

#84

**COMPLETE**

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

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

Kensington Swan strongly supports proposed Code Standard 1, including its commentary. We believe it is an effective articulation of the 'client first' concept of the current Code, and a good starting point for the new Code. While there may be practical challenges in enforcing some of the commentary, the expectations are clearly set.

In light of the broad coverage of the Code, we are pleased to see the obligation to apply business practices that promote the interests of clients tempered by reference to the nature and scope of the financial advice. We believe that such references are critical to the Code being workable and fair for providers and clients alike.

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

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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? **Disagree**

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

Kensington Swan supports the opening to Code Standard 3, in requiring providers to have arrangements in place to manage conflicts of interest. That requirement is a useful adjunct to section 431J, although we think the requirement should be to 'effectively' manage. However, we disagree with the opening requirement of the commentary for conflicts to be avoided where practicable. We believe that creates uncertainty. When does a commercially undesirable business practice (from the provider's perspective) become impracticable? If your otherwise lawful business model and ethical business practices contain an inherent conflict of interest, but that conflict could be avoided by restructuring the business model and service offering, does this Code Standard require that restructuring to occur? And is it appropriate for this to apply to all conflicts of interest, regardless of whether they might influence the advice provided? We also believe the requirement to 'adequately' disclose needs to be placed in context, so the objective of that disclosure is clear. We recommend reworking the Code Standard with these comments in mind, with the avoidance obligation in particular modified so as to be workable, one option being to add 'having regard to the nature and scope of the financial advice'.

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

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

Kensington Swan is concerned that requiring providers to take reasonable steps to ensure a client understands the financial advice received places an undue burden on the provider, as a client's ability to understand is very subjective. Provider concerns over just how far they need to go in order to demonstrate compliance may add undue length and complications to delivering advice, contrary to the regime's objectives. We believe there obligation here can be contrasted with the statutory obligation to take steps to ensure the client understands the nature and scope of the advice and any limitations, and the proposed requirement to understand material risks and consequences. These are more manageable requirements. We believe the obligation here would be better cast as a requirement to take reasonable steps to ensure clients are able to make informed decisions (as per the opening to the commentary and current Code Standard 7), coupled with a requirement to communicate clearly and effectively. We also have major reservations over the appropriateness of the example provided regarding Beth, which is confused and appears to promote the approach of not undertaking comparisons when replacement business is arranged, which is contrary to best practice. Simply stating that 'Beth checks that client understands each of these risks and consequences' is also not overly helpful without clarifying how she went about this.

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

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

Proposed Code Standard 5 works where the advice in question is personalised. It does not work where the advice is generic, or is product-specific. Adjusting the obligation to have regard to the nature and scope of the financial advice must be extended beyond just applying to the need to have reasonable grounds for the advice, and also apply to the suitability obligation. Recognition that the Code Standard will apply to any form of financial advice, and not just advice directed at a specific known client, needs to be reflected in the Code Standard. At the very least, a caveat should be included to clarify that the Code Standard does not apply in respect of financial advice produced that solely relates to a financial product, without reference to a client (such as a stock analyst's report), as well as clarification that the provider is able to identify characteristics of classes of client for whom the advice is suitable.

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

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

Code Standard 6 is simply a restatement of current legal obligations, with the commentary then going further and imposing some additional obligations regarding use, retention and disposal of information that may present challenges in the digital age. Imposing restrictions on the use of client information in anonymised form is inappropriate, and may serve to impede the efficient development of products and services aimed at better serving the interests of clients. We believe the obligations here are best left to be addressed as part of the current Privacy Act reforms, with the commentary refined to simply emphasise the sensitivity of client information and the need to respect the confidentiality of the client information advisers receive.

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

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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? **Agree**

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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? **Agree**

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

Kensington Swan agrees with the approach of focusing on qualification outcomes throughout the competency, knowledge, and skills Code Standards, including the ability to rely on organisational procedures, systems and expertise to provide the requisite level of capability. We support the principled approach taken, and the flexibility it provides.

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**Q19** Overall, do you agree or disagree with [standard 10] and proposed commentary? **Neither agree nor disagree**

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

We support the principled approach taken to the need to keep competence, knowledge, and skill up-to-date, but note that the proposed approach of not setting minimum hours of qualifying activity is out of step with requirements that apply for most other professions. To assist organisations develop appropriate compliance approaches, we would prefer to see some clarification added as to expectations of the type of learning activity that the Code Working Group regards as best practice. Regardless, we saw considerable merit in the current Code's requirement for a CPD Plan to be maintained by or for advisers, and believe this would be a useful addition to ensure CPD is planned, and to assist with monitoring compliance.

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

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

Kensington Swan agrees with the overall approach taken in relation to recognition of achievement of investment strand qualification outcomes as a means of demonstrating compliance with the investment plan design Code Standard. However, care needs to be taken in recognising AFA status, as not all AFAs will necessarily have been authorised to provide investment planning services.

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

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

Kensington Swan agrees with the overall approach taken in relation to recognition of achievement of relevant strand qualification outcomes as a means of demonstrating compliance with the other types of financial advice Code Standard. However, care needs to be taken in recognising AFA status as an alternative to achieving the qualification outcomes of the investment strand, as not all AFAs will necessarily have been authorised to provide investment advice.

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

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

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

Examples in relation to the Code Standard regarding managing conflicts of interest would be helpful

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**Q28** Is there anything else you want to say?

We trust that there will be opportunity to provide feedback in relation to an updated version of the Code before it is finalised. If so, it would be extremely helpful to see the Code Working Group's analysis of submissions received, so there is transparency over the thinking behind the final proposed wording of the Code Standards.

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**Q29** Name

Kensington Swan

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**Q30** Your role or professional title **Respondent skipped this question**

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

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**Q32** If you give financial advice...

Respondent skipped this question

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

My organisation or I do not give financial advice

**Q34** Organisation Name

Kensington Swan

**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.

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)

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