



Westpac New Zealand Limited

Submission to the Financial Advice Code Working Group
on the Draft Code of Professional Conduct for Financial
Advice Services

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1. Introduction

- 1.1 This submission to the Financial Advice Code Working Group (**CWG**) is made on behalf of Westpac New Zealand Limited (**Westpac**) in respect of the Draft Code of Professional Conduct for Financial Advice Services (**Code**). Westpac's contact for this submission is:

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- 1.2 Westpac welcomes the opportunity to provide feedback to the CWG on the Code, and strongly supports the CWG's principles based approach to drafting the Code.

2. Code Standard 1

- 2.1 We support the inclusion of a clear and simple standard that promotes fairness and client centric advice.
- 2.2 In that regard, our preference is for Code Standard 1 to be articulated as being to "Treat clients fairly" and to remove the additional wording in the Code Standard concerning the need to "act in their interests". We consider that acting in a client's interests is a key aspect of treating a customer fairly. For that reason, we support the current commentary for Code Standard 1 which explains that fairness usually includes "applying business practices that promote the interests of clients". In comparison, we are concerned that the approach taken in the draft Code, of including the need to act in clients' interests in addition to a fairness requirement, may give rise to uncertainty about the scope of an adviser's duty to act in a clients' interests.
- 2.3 The Commentary states that "treating clients fairly usually includes...acting in accordance with the spirit and intent of the person's legal obligations, including under the FMCA, FMC Regulations and the Code." While we support the view that advisers should not take an overly technical approach to applying the law, given the potential for disciplinary action and sanctions for a breach of this Code Standard, we consider that the requirement should be limited to acting in accordance with the relevant principles-based legislation. Any additional requirement creates uncertainty both at the compliance and disciplinary stages for advisers.
- 2.4 We understand that FSLAB permits advisers to limit the scope and nature of financial advice provided, and that Code Standard 1 would, therefore, be read as subject to nature and scope. We recommend that Code Standard 1 (or the related commentary) makes this explicit.

3. Code Standard 3

- 3.1 We support the inclusion of a standard that promotes the effective management of conflicts of interest. We believe that the focus should be on identifying, assessing and appropriately managing those conflicts of interest (as opposed to avoiding conflicts where practicable as proposed).
- 3.2 There will be conflicts of interest in many business models, and the current language could be interpreted as requiring a financial advice provider (FAP) to change its business model. We understand that this is not the CWG's intention, while also recognising that additional commentary that carves out business models from the scope of Code Standard 3 is likely to be impractical.
- 3.3 Finally, disclosure should be made in accordance with the new FMC (financial advice disclosure requirements) Regulations (**Disclosure Regulations**). To the extent that disclosure is covered in those regulations that should be adequate disclosure.
- 3.4 Against that background, we therefore recommend making the following changes to Code Standard 3:

[Standard 3] Manage conflicts of interests

A person who gives financial advice must have arrangements in place to **identify, assess and appropriately** manage conflicts of interests, ~~including arrangements to~~, **including clearly disclosing the conflicts of interest to clients.**

- ~~• where practicable, avoid conflicts of interests~~
- ~~• identify conflicts of interests~~
- ~~• ensure that conflicts of interests are controlled in accordance with the requirements of the FMC Act~~
- ~~• adequately disclose conflicts of interests to clients.~~

4. Code Standard 5

- 4.1 We support the inclusion of a standard that promotes the suitability of financial advice.
- 4.2 However, similar to Code Standard 4, we believe that Code Standard 5 should include an element of reasonableness. Also, it would also be better if this standard maintained a high level view regarding how suitability is achieved. We believe that the current proposed detail is, in places, unclear. For example, we do not find the phrase “the strategy underpinning the advice” helpful and suggest that the test should instead focus on how the customer’s needs are being met. Also, the example refers to a “bank’s systems”, with the inference that those systems are technology related. This ignores the fact that some FAPs will have a range of processes in place to ensure suitability (training also being a key component).
- 4.3 We, therefore, recommend the following changes:

[Standard 5] Give financial advice that is suitable for the client

A person who gives financial advice must **have reasonable grounds** ~~ensure that the financial advice is suitable for the client. The person must have reasonable grounds~~

~~for the financial advice, having regard to the nature and scope of the financial advice and the client's circumstances.~~

*Reasonable grounds for the financial advice means grounds that a prudent person engaged in the profession of giving financial advice would consider to be adequate in the same circumstances, **having regard to the nature and scope of the financial advice** including in relation to:*

- ~~• the strategy underpinning the financial advice~~
- *each financial advice product covered by the financial advice.*

*The client's circumstances means those aspects of the client's situation, needs, goals, and risk tolerance that a prudent person engaged in the profession of giving financial advice would **take into account in providing** ~~consider to be relevant to the financial advice, having regard to the nature and scope of the financial advice.~~*

5. Code Standard 6

- 5.1 We do not support the inclusion of a standalone privacy standard that replicates obligations already set out in the Privacy Act 1993, typical contractual advisor / client confidentiality obligations and (in the case of banks) the Code of Banking Practice.
- 5.2 Our primary concern is that this will inevitably result in privacy standards that are misaligned. If the CWG is keen to reference privacy obligations within the Code, we would support a reference to the Privacy Act within the commentary of Code Standard 1. However, care should be taken to ensure that this would not confuse clients regarding redress for Privacy Act breaches and/or undermine the role of the Privacy Commissioner.
- 5.3 For example, elements of Code Standard 6 that appear to extend beyond the Privacy Act requirements raise the following issues:
- (a) Requiring client consent for information to be used in an anonymised form – this is unnecessarily restrictive and should be removed. It would be useful for product providers, industry groups and regulators to be able to ascertain anonymous information to better understand customers even if there is no legal requirement for the information to be provided.
 - (b) Requiring that client information be held only for purposes of the engagement – this is vague. Also, often it is not known how long an 'engagement' will be. This requirement also seems inconsistent with Information Privacy Principle 9 in the Privacy Act, which could cause confusion.

6. Code Standard 7

- 6.1 We agree with the proposed definition of complaint which is consistent with the Australian and New Zealand ISO complaint definition. Westpac's own definition of a complaint is:

A complaint is an expression of dissatisfaction made to Westpac Group when a response or resolution is explicitly or implicitly expected. A complaint can be related to our products or services, or the complaints handling process itself.

7. Code Standard 8

- 7.1 We support the inclusion of a standard that seeks to protect the reputation of the financial advice industry. We believe that “not do anything that would, or would be likely to, bring the financial advice industry into disrepute” is sufficiently broad and that the standard itself should not extend to “...promote confident and informed participation by consumers in financial markets”. We suggest, instead that that latter obligation (which appears intended to replicate one of the FMCA purposes) is brought into the commentary section only for context. This is because any finding that you bring the industry into disrepute will inevitably mean that you are acting inconsistently with promoting confident and informed participation by consumers in financial markets. In the course of drafting a revised commentary, thought could also be given as to whether a wider reference to the purpose provisions in the FMCA could be included in the context of providing financial advice, as the FMCA purposes (and additional purposes) are designed to be read in conjunction with each other.

8. Code Standard 12

- 8.1 We understand that Code Standard 12 is intended to relate to all types of financial advice excluding investment planning. Under the heading ‘Individuals’ it states “in the case of the investment strand ...”. This language should be deleted as investment planning is covered in Code Standard 11.

- 8.2 Under the heading nominated representatives, we also propose the following changes:

“complete the learning outcomes specified for their role by their financial advice provider ~~that mean that,~~ and together with the procedures, systems and expertise of the financial advice provider, the nominated representative ~~has~~ means that the combined capabilities are equivalent to those of an individual who alone has achieved the qualification outcomes of the relevant strand of the New Zealand Certificate in Financial Services (Level 5).”

9. Are there missing Code standards

- 9.1 In light of the findings from the Reserve Bank’s and Financial Markets Authority’s Bank Conduct and Culture review, it may be appropriate to consider whether any of the Code Standards, in addition to Code Standard 4, should refer to any expectations regarding the extent (if any) of any ongoing support to customers following the provision of initial advice.