failure to achieve this will lead to the regulator being a



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aim of the legislation must have the creation of such a mind shift. A failure to achieve this will lead to the regulator being a gamekeeper of an industry which is focused on avoiding being caught rather than dealing with all clients professionally. Pre-active encouragement of a professional culture will minimise activities which cause damage in the first instance. The recent Hayne Royal Commission gives ample examples of the dangers of the failure to create a professional culture.

The essence of 'professionalism' is (i) client centred advice, (ii) a scientific approach to information gathering, (iii) a regard for all aspects of client needs, (iv) ongoing education, (iv) awareness of the limits of competence and a willingness to refer and (v) a strong ethical professional culture. There is an ethical spirit to professionalism, a commitment to a sound process of behaviour. In addition it may be helpful to define 'professionally', in a way which focuses on ethics.

The best way to encourage a professional culture is creation of collegial atmosphere which encourages members to promote professional ethics based attitudes and discourages non-ethical attitudes. An effective way of doing this is to encourage and support the development of professional bodies which develop a strong culture of encouraging mutual support of ethical behaviour and condemnation of unethical behaviour. It is vital that the code encourages such professional bodies. A note could be added to Standard 10 requiring advisers, whether individual or corporate, to be a member of a professional body. To be successful the financial advice industry has to have a similar professional standing and ethics as that offered by the accounting and legal professions. It cannot be regarded as similar to builders or real estate agents.

As part of this it is vital that the industry runs itself in a similar way to the legal and accounting professions. This will create a vital change in mindset in the industry. It is not being suggested by any experts that a government agency could run the legal profession better than the law society does. Why should a government agency be able to run the financial advice profession better?

### Independence

Proposed standard 4 requires advisers to ensure that the client understands the advice. While this includes 'any limitations', it does not specifically require advisers to disclose whether or not they are 'independent'. Given the current structure of the industry only a small minority of advisers will be able to claim independence. A related problem, especially on insurance advice, is restrictions on advisers to a single or a limited range of suppliers. Clients may be unaware that advisers may be advising only on a sub-set of possible products, and thus not including a superior alternative product. It may be better to specify defined disclosure categories:

- Single Supplier/ Insurer Agent – clearly an agent of one insurer. Both agent and supplier/ insurer are liable, including for advice.
- Multi-supplier/ insurer Agent – both supplier/ insurer and agent are liable, but the supplier/ insurer is only liable in relation to its own products. Agent is responsible for advice.
- Client/ Policyholder Agent – clearly agent for client. Agent alone is liable.

### Corporates/ Franchises

Experience from the UK and Australia shows that one of the worst side impacts of regulation was the closure of small advisers who customised advice, in favour of large firms who offer standardised advice and focus on the sale of in-house products. This led to a worsening of advice quality.

Additional regulation are required to address this.

(i) One would be regulations which impose a higher level of competence for principle partners or franchise owners. They should be legally responsible for the practises & processes of advisers and junior staff – the company culture.

(ii) There needs to a change in legislation to allow controls on company structures or mergers if these would led to the creation of commission driven groups.

(iii) There should be associated regulations required providers of tied products, to disclose to customers that they can only provide the products of one supplier and that the "products offered by other suppliers may be superior or better suited to the client's needs".

(iv) Another area would be regulations relating to qualifications, expertise, authority, quantity and legal responsibility of line managers in charge of advisers. ASIC regulations would be a good guide.

(v) Another area would be regulation around acceptable practises for the setting of sales quotas, inducements for achieving sales targets and the punishment and humiliation of staff who do not achieve their targets. This will be particularly important for corporate QFE's, as some NZ banks have proved unable to resist these practises. Company managers should be legally liable for deliberate or grossly negligent breaches of these regulations.

(vi) International experience with financial institutions shows that the imperatives of meeting profit targets set by higher level managers create insolvable ethical issues for lower level managers who try to use a client-centred professional approach. One suggested solution is for regulation to require OFE's and adviser /franchise firms of more than a minimum size to appoint a high-level manager to be appointed in charge of financial advice ethics. This could be a part-time. This manager would be required to create a freely published corporate code ethics (approved by the Commissioner), to ensure the incorporation of this code of this into the company's training courses and to produce an annual ethics report on company compliance with the code. Company directors would be required to sign this off, and thus be legally liable for it. This report should then be publicly available so it can be subjected to public and media scrutiny, as public shaming is one of the most effective tools in overcoming corporate inertia. It is vital that regulations focus on company culture as well as the advice procedure, so that the spirit of the law is not broken even while the letter

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of the allowed is obeyed.

(vii) AFA's who belong to QFE's as well as responsible line managers should be encouraged to belong to a professional association which has dynamic regular meetings.

### Exemptions for generic advice

There need to be a clause which provides exemptions from regulation for various categories of persons who may give general financial advice with in the course of their profession. Example would be academics, authors, journalists, media commentators, politicians.

### Adviser Company Ownership Structure

A number of problems in the area of personal financial advice in NZ and in foreign countries have occurred due to advisers being forced to push products supplied by related companies.

A major problem which occurred in the UK and Australia after regulation is that the additional costs imposed by regulation drove the small firms out of the market in favour of large franchises. These large firms or franchises tend to concentrate on sales of their in-house or related party products, rather than offering clients correct advice from a wide range of product. Several NZ franchises operate like this, and these links have been linked to losses by clients. It is therefore suggested that the FMA be granted powers to control company policies or rules of this sort.

It is also suggested that additional rules be introduced restricting who can be a director or principal of a financial advice firm or franchise to 'fit and proper persons' as defined by subsequent regulation. This should include a requirement for higher qualifications than the current low industry standard of a poly-tech level diploma.

It is also suggested that firms, directors and principal partners be held liable for offences committed by staff which they have knowingly or negligently did not take adequate steps to prevent.

It is also suggested that every director or principal of a firm who knowingly or negligently authorises or knowingly or negligently fails to prevent an offence by a financial service provider which is not an individual be held liable, as per clause 39 of the Financial Service Providers (Registration and Dispute Resolution) Bill.

Massey University would like to have a meeting with the Full Code Committee to discuss the points we have made and the details of the education requirements.

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### Q29 Name

Dr Michael Naylor; Dr Jasmine Fang

### Q30 Your role or professional title

Senior Lecturer; Lecturer

### Q31 Individual or organisational submission

**This is an individual submission and not on behalf of an organisation**

### Q32 If you give financial advice...

**Respondent skipped this question**



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

**My organisation or I do not give financial advice**

Other (please specify):

We teach advisers to give advice.

**Q34** Organisation Name

Massey University

**Q35** Type of organisation

**Education provider**

**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.

**Respondent skipped this question**

**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)