

#92

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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.

This is an important standard to properly clarify the role of the profession.

The commentary only goes so far to require a person giving financial advice to fairly consult with their client, have regard to the law, align business practices to promote the client's interests and not exploit vulnerable clients. It does not impose any positive obligations to place a client's interests above the interests of other parties.

While we agree with the use of the word "always", we recommend amending this standard to state "Treat clients fairly and always place their client's interests first".

This is because the draft standard and commentary appear to impose a lower obligation than the proposed law. The commentary imposes obligations to consult with a client and treat them fairly, but it does not properly clarify an adviser's obligations with respect to their client. In the disputes we see, there is sometimes confusion from both advisers and clients about who the advisers are acting for and their obligations to the clients.

It is important for an expanded, principle-based code to reflect the ethical obligations advisers will have towards their clients, taking into account the inherent conflict between commissions and the client's interest. It is also important that the code clarifies the obligations advisers have towards their clients, both at the time advice is given and longer-term.

We agree with the commentary that an adviser should have regard to the intent and spirit of the law as well as the letter of the law.

We agree with removing the reference to "good advice outcomes".

We recommend that the commentary also includes the following positive obligations:

- Persons giving financial advice must communicate with clients in an easily understandable manner
 - Persons giving financial advice must assist the client in making informed choices
 - Persons giving financial advice must provide culturally sensitive and competent service
 - Persons giving financial advice must ensure that records of a high standard are kept, maintained, and made available to a client or their representative, when required.
 - Persons giving financial advice must act only on the basis of free, prior and informed consent of a client.
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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.

It would be helpful if the standard (or commentary) is amended to state “to act with professionalism and integrity”. While the code establishes minimum standards, it also aspires to lift the status of the profession and improve public confidence in financial advisers.

As the standard is aspirational in nature, it would help if the commentary provides specific guidance that sets minimum standards of expected behaviour:

Honesty in dealings

The “right thing” to do in a situation is a matter of subjective opinion and will vary from person to person. We recommend use of the following wording to establish minimum obligations “persons giving financial advice must not act dishonestly or in a misleading manner” and “persons giving financial advice must always act professionally and in good faith”.

Inappropriate relationships

Persons giving financial advice should not exploit a past or present client (whether vulnerable or not) physically, sexually, emotionally or financially.

Persons giving financial advice may be involved in relationships where there is a potential or actual imbalance of power. They have access to an individual’s personal information, such as their finances and medical information. The code should impose the importance of maintaining appropriate boundaries with clients so that advisers do not act in any manner where they are able to gain an inappropriate advantage due to their knowledge or as a result of their position as an adviser.

Information to be disclosed

The standard does not specify or prescribe at a minimum what information must be shared with an adviser’s clients or the public (such as disclosure of commissions, fees, etc). It follows that a breach of this standard is likely to be a matter of subjective opinion. We understand that this will be covered in the disclosure and licensing regulations. It may be helpful to include reference to the new regulations in the commentary for this standard.

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.

Conflicts of interest can often be difficult to identify. For example, we have seen cases where an adviser has not recognised receiving a commission from a lender or an insurance company as a conflict, or where the advice provided may benefit a third party. It would be useful to have examples to provide guidance to both advisers and their clients as to what is a conflict of interest, and that it is not only limited to fiscal outcomes.

We recommend amending the first two bullet points in the commentary to include potential conflicts of interest. Advisers must have processes in place to actively identify and mitigate potential and real conflicts of interest.

Page 6

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.

This standard is reasonable and notes that reasonable steps should be taken to ensure the client understands the financial advice and the consequences associated with both the advice and the nature and scope of the advice, in a way that allows the client to make an informed choice. However, it does not describe how or what reasonable steps the person giving financial advice should take.

It would be helpful to have certain minimum positive obligations such as:

- explaining each step of the financial advice
- ensuring the advice is presented in an easily understandable form for the client
- ensuring oral advice is followed up in writing
- being mindful of and addressing any cultural gaps or vulnerabilities that may affect a client's understanding
- ensuring the client understands the associated and ongoing fees and costs.

Page 7

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.

We strongly support having this standard.

This standard provides good direction with respect to the provision of financial advice.

Suitability for the client must include a consideration of both their immediate and future needs. We recommend that the commentary include reference that the financial advice is matched to the client's immediate and foreseeable future circumstances.

With regards to the following commentary "...it may be reasonable to conclude that the financial advice is suitable where the client's circumstances include particular characteristics." – We had previously suggested that the code not refer to generic advice to people fitting within groups, as this is counter intuitive to knowing your client. However, we note that the use of generic advice will be limited to circumstances where it may be considered "reasonable". We propose that if the commentary must refer to the above exception, that it is amended to state that "in most situations, an in-depth analysis of the client's circumstances will be required. In some situations, it may be reasonable to conclude the financial advice is suitable where the client's circumstances include particular circumstances, however the onus will be on the person giving financial advice to demonstrate this. "

Page 8

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

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

The commentary appears to be a restatement of the Privacy Act principles.

It would be helpful if this section could clarify that personal information includes information that is collected or held by a person who gives financial advice. This includes:

- All a client's information held by an adviser. Personal information relates to any information about an identifiable individual.
- keeping clear, complete and reliable records
- providing a client with their personal information in an understandable form.

It would also be useful to specify a minimum period of time for which records are to be held (reiterating information which we understand will be specified in licensing requirements).

Page 9

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

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

We agree with having this standard, except we recommend that the word “recognising” be added before “resolving complaints”. We are pleased to see the universal definition of a complaint is used.

The commentary addresses the complaints process adequately. However, it does not stipulate managing a complaints process internally. It would be helpful to state that persons giving financial advice must:

- have an internal complaints process and a well-maintained complaints register,
- make reasonable efforts to inform a client about their internal and external complaints process,
- provide information about their complaints process, including their independent dispute resolution scheme in an easily accessible manner,
- resolve complaints in a fair, impartial and respectful manner.

In the least, reference to the Australian/New Zealand Standard “Guidelines for complaint management organisations” should also be included in the code.

We submit that the code must contain reference to a complaints process as the code is likely to be the go-to ethics document for most of the profession and consumers (rather than reading the Act and regulations).

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 following additions to the standard and commentary-

“Act in a manner that promotes public confidence in the financial services industry”.

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 second bullet point for entities may be difficult to demonstrate and prove. It is also not specified who bears the responsibility for the nominated representative fulfilling the qualifications standard as the code refers to “person giving financial advice” rather than an “adviser” or “financial advice provider”.

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.

There may be inconsistencies in the skill and rigour levels if each entity is responsible for designing and implementing learning activities for the NRs. The commentary should clarify that an NR will not be able to provide advice beyond the scope of their training/ templated advice. The limits on their advice should be disclosed to the client upfront and the client should be given an opportunity to speak with a qualified adviser.

We recommend the initial training and CPD includes a compulsory ethics component and an understanding of an adviser's obligations under this code.

We also recommend that CPD includes a training component about best-practice complaints-handling and 'lessons learned' from complaints, to be completed at not less than three yearly intervals.

Depending on the framework for assessment and criteria devised by the FMA, the shift towards evidence-based learning may be onerous for advisers and managers and difficult to implement and monitor. We recommend that a minimum number of hours is stipulated to assist with the shift towards evidence-based learning outcomes for the profession.

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.

No specific comment.

Page 15

Q23 Overall, do you agree or disagree with [standard 12] and proposed commentary? **Neither agree nor disagree**

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

A templated process may be difficult to manage on a practical level. There should be a requirement that a NR understands when the advice sought is beyond the scope of the templated advice they can provide, they let the client know upfront and offer the client the option of meeting with a qualified financial adviser.

Page 16

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

Q26 If you answered yes, what is missing?

- Record keeping and file management.
- Acting professionally
- Maintaining professional boundaries, such as not having relationships with clients.
- an ethics component to the qualifications and CPD.

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

It would be helpful to include examples for what a conflict of interest may be to show that it is not only fiscal related.

Q28 Is there anything else you want to say?

- We recommend that the preamble includes a paragraph stating that that potential breaches of the code will render the person giving financial advice subject to investigation and disciplinary action by bodies responsible for enforcing the code such as the FMA, dispute resolution schemes, etc.

- We recommend that the code specifies a review period of 2-3 yearly intervals.

Page 17

Q29 Name

Susan Taylor

Q30 Your role or professional title

CEO

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...

Other (please specify):

Financial Services Complaints Limited (FSCL) is an external dispute resolution scheme.

Q34 Organisation Name

Financial Services Complaints Limited (FSCL)

Q35 Type of organisation

Dispute resolution scheme

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.

N/A

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.

N/A

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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