



# Code of Professional Conduct for Financial Advice Services

Submission from AMP Financial Services

## Information about you

<b>Share your details</b>	
i.	<p>Please provide your name and (if relevant) the organisation you represent</p> <p>AMP Financial Services</p>
ii.	<p>Please provide your contact details</p> <p>Peter Kenny Head of Compliance PO Box 55, Shortland St Auckland 1140</p> <p style="color: red; font-weight: bold; font-size: 1.2em;">S 9 (2) (a)</p>
iii.	<p>Please provide any other information about you or your organisation that will help us understand your perspective (e.g. the financial advice situations you have experience with)</p> <p>AMP comprises all of AMP Limited’s New Zealand-based financial services businesses (excluding AMP Capital). AMP Limited is listed on the Australia and New Zealand stock exchanges. AMP has more than 150 Authorised Financial Advisers, the largest assemblage in the New Zealand market and has a similar number of QFE Advisers. AMP’s brands include:</p> <div style="display: flex; justify-content: space-between; align-items: flex-start; margin-top: 20px;"> <div style="text-align: center;">  </div> <div> <p>AMP is a leading investments and retirement savings provider and life insurer with more than 700,000 customers. It is the second largest contemporary life insurer, has the majority of the conventional life insurance market, manages approximately 12% of Kiwi’s KiwiSaver funds, and runs the largest retirement savings master trust in New Zealand. AMP Services (NZ) Limited is a Qualifying Financial Entity and a Discretionary Investment Management Services licensee, AMP Wealth Management New Zealand Limited is a Managed Investment Scheme licensee, and AMP Life Limited is licensed insurer.</p> </div> </div> <div style="display: flex; justify-content: space-between; align-items: flex-start; margin-top: 20px;"> <div style="text-align: center;">  </div> <div> <p>AdviceFirst is the largest financial advice business of its type in New Zealand, with offices nationwide, providing quality financial advice through its 57 financial advisers to individuals and businesses on life and health insurance, general insurance, investments, KiwiSaver, and home loans. AdviceFirst is majority-owned by AMP.</p> </div> </div>
iv.	<p>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. (See page 2 of this document)</p> <p>This submission does not contain any confidential information we seek to have withheld from publication.</p>

## Key issues

### **AMP supports the objectives of the Financial Services Legislation Amendment Bill (“the Bill”) and the intentions of the Code Working Group in developing the Code.**

We believe that the Consultation Paper contains proposals which largely cover what we believe the Code should achieve in relation to ethical standard and client care. However, we believe the Code Working Group’s proposals go too far in some of these areas. Specifically, we consider these sections of the Code would be more effective if it is kept shorter and more focused on the standards and behaviours expected of advisers and FAPs and the quality of advice services customers can expect to receive. Requirements related to process and ancillary matters, such as confidentiality of client data, are better dealt with through other mechanisms. Further, while the principles, guidance and other interpretive materials can be useful, we consider anything extensive may be better kept separate from the Code.

We are concerned that the competence requirements may not yet achieve their intended outcome. We believe that these will need to be revised.

We wish to highlight the following key points from our submission:

1. AMP supports the Code Working Group’s desire to ensure the Code promotes good customer outcomes. We recognise the challenge in identifying a term that encapsulates this and the set of principles that guide the development of the Code. However, we are concerned that the principle of “good advice outcomes” is not going to be understood as it was intended.

We are concerned that advisers and customers will not understand the distinction between advice outcomes and product outcomes that the Code Working Group has attempted to draw. The terminology “good advice outcomes” inherently leads people to think about whether the product recommended performed well for them. However, the fact that the product recommended results in a good financial outcome for the customer does not necessarily mean that it was the most appropriate recommendation the adviser could have made based on the information available to the adviser at the time the advice was given and the scope of the service. We suggest this term needs to be changed.

Additionally, we are concerned that limiting this principle to within the nature and scope of the advice, without any consideration of whether the nature and scope of the advice aligns with what the client wants or needs, may result in an inappropriately narrow interpretation of “good advice outcomes”.

If it is the Code Working Group’s intention to include these principles in the final Code, we would be concerned that these issues may result in uncertainty around the interpretation of the principles, and consequently the standards, therefore reducing the effectiveness of the Code. Accordingly, we suggest that both the wording of the principles and the commentary on it need to be further refined.

2. AMP supports the Code Working Group’s desire to ensure the Code promotes strong ethical standards and protects customers. However, we believe some of the areas the Code Working Group is proposing to introduce standards are already appropriately regulated by the Bill, proposed regulations, other legislation or delivered via contractual rights. In these areas, we are concerned that imposing Code standards could result in inconsistent obligations, or have the effect of imposing additional costs or restricting innovation without a commensurate benefit to customers.

<p>3.</p>	<p>We consider the Code should not mandate frameworks, systems, policies, processes (or types of policies or processes), or controls FAPs must have, or how a firm should document its processes and controls. The value of the Code is in setting the standards of conduct and the standards of competence, knowledge and expertise that advice providers must demonstrate, and thereby establishing the minimum quality of advice that is acceptable.</p> <p>How FAPs ensure they meet the minimum standards should be as flexible as possible, so that financial advice providers can determine the processes and controls that are most appropriate for their business. The Bill already provides for the FMA to review and determine whether the processes and controls FAPs have put in place are adequate. Specifically, at licensing, FAPs will need to demonstrate that:</p> <ul style="list-style-type: none"> <li>• They are capable of effectively performing the services they are being licenced for;</li> <li>• They are likely to comply with their licensee obligations, including the requirements of the Code.</li> </ul> <p>We do not believe the FMA would consider these criteria met where the applicant does not have processes to ensure compliance with the ethical and client care standards that are appropriate to its business model. We expect the FMA will provide guidance on how it interprets these criteria in the context of the FAPs over the next year.</p> <p>Similarly, on an ongoing basis, the FMA has the ability to take action, including directions, action plans, or in the most extreme cases, cancelling licenses, where a FAP ceases to meet the licensing criteria. The FMA’s practice for QFEs and other market services licensees has been to impose standard conditions requiring firms to maintain systems, policies, processes, controls, and governance arrangements that are adequate and effective for the nature and scale of the business and are at least as robust as are those in place at the time of licensing. Notification and annual attestation requirements are used to support monitoring of this. We would expect the FMA to apply similar requirements for FAPs.</p> <p>We believe that leaving assessment of the adequacy of policies, processes and controls to the FMA will maximise flexibility and scalability. We are concerned that imposing process requirements through the Code is likely to reduce the flexibility, without necessarily improving customer outcomes. Reducing flexibility will increase compliance costs for most FAPs, and is likely to particularly hurt smaller FAPs and those with more innovative business models.</p> <p>If the Code Working Group has particular areas it wishes to provide guidance or recommendations on, we consider it would be preferable for it to work with the FMA on the development of licensing guidance.</p>
<p>4.</p>	<p>AMP supports the idea that good advice may be the result of multiple people contributing, based on their expertise, to different components of the overall advice services provided to a customer. This may involve either support functions such as product research functions or paraplanners, supporting the advisers or multiple advisers advising on different products types to address different aspects of the customer’s needs. Further, we recognise that, particularly for simpler types of financial advice, processes can go some way to ensuring the advice delivered is appropriate.</p> <p>However, particularly where services are more personalised or the customer’s needs are more complex, processes designed to guide human advisers arguably cannot fully substitute the judgment that comes from people with the knowledge and experience to</p>



prepare suitable advice. We are concerned that the proposed Code standards reflect a view that process and support can act as almost a complete substitute to the adviser personally having competence, knowledge and expertise, and do not reflect the practical reality that this has limitations.

Specifically, we consider that, while process can support good advice to an extent, priority needs to be given to ensuring the people responsible for that advice have the competence, knowledge and expertise to produce and deliver that advice. While advisers may not be the only people involved in formulating a piece of advice, given customers will expect their adviser to understand the advice the adviser is delivering and the basis for it, we believe advisers should personally have at least a minimum level of competence, knowledge and expertise in relation to the subject matter they are advising on.

Additionally, we consider that automated advice needs to be viewed as fundamentally different to advice formulated by humans, and therefore having different competence criteria in relation to FAPs providing automated advice can be justified. Where automated advice is given, the advice is entirely the product of a predetermined process. While human expertise would have been involved in the design of the process, there is no human judgment in the advice given to a particular customer. As such, determining whether it is good advice can be assessed by considering the design and limitations of the process. By contrast, as soon as human judgment is involved in producing the advice given to a particular client, whether the person, or people, making the judgment has the competence, knowledge and expertise to give that advice is critical to whether a good advice outcome can be assured.

## Principles for drafting the Code

<b>Share your views</b>	
A.	<p>What comments do you have regarding the overarching theme of “good advice outcomes” and the underlying principles?</p> <p>Although the Code Working Group (CWG) is on the right track wanting good advice as an outcome for clients, the word “outcomes” is likely to cause confusion, including for clients. They may incorrectly interpret outcomes to mean good outcomes generally (such as good investment performance). To illustrate: an adviser may recommend scaling back life insurance and increasing income protection based on client needs and suitability assessment. If the client dies shortly after making the change the outcome was poor (less life insurance paid out) despite the advice [outcome] being good.</p> <p>The issue is that the word “outcome” is ambiguous. AMP considers the word could be removed altogether, i.e. “good advice”. Other options could be “good advice outputs” (though we note ‘outputs’ can have connotations of being focused on process or form) or “high quality advice”.</p> <p>Additionally, in determining whether something amounts to ‘good advice’, we consider that care needs to be taken around the extent to which this obligation is limited by the nature and scope of the financial advice that was provided. It is important that the good advice isn’t assumed to require a comprehensive service in all cases. However, ‘good advice’ should reflect the scope and extent of advice the customer wants and needs, rather than being restricted by the nature and scope of the advice the FAP chooses to offer. By way of example, under the definition proposed, giving a generic recommendation about a financial product to a client, provided the scope and limitations of the advice was clearly explained to the customer and the recommendation was appropriate in the context of that scope, the advice would amount to a ‘good advice outcome’, regardless of whether the scope of the advice service met the customer’s needs. If the client only needed class or generic advice, giving such a generic recommendation should be acceptable. However, if the customer needed and wanted a more extensive advice service and the FAP should have been aware of this, the customer may justifiably feel their needs hadn’t been met and the advice given was poor. This sort of misalignment should be addressed in the principles.</p>
B.	<p>Are there any further principles that should be included, or existing principles that should be removed?</p> <p>The FAP being <i>accountable for “doing the right thing”</i> also needs to be considered carefully. Although it is presented as a truism, there are times when advisers inevitably recommend “second best” solutions due to all manner of constraints (cost, client tolerance, etc.). So “doing the right thing” needs to be carefully explained in guidance if it is retained.</p> <p>Again, the CWG is on the right track here – it is not only about the advice provided by the FAP to their clients. A further principle that could be included to complement “good advice” would be “good service”.</p> <p>In relation to principle 4, we support the idea that the minimum standards should aim to be ‘agnostic’ between business models and delivery methods. However, we believe that ‘agnostic’ should focus primarily on ensuring the minimum quality of financial advice given to customers is consistent, and as a secondary consideration that the overall</p>

	compliance burden is proportionate for all providers. This doesn't necessarily require that one rule is applied to all advice situations – rather it may be desirable for rules to contain distinctions between advice situations. Where practical, distinctions should reflect natural distinctions in the nature of advice services or delivery methods, rather than creating arbitrary or subjective distinctions or attempting to apply binary distinctions where a spectrum exists.
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## Ethical behaviour

Act with honesty, fairness and integrity

<b>Share your views</b>	
C.	Do you agree with a requirement to act with honesty, fairness and integrity? If not, please set out your reasoning.  Yes.

Keep the commitments you make to your client

D.	<p>Should minimum standards for ethical behaviour for the provision of financial advice extend beyond strict legal obligations, to include meeting less formal understandings, impressions or expectations that do not necessarily amount to strictly legal obligations? If no, please give reasoning. If yes, please propose how a standard for such commitments might be framed.</p> <p>We have some misgivings about this proposal, at least to the extent that it contemplates strict adherence to informal commitments, even where a failure to adhere to such a commitment would not cause the customer any loss. However, if this proposal is progressed, the Code should be aligned so far as practical with existing regulatory guidance, particularly <i>A guide to the FMA's view of conduct</i>. That would minimise duplication, cost and confusion and maximise return on investment by the regulator and Financial Advice Providers (FAPs).</p> <p>If such a standard is imposed, we believe care needs to be taken to ensure that the standard doesn't result in inappropriate regulatory outcomes. We agree with the proposition that advisers should, in general, keep their commitments and manage client expectations around the service they provide. However, where issues are isolated to specific clients, significant contractual breaches already can be managed through private law remedies, and lower value contractual breaches or non-contractual complaints about customer services standards can be dealt with through the FAP's internal complaints process or external dispute resolution scheme. We do not believe such issues should automatically become a regulatory breach, and therefore potentially subject to intervention by the FMA. This is particularly the case where it was intended by the adviser that the commitment would be 'best case' service and delivery to a lesser level causes no real detriment to the customer. An example would be providing a bi-monthly flyer communication (and promoting that in a Statement of Advice as one of the value propositions of the FAP) but later changing the frequency to quarterly.</p>
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	<p>Where the conduct is sufficiently severe or systemic issue with the adviser misrepresenting their services or failing to keep commitments that it warrants regulatory intervention, the conduct is likely to breach other proposed obligations, potentially including acting with honesty and integrity, not bringing the financial advice industry into disrepute, acting with care, diligence and skill, and behaving professionally. Additionally, the FMA has the ability to take civil action, including for breach of contract, on behalf of customers where it is in the public interest for them to do so.</p>
E.	<p>If there was a minimum standard requiring Financial Advice Providers – or Financial Advice Providers in some situations – to have their own code of ethics in addition to the Code, how would you frame the requirement for it to deal with keeping commitments?</p> <p>A plethora of codes of ethics is not a desirable outcome.</p> <p>In our view, it is far better for the Code Working Group to determine the minimum standards that are required of all industry participants. It is then for participants to determine how to implement those standards (which may involve having their own internal code of ethics or code of conduct).</p> <p>It is also important to recognise business sizes and complexities. Many larger FAPs are likely to belong to industry bodies such as the Financial Services Council, which has a Code for its member firms. They will have firm-level Codes of Conduct in place too already. Hence such FAPs already are well served, without additional requirements being added. Conversely, small FAPs will be unlikely to benefit from internal codes, probably would source them in generic form from third parties, and would be unlikely to consider them in any meaningful sense on a daily basis.</p> <p>Further, for the reasons addressed above in our third key issue, we believe it is preferable that the Code is limited to standards of conduct in relation to providing financial advice services, and avoids prescribing how FAPs should implement those standards. We believe the framework for licensing, plus ongoing monitoring by the FMA, provide adequate regulatory tools. Combined, these should ensure FAPs have appropriate processes and controls to comply with the standards in the Bill and Code.</p>

## Manage and fully disclose conflicts of interest

F.	<p>Should the Code include a minimum standard on conflicts of interest in addition to the legislation?</p> <p>Section 431J, the duty to give priority to client’s interests should be sufficient. This is provided: (a) aspects noted in AMP’s submission on the Bill are addressed, and (b) regulator guidance provides adequate elaboration.</p> <p>There is also scope for the Code to leverage <i>A guide to the FMA's view of conduct</i>. This would reduce effort and confusion and maximise return on investment by the FMA and licensees.</p> <p>MBIE is proposing to address disclosure of conflicts of interest in the disclosure regulations, so including conflicts of interest requirements in the Code risks causing confusion rather than supporting good customer outcomes.</p> <p>The FMA will consider how FAPs deal with conflicts of interest within their advice processes as part of licensing and monitoring, including how they meet the section 431J obligation, disclosure and how their practices align with good conduct. In our view, a</p>
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	Code standard is unlikely to meaningfully add to this, and may result in duplication or inconsistencies that increases costs for limited or no benefit to customers.
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## Do no harm to the client or the profession

G.	<p>Do you agree that a person who gives financial advice must not do anything or make an omission that would or would be likely to bring the financial advice profession into disrepute? If not, please set out your reasoning.</p> <p>Yes. This is one of the high-level requirements that comes across from the <i>Code of Professional Conduct for Authorised Financial Advisers</i> (i.e. Code Standard 2), though because there have been no decisions by the Financial Advisers Disciplinary Committee on this Standard, specific guidance and/or examples are needed.</p> <p>We note that there could be benefits in broadening this standard to prohibit any action or omission in connection with the provision of financial advice that is likely to bring the financial <b>services</b> industry, or any part of it, into disrepute. Given advice services are frequently linked to either the sale of a financial product or a broking or intermediary service, this extension would avoid possibility that misconduct by advisers may be perceived as issues related to execution of a transaction or product-related issues.</p>
H.	<p>Is an additional minimum standard on doing no harm to the client necessary? If so, what standard do you propose?</p> <p>The Working Group’s “current thinking” (para 95) is that this is unnecessary since the legislation and other elements of the Code will adequately address this seems correct. Section 431J, the duty to give priority to client’s interests, makes such a standard redundant.</p>

## Keep your client’s data confidential

I.	<p>In which situations, if any, should the retention, use or sharing of anonymised bulk customer data be subject to Code standards?</p> <p>The Principles of the Privacy Act should be sufficient. There should be no need to extend or augment those principles in the Code. Any concerns the CWG has regarding privacy in the context of Financial Advice Services should be submitted to the consultation on the Privacy Bill currently before Parliament.</p> <p>As noted in the second key issue highlighted above, we are concerned that a Code standard to deal with privacy or confidentiality may inadvertently create inconsistent regulatory obligations, unjustified costs for FAPs, or prohibit uses of client data which benefit clients and are permitted under the Privacy Act.</p>
J.	<p>Do you agree that the Code should cover the various aspects of maintaining client confidentiality discussed in this paper?</p> <p>As per answer to I, above, we do not believe this should be addressed in the Code.</p>
K.	<p>Are there other aspects of maintaining client confidentiality to consider?</p> <p>As per answer to I, above.</p>

## Ethical processes in Financial Advice Provider entities

L.	<p>Do you agree that the Code should require the Financial Advice Provider to document and maintain its “ethical processes”?</p> <p>Like the privacy answer, above, the Code should generally not go wider than advice provision. FAPs should be subject to the same minimum standards of ethical behaviour.</p> <p>We believe that the proposals to require ethical processes ‘tailored’ to the FAP’s culture and risk appetite will lead to variation in standards rather than to the establishment of a consistent standard.</p> <p>Further, for the reasons addressed in our third key issue above, the requirement to document processes in the way proposed will reduce flexibility for smaller financial advice providers and financial advice providers focusing on alternative delivery models. This is likely to have the effect of disproportionately increasing compliance costs or unnecessarily preventing firms from becoming licensed.</p> <p>Accordingly, we consider the Code Working Group should limit itself to setting minimum standards. The FMA can then determine, at the point of licensing and through ongoing monitoring, whether financial advice providers have adequate systems and controls to comply with those minimum standards and whether they have systems and controls necessary for their increased complexity, where applicable.</p>
M.	<p>Should the Financial Advice Provider be required to have a publicly available corporate code of ethics? Are there particular situations where a corporate code of ethics should be or should not be required?</p> <p>As per the answer to L, above, we do not support a Code standard requiring FAPs to have a corporate code of ethics. Further, requiring codes of ethics to be public is unlikely to provide any real benefit, because very few customers are likely to read them, and it will be difficult to draw meaningful conclusions about differences in the services they are likely to receive based on them.</p>
N.	<p>Should Financial Advice Providers also be subject to additional standards in respect of leadership and culture? If so, how should these be framed?</p> <p>As per the answer to L, above, we do not believe this should be required under the Code.</p>
O.	<p>Do you propose other additional standards of ethical behaviour that should apply to Financial Advice Providers?</p> <p>We don’t have any other suggestions for additional ethical standards.</p>

## Ethics training

P.	<p>Do you agree that Financial Advice Providers should be required to meet standards relating to ethics training? If not, please state your reasoning.</p> <p>This would be more appropriately addressed in Standard Conditions. This should apply to all FMC licensees, not just FAPs. An extension to existing Standard Conditions may be the most efficient means of requiring ethics training. For example, the MIS Standard Condition (A6) already requires that “at all times, adequate and effective systems, policies, processes and controls that are likely to ensure [the licensee] will meet [its] market services licensee obligations in an effective manner” are in place.</p>
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Q.	<p>Should ethics training requirements apply to all officers and employees of a Financial Advice Provider, as appropriate to their role and contribution to the process of financial advice provision? If not, please state your reasoning.</p> <p>Refer answer to P, above.</p>
R.	<p>Should there be a requirement for ongoing refresher training on ethics?</p> <p>This could be a requirement of the ongoing Fit and Proper requirements for Senior Managers and Officers either in the Standard Conditions or explicitly in the Act.</p>

## Resolving ethical dilemmas

S.	<p>Do you agree that Financial Advice Providers should be required to have in place, and use, a framework for resolving ethical dilemmas that may arise in giving financial advice? If not, please set out your reasoning.</p> <p>For the reasons addressed above in our third key issue above, we believe it is preferable that the ethical standards part of the Code is limited to the standards of conduct, and avoids prescribing how FAPs should implement those standards. We believe the framework for licensing and ongoing monitoring by the FMA provide adequate regulatory tools, and is a more flexible and efficient mechanism, to ensure FAPs have appropriate processes and controls to comply with the standards in the Bill and Code. If the Code Working Group has particular areas it wishes to provide guidance or recommendations on, we consider it would be preferable for it to work with the FMA on the development of licensing guidance. If considered appropriate at that point, the model outlined in the IOSCO report referenced by the Paper (<a href="https://www.iosco.org/library/pubdocs/pdf/IOSCOPD217.pdf">https://www.iosco.org/library/pubdocs/pdf/IOSCOPD217.pdf</a>) could be prescribed as a default model. It is unlikely many FAPs would want to, or have the skills to, develop bespoke frameworks for resolving “ethical dilemmas”.</p>
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## Compliance functions

T.	<p>Should there be a requirement for explicit sign-off on the soundness of financial advice provided directly by a Financial Advice Provider?</p> <p>This is a sensible requirement because without it there will be an unlevel playing field for directly FAP-provided advice. Assessment of the advice permutations stemming from an algorithmic system will be as important as first line control applied by FAPs to human-delivered advice. However, similarly, this should be dependent on the breadth and depth of that advice. In simple situations, such as choosing an appropriate fund based on risk profile, the assessment of soundness could be quite straightforward and easy to pre-assess for soundness. A more complicated scenario should have a higher requirement for sign-off, which could involve vetting by a qualified assessor.</p>
U.	<p>Do you agree that Financial Advice Providers should be required to have in place a compliance function aimed at following up on concerns raised by employees and other stakeholders? If not, please set out your reasoning.</p> <p>In principle, this proposal is a sound requirement. For larger FAPs, and especially current Qualifying Financial Entities (QFEs), such a requirement will pose few challenges as it will already exist. We have concerns that the smaller the FAP the harder it is to justify such a</p>



	<p>resource, so if it were to be required universally the option to outsource such a function should be available.</p> <p>However, this is another area better addressed primarily through licensing and monitoring and secondarily in Standard Conditions. For the reasons addressed above in our third key issue above, we believe it is preferable that the ethical standards part of the Code avoids prescribing how FAPs should implement the Code standards.</p>
V.	<p>Should this extend further into an internal audit obligation, having in place processes to systematically test for and detect violations of ethical behaviour?</p> <p>In principle, this proposal is also a sound requirement and, as for the answer to U, above, for larger FAPs, and especially current QFEs, such a requirement will pose few challenges but for smaller FAPs the same concerns apply.</p> <p>Again, for the reasons addressed above in our third key issue above, we believe it is preferable that the ethical standards part of the Code is limited to standards of conduct, and avoids prescribing how FAPs should implement those standards. This is another area better addressed in Standard Conditions and through licensing.</p>
W.	<p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p> <p>There would be additional compliance costs for smaller FAPs. However, compliance functions would typically be utilised less (e.g. smaller numbers of compliance queries from employees) and easier to conduct (compliance assurance programmes will often be simpler and require smaller volumes of testing) because the volume/size is considerably smaller. This will mean that the compliance resource required is lower for smaller FAPs, and will help to keep the compliance cost more proportionate.</p>

## Responsibility for the whole advice process

X.	<p>Do you agree that Financial Advice Providers should be required to be able to demonstrate that they meet the standards of ethical behaviour as if the Financial Advice Provider carried out the whole advice process directly itself? If not, please set out your reasoning.</p> <p>Yes. However, we don't think a separate Code standard is the desirable way to achieve this.</p> <p>We consider the other Code standards proposed would naturally apply to the regulated advice services delivered by a FAP, regardless of whether the FAP was responsible for all inputs or relied on some level of third party services. To any extent this needs clarifying, we believe a licence condition regarding outsourcing, similar what currently exists for fund managers and DIMS providers, would be a better mechanism to deliver this.</p>
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## Reinforcing good ethical behaviour

Y.	<p>What principle or mechanism do you propose the Code could include to reinforce good ethical behaviour on a day-to-day basis?</p> <p>If Section 431J, the duty to give priority to client’s interests, is optimised the Code may not require this additional principle.</p> <p>The Code could, of course, reinforce in its Background (as the <i>Code of Professional Conduct for Authorised Financial Advisers</i> does today) section 431J and other key principles of the FMC regime.</p> <p>We consider the Code should not prescribe ‘mechanisms’ for meeting Code standards or duties set out in the Bill.</p>
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## Conduct and client care

### Advice situations

<b>Share your views</b>	
Z.	<p>Are there other delivery methods that should be considered when testing our thinking?</p> <p>Para 124 is confusing in that the first two bullets essentially cover all options. Artificial intelligence seems to be a form of Automated advice. Open Banking is the concept of giving customers access to their own banking data, and does not necessarily involve any advice – any advice delivered through an open banking solution would typically be “automated advice”. “Vertically integrated organisations” does not appear to be an “advice-giving scenario”, rather a description of an entity that may have advice and other, potentially conflicting, operations. “Via an intermediary” is a subset of either “human” or “automated advice”, depending on the intermediary’s business model.</p> <p>The Code Working Group also needs to ensure it considers channels for giving generic advice, such as advertisements, website content, research notes, or bulk emails that may contain opinions or recommendations about a financial product but aren’t ‘automated advice’ (in the sense of being computer generated or the result of a system or process) or attributed to a particular individual.</p>

### Advice-giving standards

AA.	<p>How do the current client care standards work in practice, especially in advice-giving situations not previously covered by the AFA Code? In answering this question, please ignore “scope of advice” (CS-8) and “suitability” (CS-9 and part of CS-10).</p> <p>One key issue has been identified in the Paper, i.e. ongoing minor adjustments or renewal situations. Depending on how the wording of section 431A(1)(a) concludes, ensuring the Code accommodates these situations will be important (noting that some submissions recommend the express inclusion of “retention” of a service or product).</p> <p>We question how CS 7 will apply across the range of advice situations. This obligation was designed for situations where an individual adviser, who is required to have training</p>
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	<p>and competence in financial products and giving advice, is responsible for the advice given, and therefore their competence and integrity is central to the suitability of the advice service.</p> <p>Under the proposed competence requirements, a firm may rely on process and the knowledge and expertise of behind the scenes people, with the financial adviser or nominated representative having very little input into the advice they give. In this situation, information about the adviser delivering the advice may be of limited value, and information about the FAP’s processes and controls and about the people responsible for preparing the advice may be far more relevant to the client. However, this would be more challenging to present.</p> <p>Additionally, this obligation will apply where there is no identifiable human who is responsible for the advice, including automated advice situations. In these situations, there is no adviser, so the obligation arguably cannot be complied with. Alternatively, the FAP could be considered the ‘adviser’ but the disclosure given would need to reflect this.</p> <p>Further, this duty will also apply to the situations where generic or class advice is published, rather than given to one or more identifiable clients. What is expected in this scenario also needs to be taken into account in drafting this standard.</p> <p>Another area that may need further consideration is CS 12. We support proper record keeping. However, the current wording is designed for personalised advice generated by people. Consideration will need to be given to how this applies to automated advice, and generic or class advice.</p>
BB.	<p>Could any aspect of the current client care standards be worded better? (For example, we are aware that the definition of “complaint” could be improved.)</p> <p>Where possible, utilise International/Australian/New Zealand Standards. In this example, “complaint”, the definition can be taken from ISO 10002 (AS/NZS 10002):</p> <p style="text-align: center;"><i>expression of dissatisfaction made to an organization, related to its products, or the complaints-handling process itself, where a response or resolution is explicitly or implicitly expected</i></p>
CC.	<p>Are there any aspects of the current client care standards that could be expanded or clarified (for example, in light of the published findings of the Disciplinary Committee)?</p>
DD.	<p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p>
EE.	<p>Are there any additional matters that should be addressed in the advice-giving standards? Those listed above? Others?</p> <p>We do not consider there is a need for standards around cyber security or client confidentiality. These can be adequately dealt with through the licensing criteria and through other legislation, such as the Privacy Act.</p> <p>We would support requirements related to replacement business – we believe advisers should have an obligation to offer the client advice on the relative merits of the existing and replacement products and the risks of switching in any replacement business scenario.</p>

	<p>Other possible obligations could include:</p> <ul style="list-style-type: none"> <li>• An obligation to take reasonable steps to ensure the scope of the advice service meets what the client reasonably wants or needs. This should be aimed ensuring customers who want and need more comprehensive services aren't restricted to a level of service that clearly doesn't meet their needs. Note, the customer's needs and the level and scope of advice they want may not readily align, and any Code standard would need to enable a sensible and pragmatic solution in terms of setting the scope of the advice. For example, a customer may need a more extensive service than they are willing to accept (due to concerns about the cost of advice or the time involved in a comprehensive service), and therefore the adviser may, in practice, be limited to providing what the client wants. In such circumstances, providing the level of service the customer wants would likely be an appropriate outcome. Similarly, the client may want a more extensive service than they need or the adviser can reasonably be expected to provide in the circumstances. In that case, the adviser providing at least the service the customer needs and managing the customer's expectations around the difference would likely be appropriate. Consideration would also need to be given to whether such a Code standard should require advisers to refer clients to an adviser outside their FAP (or otherwise assist the customer to find another adviser) if the FAP can't provide an advice service that meets the customer's needs.</li> <li>• An obligation for any person who holds themselves out as offering regulated financial advice to make financial advice available to their customers on reasonable terms if the client wants it or it is clear that the client needs it. This obligation should be designed to prevent financial advisers limiting the services they <i>actually</i> provide to information and execution services. It should not, however, extend to requiring advisers to provide advice on all types of products or on all products of a particular type.</li> </ul>
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## Advice process

FF.	<p>Do you think there are any other components that should be included in the design considerations of an advice process?</p> <p>The provisional thinking in para 133 is good. Risks to the client should be specifically included also.</p>
GG.	<p>Should the Code include guidance material to help determine what needs to be considered when designing an advice process?</p> <p>This is likely to significantly lengthen the page count of the Code. Guidance material is usually welcomed, but we believe it is better sitting outside the Code itself if provided.</p>
HH.	<p>Are there any other important aspects you think should be included in the advice process for all types of financial advice activities under the new regime?</p> <p>The key aspects outlined in para 134 are good. Further aspects to consider including are:</p> <ul style="list-style-type: none"> <li>• Product comparisons should be on a like-with-like basis, especially when recommending replacing a product</li> <li>• For verbal advice, a requirement to provide a summary or recording of the conversation would be an improvement.</li> </ul>

<p>II.</p>	<p>Should any of the key aspects that we have listed above be removed? If so, why?</p> <p>No. Though the second and fourth bullet points may benefit from either being merged or better differentiated. Currently they appear to have substantial overlap.</p> <p>Also, the Code will need to acknowledge challenges in complying with some of the obligations and provide for this in the wording of the standards. For example, when providing an explanation of the basis for the advice, clients receiving simple generic or class advice are unlikely to want to receive detailed analysis underlying the advice. Similarly, when receiving advice verbally, some customers may find it difficult to understand if too much detail is given. As such, the level of detail provided (and the delivery method) needs to be appropriate to the circumstances. Similarly, while getting some level of acknowledgement from a client is practical in a face to face situation, where advice is delivered through an automated platform, or generic or class advice is widely distributed, it may be difficult to ensure the customer gives a positive acknowledgement before proceeding with a decision, and different mechanisms may be involved.</p>
<p>JJ.</p>	<p>Are there any situations in which an advice process need not be followed?</p> <p>We consider an appropriate advice process should be followed in all circumstances where advice is provided, noting that a FAP should be able to operate different advice processes for different types of advice situation and different levels of advice.</p> <p>The only circumstances where an appropriate advice process should not be required is where (a) there is no advice provided, AND (b) the client has no reasonable belief that they were <i>advised</i>. Notwithstanding “no advice” is not regulated financial advice, it is rare that a client considers they have not received advice when they spend any significant time with an adviser. A key test should be: could the client have gone to an administrator/non-adviser and asked for what they had implemented. Some situations may fit such a scenario. For example, a request to reduce life insurance to a specified level is one example. However, if the adviser and client have extensive discussions in relation to a request, it would usually be reasonable for the client to believe that they received financial advice. Further, as noted by the FMA in its <i>Guidance Note: Sale and Distribution of KiwiSaver</i>, “the context of the services often leads to an implied recommendation or opinion being given to the client. In many circumstances where a sales person interacts with a potential client, a financial advice service will be provided. In only limited circumstances will the service be a ‘no advice’ service.” From our observation, there are many advisers who spend considerable time with their clients but do not provide “advice”, yet when pressed acknowledge that their client might reasonably feel as though they were advised. This has been a challenge exacerbated by the full personalised advice process, since, understandably, there may be reticence to provide personalised advice when the efforts required are incommensurate to the client expectation and the adviser’s time and effort needed to deliver it.</p>

## Personalised suitability

KK.	<p>What comments do you have about a proposed minimum standard on personalised suitability analysis? What are your views on the example above?</p> <p>Suitability should be considered in the context of what the client wants, reasonably expects, and needs (to protect them from insufficient advice/risks). These things sometimes do not align. For example, the client may <i>need</i> a deep “fact find” and “needs analysis” but may be disinterested or time pressured. Conversely, sometimes these things are done when there is little need for them. The nature and extent of suitability analysis required should be linked to the scope and degree of personalisation of the advice that is to be given.</p> <p>We are concerned that the proposals as currently designed will have the effect of creating a class/personalised distinction in relation to this obligation which may not be appropriate for the full range of advice given. A more flexible approach that recognises the full spectrum of advice that should be available would be preferable.</p> <p>A solution to this conundrum may be to have FAPs identify levels of advice in tranches or on a continuum where increasing complexity and/or risk to the client demands higher levels of suitability analysis. Such an approach would align with the CWG’s desire to achieve good advice without undue analysis when it is not required.</p> <p>An example may be thus:</p> <ul style="list-style-type: none"><li>• Sale of new life insurance to an uninsured person who specifies a level of cover to cover their mortgage and is not interested in detailed analysis: <b>low</b>, sale with information and generic advice, <b>no suitability analysis</b> [<i>this aligns with para 141 – it is straightforward, the broader financial situation is not material, and no expectation of comparisons is present...provided the FA or NR makes it clear only one product is available to them to meet the stated need</i>]</li><li>• Replacement of a KiwiSaver – <b>moderate</b>, simple statement of advice providing warnings of risks and product comparative information; <b>basic suitability analysis</b></li><li>• Replacement of life, trauma, income protection – <b>high</b>, detailed revision of client facts, needs. Comprehensive product and features comparison on a like-with-like basis. Comprehensive statement of advice including explicit warnings of risks based on <b>detailed suitability analysis</b>.</li></ul> <p>There may also be some limited situations where it is appropriate that no suitability analysis is available. For example, generic advice in marketing materials may be appropriate, on the basis that customers will understand it is not targeted at them personally and doesn’t take into account their circumstances. Similarly, it may be appropriate for research notes on a security (which will typically contain advice) to be generic, on the basis that customers can seek advice on the suitability for them if they want it. These types of scenarios should not be prohibited by a requirement for a suitability assessment.</p>
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## Organisational standards

LL.	<p>What are the practical advantages and disadvantages of including organisational standards as described? What explanatory material or examples could we provide in the Code that might help to make these standards easier to comply with in practice?</p> <p>For the reasons discussed in the third point of the key issues section above, we consider organisational standards would be better addressed via licensing or Standard Conditions. In today's context, QFE Standard Conditions and Adviser Business Statement (ABS) appear to have a lot of overlap with what is contemplated. Adoption of those, extending advice processes aspects, may be the most efficient and least burdensome means of addressing this rather than including it in the Code. FAP Standard Conditions and a FAP Business Statement (outlining systems, processes, etc., as the QFE ABS does today) could practically address describing the FAP's organisational standards.</p>
MM.	<p>Would implementing these organisational conduct and client care standards create a particular compliance burden for your firm? If yes, please explain why.</p> <p>This will depend on how extensive the requirements are. As the Paper notes (para 149) this is "difficult to describe and measure" and this difficulty naturally means time, energy and resources would be required because designing, measuring, monitoring and enforcing more subjective standards is harder than objective ones.</p>

## General competence, knowledge and skills

<b>Share your views</b>	
NN.	<p>Do you agree with our interpretation of the meaning of "competence, knowledge, and skill"? If not, why not?</p> <p>Competence is more than just "do[ing] something to an acceptable standard". It implies capability, doing something well and efficiently.</p> <p>Knowledge is more than just "theoretical or practical understanding". Knowledge involves the synthesis of data and information and may be stored and applied by individuals or entities.</p> <p>The definition of skill is adequate.</p> <p>The aggregated "competence, knowledge, and skill" definition is well-designed, capturing the essential concept that these combine as expertise, which enable FAPs to deliver good advice outcomes to their clients.</p>
OO.	<p>Are there other factors, which contribute to <b>combined expertise</b>, that we have not listed? We are particularly interested in factors that are relevant to financial advice that is given by a Financial Advice Provider directly, including by digital means.</p> <p>Adding judgment/discernment could be considered. This would create a neat linkage to the ethical/conduct aspects of applying combined expertise.</p>



PP.	<p>What do you think are the advantages of this approach to general competence, knowledge and skills?</p> <p>The approach elegantly addresses the requirement for the largest entities to sole traders, so is well considered.</p>
QQ.	<p>What do you think are the disadvantages of this approach to general competence, knowledge and skills?</p> <p>It arguably places a higher burden at the individual level insofar as “Set B”/Unit Standard 26360 knowledge would be required of all FAs and NRs, but the FAPs themselves (or developers of robo-advice solutions in the FAPs) do not appear to be required to ‘pass’ that test.</p> <p>We are also concerned that, particularly in the absence of any requirement to ensure the nature and scope of the advice is appropriate for the client, the focus on process will heavily favour basic formulaic advice provided by advisers with limited or no individual capability. This may result in unqualified and inexperienced advisers being able to continue providing advice, subject to limitations on the advice they can provide (which limitations may mean the advice doesn’t meet the client’s needs). However, organisations that wish to provide a broader range of advice services will face substantially higher training requirements and compliance costs.</p>
RR.	<p>In what ways do you think this proposed standard contributes to, or detracts from, the legislative purposes (for example ensuring the quality and availability of advice, avoiding unnecessary compliance costs, and promoting innovation and flexibility)?</p> <p>For today’s QFEs we consider that the proposed standard will require some re-assessment of the adequacy of processes and systems, though in some, perhaps many, cases it should require negligible augmentation. For other entities, and especially new organisations becoming FAPs, the development and articulation of processes may come with substantial cost (including compliance cost). Nonetheless, the minimum standard articulated in para 163 should be considered an absolute core competence for any FAP; failing to have the aggregate competence, knowledge, and skill to deliver good advice outcomes and/or understanding of the law and Code is unacceptable. If a FAP cannot deliver on the minimum standards it should not be licensed.</p> <p>In terms of the availability of advice, standards will, overall, require a considerable upskilling for the current registered financial adviser population. This is likely to have a short-to-medium term impact on the availability of financial advice, particularly in sectors such as personal risk insurance and mortgages. While we believe requiring this upskilling is laudable, the impact should be mitigated and managed by providing as much opportunity as practical for good advisers who have gained knowledge and expertise through experience to remain in the financial advice industry, while requiring those who don’t meet the standards to either upskill or exit the industry.</p> <p>While it is proposed that current AFAs are grandfathered, we are also concerned that the proposals will place financial advisers wishing to provide more comprehensive advice at a substantial disadvantage to more process-orientated organisations, and therefore will discourage advisers from providing these services. While many existing AFAs are likely to remain in the market sector initially, thereby mitigating the effect, we would expect the proposals to cause a decline in the availability of this type of advice over time.</p>

SS.	<p>What factors should we consider in determining whether to make the proposed unit standard a renewing obligation?</p> <p>Factors such as significant changes to the law or Code should trigger the need for re-education.</p> <p>However, we would consider contemplation of requiring a full re-sit of Set B for all FAs and NRs as an unnecessary and unwarranted compliance cost. Even in the case of a material change to the framework. A requirement for FAs and NRs to complete and pass FAP-delivered (or outsourced) training on changes would be a reasonable expectation. Alternatively, maintaining a current knowledge of regulatory requirements and advice industry practices could be a mandatory component of continuing professional development for financial advisers.</p> <p>An advantage to having a renewing obligation would be it would lessen the one-off issue of ‘cramming’ for the Set B examination. A combination of a regular refresh requirement – again FAP-delivered (or outsourced or CPD-demanded) – plus an explicit requirement when there are material changes, would provide greater assurance of ongoing understanding.</p>
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## Particular competence, knowledge and skills

<b>Share your views</b>	
TT.	<p>What are the advantages and disadvantages of our approach of identifying two types of financial advice? What impact would it have on the type of advice you give and on your compliance costs?</p> <p>A disadvantage of this approach is that it risks repeating binary-type concepts that predominate the Financial Advisers Act. It has been accepted that the binary concepts of “Class” and “Personalised” advice and “Category 1” and “Category 2” products are rigid and non-customer-focused constructs. “Product advice” and “Financial planning” naturally overlap in many real-world cases.</p> <p>An advantage is that enabling product-limited/guided advice, providing it is clear to the customer that is all they are receiving, would enable many more FAs and NRs to advise customers. We do have concern, however, that “Product advice” in the circumstance where the customer would dispose of a similar product in favour of a replacement one is a key risk factor that requires higher standards, requirements, and integrity.</p> <p>It is critical that the greyness between what is “Product advice” and “Financial planning” be minimised. Discussions at the Consultation meetings suggested that relatively simple advice scenarios including only one financial product type could be considered “Financial planning”. If so, much of today’s <i>advice</i> would be deemed <i>planning</i> and the consequence would be a massive increase for many of today’s advisers to achieve the proposed standard (Level 7 degree and Level 6 certificate).</p> <p>The impact from using these two advice types on how we advise would depend on whether a ‘bright line’ test could easily be applied. It would require some re-thinking and design of current advice processes and assessment tools, but would not be unduly costly provided the bright line was well defined. If left ‘grey’, there would be considerable challenges, and potentially arguments about whether “Financial planning” had occurred.</p>

UU.	<p>How should RFA's experience be recognised?</p> <p>It may be feasible to credit recognition of prior learning/experience to the minimum certificate qualifications proposed. Many tertiary institutions have such mechanisms in place. Some involve assessment only, equivalency examination, or a combination.</p> <p>Providing full exemption from the new minimum standards should not be an option.</p>
VV.	<p>What do you think are the advantages of this approach to particular competence, knowledge, and skill?</p> <p>The key one is identified in the Consultation Paper – objective measurability.</p>
WW.	<p>What do you think are the disadvantages of this approach to particular competence, knowledge, and skill?</p> <p>There will naturally be cases where extremely competent advisers today will be put off or opt-out due to fear, disinterest or other factors associated with being burdened with needing to gain a formal qualification(s) to continue doing what they do today. Formal qualifications per se do not guarantee competence, knowledge and skill; rather they show academic ability to pass assessment over a relatively short period of learning. For example, a new FA in 2020 may have completed a relevant Level 7 degree decades ago but never actually practised in the subject matter of his/her degree: what is the likelihood of that degree being relevant to the FA's competence, knowledge, and skill to deliver a financial plan?</p>
XX.	<p>In what ways do you think this proposed standard contributes to, or detracts from, the legislative purposes (for example ensuring the quality and availability of advice, avoiding unnecessary compliance costs, and promoting innovation and flexibility)?</p> <p>The requirement for a specific qualification in the product significantly contributes to the legislative purpose insofar as "Product advice" is concerned. Quality of advice overall would hopefully improve, though in the short-medium term availability may be impacted if a significant number of RFAs chose to exit the industry.</p> <p>Providing recognition of prior experience is adequately accommodated in the Level 5 certificate this "exodus" risk may be lessened and unnecessary compliance costs minimised.</p>
YY.	<p>What alterations, if any, would you suggest to the baselines we have nominated: specialist strand for product capability, Level 5 for discipline capability, and relevant degree (or other degree plus Level 6) for planning capability?</p> <p>Notwithstanding our reservations with binary advice categorisation, having higher academic qualifications as prerequisites for riskier and/or more complex advice is sound in theory. Consideration as to what are appropriate qualifications needs to be well considered, however. For example, a degree in "management" (para 185) seems inappropriate for demonstrating ability to provide a financial plan; it is the requirement to have a relevant Level 6 certificate that provides confidence that the adviser has knowledge in this area.</p> <p>A more appropriate academic expectation may be to have more options/pathways in this regard. For example, Massey's Graduate Diploma in Business Studies (Personal Financial Planning), which requires a bachelor's degree or equivalent to enrol in, seems an appropriate qualification.</p>

## Other comments

<i>Share your views</i>	
ZZ.	<p>Are there any other comments you would like to make to assist us in developing the Code?</p> <ol style="list-style-type: none"><li>1. The task facing the CWG is enormous. Condensing the Code into a short, simple document is challenged by the complexity and inclusion of myriad factors, which may be theoretically important, but in practice could complicate the regime. Trying to do too much is a risk in the Code's development.</li><li>2. The Code is focused on provision of good <i>advice</i> [outputs]. The Code is, however, about "Financial Advice Services". There seems an opportunity to include <i>service</i> factors. Minimum requirements for servicing of FAPs' clients is one aspect to consider. This need not be a prescribed "every X years". It could be a requirement to have the FAP determine and have documented a client servicing programme and, further, require the FAP to keep records of how it delivers to that programme.</li><li>3. To deliver effective compliance, minimum standards for frameworks as well as staff skills and competencies is required. We note that the current anti-money laundering (AML/CFT) legislation provides for each reporting entity to have a programme, a risk assessment, independent audit of those, as well as a designated officer responsible for AML/CFT who reports to a senior manager. To underpin FAPs' delivery of their obligations, the Code (or alternatively the FAP Standards Conditions) could address:<ol style="list-style-type: none"><li>a. Creation and maintenance of a compliance framework by FAPs</li><li>b. Independent audit of FAPs' compliance frameworks at regular intervals</li><li>c. Designation of a responsible compliance officer and prescribed minimum educational standards (e.g. New Zealand Diploma in Organisational Risk and Compliance (Level 6); <i>this would align compliance oversight standards with the CWG's mooted advice standards, i.e. a Level 6 qualification</i>), and</li><li>d. Educational requirements of compliance staff who report to the responsible compliance officer (e.g. New Zealand Certificate in Regulatory Compliance (Operational Knowledge) (Level 4)).</li></ol>In relation to paras c. and d. the compliance officer and staff could also be required to have the same advice qualifications as advisers. [<i>For context, 75% of AMP's compliance team involved in advice quality assessment are AFAs and the remainder are in the process of qualifying.</i>]</li><li>4. Finally, Code enforceability should be considered. The current AFA Code is rarely invoked in a disciplinary sense, with the FADC rarely hearing or making decisions. This does not help the industry as decisions are a valuable source of understanding. There are likely myriad reasons for few hearings, but addressing any impediments that stem from Code wording/construction could be explored.</li></ol>