

Code of Professional Conduct for Financial Advice Services Impact Analysis

1. Introduction

1.1 This document, provided to the Minister of Commerce and Consumer Affairs on 28 February 2019, contains the impact analysis prepared by the Code Committee (currently the Code Working Group) in connection with the draft Code of Professional Conduct for Financial Advice Services.

1.2 Proposed clause 33(2)(b) of Schedule 5 of the Financial Markets Conduct Act 2013 (the FMC Act) requires the Code Committee to prepare an impact analysis that describes how the proposed standards may contribute to, or detract from:

- the main¹ and additional² purposes of the FMC Act and the additional³ purpose of the advice provisions
- New Zealand's international obligations that are relevant to financial markets or financial advice services. We have been advised there are no relevant international obligations.

1.3 It must include a description of any trade-offs between those impacts.

1.4 This document includes:

- A summary – set out in section 3 – of the impact on each legislative purpose of the proposed standards collectively
- A standard-by-standard analysis – set out in sections 4 to 12 - explaining how each proposed standard contributes to or detracts from the legislative purposes and international obligations.

1.5 In this document:

- references to the Code Committee include the Code Working Group established by the responsible Minister before commencement of the relevant provisions of the FMC Act
- “we”, “our” and “us” refer to the Code Committee
- references to financial advice or advice mean regulated financial advice given to a retail client as defined in the proposed amendments to the FMC Act, as set out in the Financial Services Legislation Amendment Bill.

¹ FMC Act section 3 – <http://www.legislation.govt.nz/act/public/2013/0069/latest/DLM4090585.html>

² FMC Act section 4 – <http://www.legislation.govt.nz/act/public/2013/0069/latest/DLM4090586.html>

³ FMC Act section 431B – <http://legislation.govt.nz/bill/government/2017/0291/latest/DLM7386404.html>

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3. Collective impact of proposed standards on each legislative purpose
 - 3.1 This section summarises the main ways that the proposed standards may contribute to, or detract from the purposes (shown in *italics*) of the legislation. A detailed standard-by-standard analysis follows in subsequent sections.
 - 3.2 The draft Code *promotes the confident and informed participation of businesses, investors, and consumers in the financial markets* principally by requiring persons who give advice to treat clients fairly and act with integrity. It sets minimum standards of competence for all persons who give financial advice.
 - 3.3 The draft Code *promotes and facilitates the development of fair, efficient, and transparent financial markets* principally by requiring persons who give advice to treat clients fairly and take reasonable steps to ensure their clients understand the advice that they are given.
 - 3.4 The draft Code *provides for timely, accurate, and understandable information to be provided to persons to assist those persons to make decisions relating to financial products or the provision of financial services* by including standards of client care that promote timely understanding by clients of information that is relevant to their decision-making.
 - 3.5 The draft Code does not directly *ensure that appropriate governance arrangements apply to financial products and certain financial services that allow for effective monitoring and reduce governance risks*. This is primarily the role of the licensing requirements.
 - 3.6 The draft Code helps to *avoid unnecessary compliance costs* by structuring the standards to be agnostic to the business model that is used to give advice. This document addresses the trade-offs between quality, availability and cost of advice.
 - 3.7 The draft Code helps to *promote innovation and flexibility in the financial markets* by being non-prescriptive as to how each standard can be demonstrated.
 - 3.8 The draft Code will have an impact on *the availability of financial advice for persons seeking that advice* because it imposes costs and requires advisers to be qualified. These requirements are imposed to help ensure *the quality of financial advice and financial advice services*. The standards are, however, structured to be adaptable to different advice situations so that its requirements are proportionate.
 - 3.9 The Code Committee is required to have regard to *New Zealand's international obligations that are relevant to financial markets or financial advice services*. We have been advised by MBIE that there are no particular international obligations to be considered at this time. If international obligations or considerations arise in future, we will factor them into our ongoing review of the Code.

3.10 The Code is one part of the regulatory regime for financial advice. The Code alone cannot address all aspects of the purposes of the FMC Act. Accordingly, the draft Code does not seek to explain and duplicate the whole regime. However, it cross-references to other parts of the regime where there is a particular benefit in doing so.

3.11 Our approach to drafting the Code has also been informed by the requirement for the Code to set minimum standards. While the draft Code is designed to lift the standard across the industry, its purpose is not to set best practice.

4. [Standard 1] Treat clients fairly

4.1 The impacts of the standard on the legislative purposes and international obligations are:

Legislative purposes and International obligations	Standard contributes to purpose	Standard detracts from purpose
Promote the confident and informed participation of businesses, investors, and consumers in the financial markets	Fair treatment of clients is fundamental to trust and confidence.	No material detractions. See compliance costs point below.
Promote and facilitate the development of fair, efficient, and transparent financial markets	Fair treatment in advice contributes to fair markets.	No material detractions.
Provide for timely, accurate, and understandable information to be provided to persons to assist those persons to make decisions relating to financial products or the provision of financial services	Timeliness and clarity highlighted in standard's commentary.	No material detractions.
Ensure that appropriate governance arrangements apply to financial products and certain financial services that allow for effective monitoring and reduce governance risks	To comply with the standard, businesses need to integrate fair treatment into their conduct and governance arrangements.	No material detractions.
Avoid unnecessary compliance costs	Costs of compliance are reasonable given the other benefits. These costs are necessary to ensure the quality and reputation of advice services.	Businesses will need to maintain conduct arrangements to comply.
Promote innovation and flexibility in the financial markets	The standard provides flexibility as to how businesses choose to implement the requirement. There is no mandated process.	No material detractions.

Legislative purposes and International obligations	Standard contributes to purpose	Standard detracts from purpose
Regulate the giving of financial advice and provision of financial advice services with a view to ensuring the availability of financial advice for persons seeking that advice, and the quality of financial advice and financial advice services	Fair treatment is a core component of quality advice.	No material detractions. Nothing has been brought to our attention to suggest fair treatment will limit advice availability.
New Zealand’s international obligations that are relevant to financial markets or financial advice services	We have been advised there are no relevant international obligations.	No material detractions.

Trade-offs

- 4.2 There is a trade-off between the positive contribution made to most of the legislative purposes and compliance costs. Putting in place conduct arrangements for fair treatment does come at a cost. We consider that a standard of this nature is integral to the Code, so the compliance costs associated with it are necessary. The standard mitigates the additional costs by providing compliance flexibility and not mandating particular processes or approaches.
- 4.3 We rejected a consultation suggestion that “reasonable steps” should be included in the standard. We have noted in the commentary that “what is fair depends on the particular circumstances.”

5. [Standard 2] Act with integrity

- 5.1 The impacts of the standard on the legislative purposes and international obligations are:

Legislative purposes and International obligations	Standard contributes to purpose	Standard detracts from purpose
Promote the confident and informed participation of businesses, investors, and consumers in the financial markets	Integrity is fundamental to trust and confidence.	No material detractions.
Promote and facilitate the development of fair, efficient, and transparent financial markets	Integrity contributes to fair markets.	No material detractions.
Provide for timely, accurate, and understandable information to be provided to persons to assist those persons to make decisions relating to financial products or the provision of financial services	The commentary notes that acting with integrity includes how a person publishes and shares information with clients.	No material detractions.
Ensure that appropriate governance arrangements apply to financial products and certain financial services that allow for effective monitoring and reduce governance risks	Integrity is fundamental to good governance.	No material detractions.

Legislative purposes and International obligations	Standard contributes to purpose	Standard detracts from purpose
Avoid unnecessary compliance costs	Integrity in business dealings is a pre-requisite for reasonable costs of business.	No material detractions.
Promote innovation and flexibility in the financial markets	No direction contributions.	No material detractions.
Regulate the giving of financial advice and provision of financial advice services with a view to ensuring the availability of financial advice for persons seeking that advice, and the quality of financial advice and financial advice services	Integrity is a core component of quality advice.	No material detractions.
New Zealand's international obligations that are relevant to financial markets or financial advice services	We have been advised there are no relevant international obligations.	No material detractions.

Trade-offs

5.2 There are no material trade-offs between those impacts.

6. [Standard 3] Give financial advice that is suitable

6.1 The impacts of the standard on the legislative purposes and international obligations are:

Legislative purposes and International obligations	Standard contributes to purpose	Standard detracts from purpose
Promote the confident and informed participation of businesses, investors, and consumers in the financial markets	Suitable advice is fundamental to trust and confidence.	No material detractions.
Promote and facilitate the development of fair, efficient, and transparent financial markets	Suitable advice contributes to fair markets.	No material detractions.
Provide for timely, accurate, and understandable information to be provided to persons to assist those persons to make decisions relating to financial products or the provision of financial services	The standard requires reasonable grounds for the financial advice.	No material detractions.
Ensure that appropriate governance arrangements apply to financial products and certain financial services that allow for effective monitoring and reduce governance risks	Does not contribute directly to governance.	No material detractions.

Legislative purposes and International obligations	Standard contributes to purpose	Standard detracts from purpose
Avoid unnecessary compliance costs	While the standard necessarily imposes compliance costs, it has been structured so that those costs are appropriately proportionate.	No material detractions.
Promote innovation and flexibility in the financial markets	Standard is structured so as not to impose rigid process requirements, allowing for innovation.	No material detractions.
Regulate the giving of financial advice and provision of financial advice services with a view to ensuring the availability of financial advice for persons seeking that advice, and the quality of financial advice and financial advice services	Suitability underpins advice quality. The standard has been structured to allow for a full range of advice situations, promoting advice availability.	No material detractions.
New Zealand's international obligations that are relevant to financial markets or financial advice services	We have been advised there are no relevant international obligations.	No material detractions.

Trade-offs

- 6.2 There are no material trade-offs between those impacts.
- 6.3 The commentary permits situations where an in-depth analysis of client circumstances is not required. We do not view this as a trade-off between advice quality and availability because it is available only when it is reasonable given the nature and scope of advice. In fact, for situations that would previously be “class advice”, the effect of this requirement is to strengthen consumer protection by requiring that any assumptions must be reasonable in the circumstances.
7. [Standard 4] Ensure that the client understands the financial advice
- 7.1 The impacts of the standard on the legislative purposes and international obligations are:

Legislative purposes and International obligations	Standard contributes to purpose	Standard detracts from purpose
Promote the confident and informed participation of businesses, investors, and consumers in the financial markets	The standard requires clients to be properly informed.	No material detractions.

Legislative purposes and International obligations	Standard contributes to purpose	Standard detracts from purpose
Promote and facilitate the development of fair, efficient, and transparent financial markets	This standard is about transparency. Well-informed clients contribute to the fairness of markets.	No material detractions.
Provide for timely, accurate, and understandable information to be provided to persons to assist those persons to make decisions relating to financial products or the provision of financial services	The standard requires information to be given so the client can make timely and informed decisions.	No material detractions.
Ensure that appropriate governance arrangements apply to financial products and certain financial services that allow for effective monitoring and reduce governance risks	Does not contribute directly to governance.	No material detractions.
Avoid unnecessary compliance costs	The standard is limited to “reasonable steps” and “sufficient information” to ensure that compliance costs are proportionate.	No material detractions.
Promote innovation and flexibility in the financial markets	Standard does not impose any specific approach or process, allowing flexible ways of achieving client understanding.	No material detractions.
Regulate the giving of financial advice and provision of financial advice services with a view to ensuring the availability of financial advice for persons seeking that advice, and the quality of financial advice and financial advice services	Well informed clients are an essential component of advice quality. The standard allows for different advice situations, therefore promoting availability of advice.	No material detractions.
New Zealand’s international obligations that are relevant to financial markets or financial advice services	We have been advised there are no relevant international obligations.	No material detractions.

Trade-offs

7.2 We consider that the client’s understanding should be the goal, rather than a requirement to explain the advice to client. The standard is limited to “reasonable steps” and the commentary highlights that what is reasonable will depend on the circumstances, to ensure that the compliance costs are proportionate. The standard is consistent with the wording of the (new, related) legislative requirement for nature and scope of advice, which also focuses on “understanding”.

7.3 There are no other material trade-offs between those impacts.

8. [Standard 5] Protect client information

8.1 The impacts of the standard on the legislative purposes and international obligations are:

Legislative purposes and International obligations	Standard contributes to purpose	Standard detracts from purpose
Promote the confident and informed participation of businesses, investors, and consumers in the financial markets	Protection of client information is essential for consumer confidence.	No material detractions.
Promote and facilitate the development of fair, efficient, and transparent financial markets	Protection of client information is essential for fair markets.	No material detractions.
Provide for timely, accurate, and understandable information to be provided to persons to assist those persons to make decisions relating to financial products or the provision of financial services	Protection of client information is required to promote effective sharing of information between adviser and client.	No material detractions.
Ensure that appropriate governance arrangements apply to financial products and certain financial services that allow for effective monitoring and reduce governance risks	Does not contribute directly to governance.	No material detractions.
Avoid unnecessary compliance costs	The standard is worded as a general principle, to allow for a wide range of compliance approaches. Process requirements are left to licensing. Commentary clarifies that intention is for privacy aspect of standard to be consistent with Privacy Act.	No material detractions.
Promote innovation and flexibility in the financial markets	The standard is worded as a general principle, to allow for flexible application.	No material detractions.
Regulate the giving of financial advice and provision of financial advice services with a view to ensuring the availability of financial advice for persons seeking that advice, and the quality of financial advice and financial advice services	Information protection is critical for advice quality and to promote the availability of advice.	No material detractions.
New Zealand's international obligations that are relevant to financial markets or financial advice services	We have been advised there are no relevant international obligations.	No material detractions.

Trade-offs

8.2 There are no material trade-offs between those impacts.

9. [Standard 6] Have general competence, knowledge, and skill

9.1 The impacts of the standard on the legislative purposes and international obligations are:

Legislative purposes and International obligations	Standard contributes to purpose	Standard detracts from purpose
Promote the confident and informed participation of businesses, investors, and consumers in the financial markets	Adviser competence underpins confidence in the system	No material detractions.
Promote and facilitate the development of fair, efficient, and transparent financial markets	Adviser competence underpins fair financial markets	No material detractions.
Provide for timely, accurate, and understandable information to be provided to persons to assist those persons to make decisions relating to financial products or the provision of financial services	Advisers need sufficient competence to deliver on this purpose	No material detractions.
Ensure that appropriate governance arrangements apply to financial products and certain financial services that allow for effective monitoring and reduce governance risks	Advisers need sufficient competence to deliver on this purpose	No material detractions.
Avoid unnecessary compliance costs	There are compliance costs but they are necessary	No material detractions.
Promote innovation and flexibility in the financial markets	Competence options have been structured flexibly, allowing for a wide range of individual circumstances and a full range of adviser business structures.	No material detractions.
Regulate the giving of financial advice and provision of financial advice services with a view to ensuring the availability of financial advice for persons seeking that advice, and the quality of financial advice and financial advice services	See trade-offs, below. Standard non-prescriptive in respect of business structure and models (eg use of technology)	No material detractions.
New Zealand's international obligations that are relevant to financial markets or financial advice services	We have been advised there are no relevant international obligations.	No material detractions.

Trade-offs

9.2 Competence requirements involve a trade-off between:

- Advice givers having sufficient competence to provide advice to an acceptable quality
- The cost (dollars and time) of compliance – including education – and the effect of that cost on the availability of advice.

9.3 In balancing this trade-off we have taken into account:

- consumer expectations that advisers should be appropriately skilled
- the potential for consumer harm
- the reputation of the profession
- the fact that many current advice practitioners have limited (or no) formal qualifications
- general acceptance of the Level 5 qualification as a reasonable minimum benchmark
- the need to accommodate a full range of business models, including those where advice-giving is based wholly or partly on technology.

9.4 We note that there are likely to be higher costs, in the short term, for current RFAs because they have not previously been required to be qualified so are likely to need to undertake training. Some advisers may choose to cease training rather than attain the competence standards. We nonetheless consider the competence requirements to be essential to ensuring quality of advice in the regime.

9.5 In line with the legislative framework, the draft Code specifies competence by way of generic standards and specific “ways” of demonstrating the standard. The “ways” are not exhaustive but are intended to provide options for compliance certainty. The standard itself is intended to provide broad flexibility and to allow for a wide range of advice business models.

10. [Standard 7] Have particular competence, knowledge, and skill for designing an investment plan

10.1 The impacts and trade-offs are, in general, the same as those for [Standard 6].

10.2 The standard is an interim standard because we believe it requires additional consideration and further consultation.

- 10.3 We have concluded that there is no likely detriment (for example detracting from advice quality) by not having a higher minimum standard in the short term.
- 10.4 We note that financial planning qualifications are being reviewed in Australia. It is our intention to consider the Australian requirements once they have been finalised.
11. [Standard 8] Have particular competence, knowledge, and skill for product advice
- 11.1 The impacts and trade-offs are, in general, the same as those for [Standard 6].
- 11.2 We have considered the trade-off between quality of advice on the one hand and, on the other, the availability of advice and the costs of compliance.
- In general, we concluded that completion of any version of the Level 5 qualification – together with ongoing continuing professional development requirements – will result in a level of competence sufficient to produce advice quality that meets our objectives of the minimum standards. Therefore, for example, we have not imposed particular requirements in respect of specific course content requirements (such as completion of the financial advice strand in the NZ Certificate in Financial Services (Level 5) version 1).
 - In respect of KiwiSaver advice, we acknowledge the compliance costs of the Level 5 requirements. However, we considered on balance that the quality considerations outweigh those cost considerations.
12. [Standard 9] Keep competence, knowledge, and skill up-to-date
- 12.1 The impacts and trade-offs are, in general, the same as those for [Standard 6]. We specifically considered whether the requirement to undertake a certain minimum number of hours CPD was essential to maintain the quality of advice, but concluded that (i) quantity measures are no guarantee of the quality of the CPD undertaken and (ii) the wide range of adviser situations and roles means that each adviser must consider what is appropriate for them.
- 12.2 We consider that maintaining competence in respect of advice being given is a pre-requisite for quality advice. We note that this will involve compliance costs, for example in respect of professional learning to keep up-to-date with product types and the specific products being advised on. These costs are a necessary part of doing business.
- 12.3 The draft Code requires an up-to-date understanding of the regulatory framework and suggests, as an example, the relevant part of the prevailing Level 5 qualification as a pathway for demonstrating compliance following any material changes to the

regulatory framework. This is a potentially recurring compliance cost which we consider to be a necessary element of maintaining relevant knowledge.