

# Code of Professional Conduct for Financial Advice Services

## Submission Template

*Submissions close Monday 30 April 2018*

Please send submissions to:

[code.secretariat@mbie.govt.nz](mailto:code.secretariat@mbie.govt.nz) or

Code Working Group

c/o Code Secretariat (Poppy Haynes and Max Lin)

Ministry of Business, Innovation & Employment

PO Box 1473

Wellington 6140

New Zealand

## Submissions process

The Code Working Group (CWG) seeks written submissions on the issues raised in this document by **5pm on Monday 30 April 2018**

**We welcome submissions on any or all consultation questions. You are welcome to comment only on the issues most relevant to you.**

Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Please direct any questions that you have in relation to the submissions process to [code.secretariat@mbie.govt.nz](mailto:code.secretariat@mbie.govt.nz).

## Use of information

The information provided in submissions will be used to inform the CWG's development of the draft Code. We may contact submitters directly if we require clarification of any matters in submissions.

## Release of information

The CWG intends to upload PDF copies of submissions received to MBIE's website at [www.mbie.govt.nz](http://www.mbie.govt.nz). The CWG will consider you to have consented to publication of your submission, unless you clearly specify otherwise in your submission.

If your submission contains any information that is confidential or you otherwise wish us not to publish, please:

- indicate this on the front of the submission, with any confidential information clearly marked within the text
- provide a separate version excluding the relevant information for publication on our website.

Submissions remain subject to request under the Official Information Act 1982. Please set out clearly in the cover letter or e-mail accompanying your submission if you have any objection to the release of any information in the submission, and in particular, which parts you consider should be withheld, together with the reasons for withholding the information. The CWG will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.

## Private information

The Privacy Act 1993 establishes certain principles with respect to the collection, use and disclosure of information about individuals. Any personal information you supply to the CWG in the course of making a submission will only be used for the purpose of assisting in the development of the draft code. Please clearly indicate in the cover letter or e-mail accompanying your submission if you do not wish your name, or any other personal information, to be included in any summary of submissions that the CWG may publish.

## Information about you

<i>Share your details</i>	
i.	Please provide your name and (if relevant) the organisation you represent
ii.	Please provide your contact details
iii.	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)
iv.	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)

## Principles for drafting the Code

<i>Share your views</i>	
A.	What comments do you have regarding the overarching theme of “good advice outcomes” and the underlying principles?
B.	Are there any further principles that should be included, or existing principles that should be removed?

# Ethical behaviour

Act with honesty, fairness and integrity

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

Keep the commitments you make to your client

D.	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.
E.	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?

Manage and fully disclose conflicts of interest

F.	Should the Code include a minimum standard on conflicts of interest in addition to the legislation?
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Do no harm to the client or the profession

G.	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.
H.	Is an additional minimum standard on doing no harm to the client necessary? If so, what standard do you propose?

## Keep your client's data confidential

I.	In which situations, if any, should the retention, use or sharing of anonymised bulk customer data be subject to Code standards?
J.	Do you agree that the Code should cover the various aspects of maintaining client confidentiality discussed in this paper?
K.	Are there other aspects of maintaining client confidentiality to consider?

## Ethical processes in Financial Advice Provider entities

L.	Do you agree that the Code should require the Financial Advice Provider to document and maintain its "ethical processes"? <b>This could be in their Procedure Manuals and listed under ethical considerations</b>
M.	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? <b>This could be available if requested (e.g. by clients if they have any concerns)</b>
N.	Should Financial Advice Providers also be subject to additional standards in respect of leadership and culture? If so, how should these be framed? <b>Financial Advice providers should have written manuals which include the culture of their organisation and how the leadership structure operates as this is good business practice.</b>
O.	Do you propose other additional standards of ethical behaviour that should apply to Financial Advice Providers?

## Ethics training

P.	Do you agree that Financial Advice Providers should be required to meet standards relating to ethics training? If not, please state your reasoning. <b>Yes. I hope there will be some training modules or training courses available from FMA or similar body.</b>
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Q.	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. <b>Yes</b>
R.	Should there be a requirement for ongoing refresher training on ethics? <b>Yes</b>

## Resolving ethical dilemmas

S.	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. <b>Yes</b>
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## Compliance functions

T.	Should there be a requirement for explicit sign-off on the soundness of financial advice provided directly by a Financial Advice Provider? <b>No, Financial Advice provider should be responsible for checking adviser is competent and reviewing some of the advice given to ensure it is appropriate, but not have to sign off all Statements of Advice.</b>
U.	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. <b>Yes</b>
V.	Should this extend further into an internal audit obligation, having in place processes to systematically test for and detect violations of ethical behaviour? <b>Yes</b>
W.	Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered? <b>Yes, there is a cost involved in the time needed to do reviews and internal checks but this is good business practice.</b>

## Responsibility for the whole advice process

X.	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. <b>Yes</b>
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## Reinforcing good ethical behaviour

Y.	What principle or mechanism do you propose the Code could include to reinforce good ethical behaviour on a day-to-day basis? <b>Providers need to check a certain percentage of advice provided by their Advisers and get Adviser to explain why they chose their particular recommendations.</b>
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## Conduct and client care

### Advice situations

<b><i>Share your views</i></b>	
Z.	Are there other delivery methods that should be considered when testing our thinking?

### Advice-giving standards

AA.	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). <b>These work well currently.</b>
BB.	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.)
CC.	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)?

DD.	Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?
EE.	Are there any additional matters that should be addressed in the advice-giving standards? Those listed above? Others?

## Advice process

FF.	Do you think there are any other components that should be included in the design considerations of an advice process? <b>No</b>
GG.	Should the Code include guidance material to help determine what needs to be considered when designing an advice process? <b>Some generic guidance could be helpful</b>
HH.	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? <b>No</b>
II.	Should any of the key aspects that we have listed above be removed? If so, why? <b>No</b>
JJ.	Are there any situations in which an advice process need not be followed? <b>The advice process may be limited in certain cases such as a 65 year old who is only wanting to put a Funeral Plan in place.</b>

## Personalised suitability

KK.	What comments do you have about a proposed minimum standard on personalised suitability analysis? What are your views on the example above? <b>Sounds pretty much the same as Limited Advice on insurance or Class Advice with Kiwisaver that we do now, you have just removed the terms.</b>
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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>Is good business practice. Any example would be helpful.</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>Yes, there will be some cost associated with the time needed for those who do not currently have everything documented</p>

## General competence, knowledge and skills

<i>Share your views</i>	
NN.	Do you agree with our interpretation of the meaning of “competence, knowledge, and skills”? If not, why not? <i>Yes</i>
OO.	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.
PP.	What do you think are the advantages of this approach to general competence, knowledge and skills?
QQ.	What do you think are the disadvantages of this approach to general competence, knowledge and skills?
RR.	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)?  <i>There may be some advisers who feel this is too much work and this could cause a reduction in the number of Advisers available if they decide to leave the industry.</i>
SS.	What factors should we consider in determining whether to make the proposed unit standard a renewing obligation? <i>What sort of test is required to check that these unit standards are being maintained, and how often do they need to be renewed? Whose responsibility is it to check up on individual advisers? The need for time spent on education needs to be balanced with time needed to see clients and earn an income.</i>

## Particular competence, knowledge and skills

<i>Share your views</i>	
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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? <i>We always try and base any advice on the client's current circumstances, so it is appropriate and affordable. Where they request <u>not</u> to have a needs analysis (FactFind) completed, we then class the advice as Limited Advice and get them to sign something saying that is what they requested, and they understand the limitations. This sounds very similar to the choice between Product Advice or Financial Planning, except that our Financial plans do not include any investment advice, so there is no added compliance cost.</i></p>
UU.	<p>How should RFA's experience be recognised? <i>I am an RFA and I have completed my Level 5 Certificate and I think a Certificate would be beneficial to all Advisers to set a consistent standard. If they have plenty of experience, then they should have no problem producing 3 files that could be audited to see if they would pass Set C on the Level 5 Certificate, and this will help reinforce the good work they are doing or show them where they need to improve. All the other papers can be done via correspondence without having to be a full-time student.</i></p>
VV.	<p>What do you think are the advantages of this approach to particular competence, knowledge, and skill? <i>More professionalism in the industry and a better perception of Financial Advisers and their advice.</i></p>
WW.	<p>What do you think are the disadvantages of this approach to particular competence, knowledge, and skill?</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)? <i>The proposed standards are good, but the transition period needs to be well managed and fair to those Advisers who are already compliant but have chosen not to be an AFA as they do not give advice on Investment products.</i></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? <i>In the proposed paper it mentions financial plans that contain 'investment advice'. We do not provide investment advice, but we do provide financial plans which encourage people to reduce their debt and have contingencies in place for when a crisis may occur. Does this mean that when I bring more Advisers on in the future, that they will need to have a degree if they are also going to help clients with financial plans, that do not contain investment advice? What happens with companies like NZ Home Loans that provide their clients with a debt reductions tool such as DebtNav? Is this also considered financial planning? This needs to be clarified, as we all want to grow our businesses but may find it difficult bringing people on board when they find out they have to have a degree or similar qualification.</i></p>

## Other comments

<i>Share your views</i>	
ZZ.	Are there any other comments you would like to make to assist us in developing the Code? <i>It would be good to see someone on the Code Working Group who actually has recent experience as a Financial Adviser.</i>