

# 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 <b>S 9 (2) (a)</b>
ii.	Please provide your contact details <b>S 9 (2) (a)</b>
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) <b>S 9 (2) (a)</b>
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)  Prefer name not to be used as am liaising and consulting in different areas across the industry.

## Principles for drafting the Code

<i>Share your views</i>	
A.	<p>What comments do you have regarding the overarching theme of “good advice outcomes” and the underlying principles?</p> <p>It’s important to balance our industry’s perception of good advice, with the customer choice about the extent of advice they are seeking. In every profession (medical, legal, accounting, trades etc) there is an understanding that the professional can provide advice, which the customer can choose to take or not. Currently, in spite of best efforts to provide quality advice and good advice outcomes, there are times when a customer just wants to limit the service or limit the implementation plan. This is where the adviser can be left in a position of vulnerability, even with sound sign-off processes and</p>

	documentation. It's a concern that there hasn't been legal precedent of whether a client-signed limitation on advice or implementation provides true protection to the adviser.
B.	<p>Are there any further principles that should be included, or existing principles that should be removed?</p> <p>Sales v advice: Having been a broker as well as a senior manager within a non-banking QFE, and listened to many opinions from within the industry, I'm concerned that many brokers perceive that because they have multiple commission-driven products to choose from, they somehow are providing superior 'advice' to clients. A principle that is important to maintain is the suitability of <i>solutions</i> for the client's needs, which does not mandate having a myriad of constantly-changing products designed to simply play some competitive product game. Of more meaning is whether the 'advice' is more holistic in that it's not just purely a suitable insurance solution but, in "doing the right thing" for the client, it is also focused on ownership of policies and clarity of where and how funds will be used. This therefore requires more robust conversations around asset protection and estate planning. Perhaps a broader scope is required on the definition of advice beyond acquiring or disposing of a financial advice product to acquiring or disposing of a financial advice product or solution.</p>

# Ethical behaviour

Act with honesty, fairness and integrity

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

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.</p> <p><b>No, a prescriptive approach beyond “do what you say you’re going to do” is fraught with becoming too detailed and then still omitting some situations. It should be left to the organisation to identify their standards. After all, they need to find a point of difference and to be able to respond to changing client expectations and focus on continuous adviser improvement.</b></p> <p><b>There is already additional clarity provided through the FAA on the adviser-client relationship and the complaints process; which allows for flexibility.</b></p> <p><b>For example some clients will have a plan implemented that carries them through the next 3-5years, while others have significant changes and need regular (at least annual) contact. In being overly prescriptive beyond legal requirements we could be trying to fit customers into a box that they’re not comfortable with and potentially creates a sub-industry of low-value and expensive compliance-driven adviser-client contact.</b></p> <p>If yes, please propose how a standard for such commitments might be framed.</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>Minimum standard:</p> <p>Would you take your own advice?</p> <p>Plus having a mandatory requirement to attend a new or refresher Ethics webinar / seminar annually.</p>

## 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.	<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><b>Yes</b></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>No. Maybe replaced with leaving the client better off? (on the condition that the client can choose what this means, eg. we had a client whose relationship with an existing insurer broke down irreparably before he contacted us. We could find another solution, but there was one exclusion added, which he was prepared to sign-off on. Under the QFE at the time we were forced to tell the client he couldn't be left 'worse off' and we couldn't action the plan. He now had two parties he was disgusted with! He went ahead and cancelled his existing insurance and found a broker who facilitated the purchase of the insurance we'd recommended.).</p> <p>So maybe there's a bottom line that 'something is better than nothing'!</p>

## 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.	<p>Do you agree that the Code should require the Financial Advice Provider to document and maintain its “ethical processes”?</p> <p>It’s likely to become just a tick-box approach without meaning to clients. Of interest would be evidence on how ethical standards impacted on decisions, eg. Business that was referred elsewhere due to a conflict of interest or because they were better-qualified or equipped to provide the advice or solution.</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 above, more time and energy could be expended on documenting and publicising such a code, with clients completely-disengaged from the detail. Their sole interest is whether the adviser is acting in their best interests.</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>It would be interesting to have KRAs and KPIs as researched and scrutinised on how they influence sales/advice behaviour as commissions and soft-incentives have had. I’ve seen some targets – including referral targets – set so high and so aggressively managed that the representative/adviser can be forced to over-ride their professional judgement with clients in order to comply with corporate requirements. On the other hand, without internal incentives/pressure some representatives/advisers would never step outside of their comfort zone to broaden their advice to, and conversations with, clients.</p> <p>So perhaps the standard is based on providing evidence that the leadership and culture of the FAP is client-centric, focused on continuous improvement and recognises not just sales targets but also business that was declined or referred-on in order to “do the right thing” by the client.</p>
O.	<p>Do you propose other additional standards of ethical behaviour that should apply to Financial Advice Providers?</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>Yes.</p>
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<p>Q.</p>	<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>Yes, with clarity that senior management and executive are deemed to be included, who are responsible for overseeing the process of financial advice provision. Sometimes this level has sat above the requirements and yet are setting expectations around business growth that could be contrary to promoting ethical behaviour.</p>
<p>R.</p>	<p>Should there be a requirement for ongoing refresher training on ethics?</p> <p>Yes, it could be mandatory annually or perhaps biennially.</p>

## Resolving ethical dilemmas

<p>S.</p>	<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>Yes, particularly where there are financial agreements between businesses or individuals that are currently not required to be disclosed. We've seen insurance advisers sitting in accounting meetings and being introduced as "an accounting associate", with the client completely unaware that it's an insurance adviser sitting there, who's paying the accountant a percentage of the business written.</p> <p>The framework could still be kept simple as disclosing any fees given or received as a result of the client interaction. This means the onus goes on those making referrals for monetary gain rather than simply referring because it's the right thing to do.</p>
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## Compliance functions

<p>T.</p>	<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>Tricky for very small businesses and mandatory as part of an induction/training process within say a QFE (or equivalent). In the business arm I established within a QFE we built a significant sign-off process for all advisers to go through (minimum of 6 client cases end-to-end). What was telling in that this process addressed many facets of behaviour and knowledge irrespective of whether they were an experienced adviser coming from a bank, or from a broker background or as someone new to the business. It also provided these advisers with immense reassurance that the QFE was overseeing things and providing a level of protection to them and the clients before they then could operate more autonomously. It's a great way to induct new blood into the adviser business.</p>
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<p>U.</p>	<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>Yes, although in small businesses this will already be happening because insurance providers can cancel an adviser’s contract if behaviour is unethical and there are options to raise awareness of non-compliant behaviour, especially if RFAs are brought under the same code.</p> <p>Within a QFE I’ve been heavily involved with, it was sometimes the feedback and opinions of other stakeholders that helped back-up internal recommendations, especially if the executive level were slightly out of touch with day-to-day operational and sales/advice matters. So larger organisations definitely need a compliance function.</p>
<p>V.</p>	
<p>W.</p>	<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>As per above, small businesses already have this built in through the existing contractual arrangements between insurance providers and advisers. However there’s possibly a gap where fees are being received for referrals without disclosure.</p> <p>Within a QFE environment, there have been business-to-business arrangements that mean referrals and financial advantages are being gained in the background, that aren’t necessary being disclosed at the client level. So again, disclosure of all fees received as a result of the client interaction should be mandatory.</p>
<p>X.</p>	<p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p> <p>If disclosure of financial gain/fees covers everything from an ethical viewpoint, it wouldn’t require too much more in compliance processes or costs.</p> <p>If small businesses were required to be audited, there’s a definite cost and they’d probably follow the same path as AFAs who typically belong to some kind of group, and receive a discount on audits.</p>

## Responsibility for the whole advice process

Y.	<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>No, as long as there's clarity about where the FAP's process and accountability starts and stops, I can't see how the FAP could be held to the level of carrying out the whole advice process directly itself. There has to be scope for referral or online processes or other options. This keeps it in line with other professions (medical, legal, accounting etc).</p>
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## Reinforcing good ethical behaviour

Z.	<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>Robust disclosure under a broader heading of all fees or financial gain or alliance relationship benefits as a result of the client interaction.</p>
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## Conduct and client care

### Advice situations

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

### Advice-giving standards

BB.	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).
CC.	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.)

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

## Advice process

GG.	<p>Do you think there are any other components that should be included in the design considerations of an advice process?</p> <p>Yes, as per comments at the start I'm concerned that financial advice is focused around product advice and not on the broader term 'product advice and solutions'.</p> <p>From an insurance angle (but perhaps relevant to mortgages also), we see instances of significant cover being put in place with sometimes little regard for appropriate ownership of those policies and where/how funds will be used on claim.</p> <p>There should be a broader expectation on advisers appropriately advising on insurance cover and policy ownership; with asset protection and estate planning discussed more often (and referrals to other solutions or experts expected). Simply having the insurance money coming in at claim time isn't sufficient. The low rate of awareness and action around Wills, EPAs, opt-out agreements, Trusts etc is a concern, with insurance funds sometimes making the gaps in this other area glaringly obvious.</p>
HH.	<p>Should the Code include guidance material to help determine what needs to be considered when designing an advice process?</p> <p>Yes!</p>
II.	<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>As per GG.</p>
JJ.	Should any of the key aspects that we have listed above be removed? If so, why?
KK.	<p>Are there any situations in which an advice process need not be followed?</p> <p>Yes! A client should still be able to purchase a financial product/solution without advice if they so choose. Just as we can walk into Noel Leeming (or similar) and buy something off the shelf, with the onus sitting with us as the purchaser.</p> <p>However, as mentioned, I'm concerned that no matter how many sign-offs an adviser gets in these situations, we're yet to see whether a court will protect the adviser who has</p>

	facilitated the purchase without advice. NOTE: a client might choose to purchase without advice and yet still want to purchase via an adviser so that they have an advocate at claim time.
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## Personalised suitability

LL.	What comments do you have about a proposed minimum standard on personalised suitability analysis? What are your views on the example above?
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## Organisational standards

MM.	<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>I prefer industry standards, with organisations able to operate above this if they choose. This becomes their marketing 'point of difference'.</p>
NN.	<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, because there's already so many legislative standards and client-driven standards that adding another layer through yet another piece of legislation seems overly burdensome. Let the fast-pace of consumer-expectations drive the deliverables; as we can't yet predict the impact of digital solutions.</p> <p>And let organisations have the flexibility of trying out additional client care initiatives without locking them down to a compliance framework before they've been tested and proven to be successful.</p>

## General competence, knowledge and skills

<i>Share your views</i>	
OO.	<p>Do you agree with our interpretation of the meaning of “competence, knowledge, and skills”? If not, why not?</p> <p>Yes.</p> <p>And yes agree that individuals involved in giving advice have general requirements around legislative understanding and advice-giving obligations</p> <p>Minimum standards:</p> <p>‘The client experience must be equivalent to that given by a person holding Level 5’.</p> <p>From what we’ve seen on the RFA v AFA differences, unless the qualification is mandatory or the person in charge is qualified, it is unlikely those delivering the advice will be aware of what the standard is. Perhaps, for those who’ve been in the industry for years who don’t want to get qualified, this is an opportunity to bring in someone qualified to help update their business practices.</p>
PP.	<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>Digital solutions are really only streamlining common process-driven elements, so the responsibility for the advice still sits with the representative/adviser. Unless a client is choosing to implement some part of their financial plan through a digital solution that sits outside of the adviser’s area of expertise, eg. An adviser-recommendation for a client to complete a will or see a lawyer, and the client choosing an e-Will solution.</p>
QQ.	<p>What do you think are the advantages of this approach to general competence, knowledge and skills?</p> <ol style="list-style-type: none"> <li>1. It’s easier for a client to understand the two levels, and get rid of the current meaningless acronyms.</li> <li>2. It’s easier for education institutions to provide relevant training modules.</li> <li>3. It would be good for the Code to mandate specific training areas either annually or biennially. It’s too loose at present, and too hard for industry trainers to build courses which aren’t being utilised, as there is no incentive for advisers to focus on continuous improvement (eg. lifting the bar in awareness and knowledge; not just maintaining the status quo).</li> </ol>

RR.	<p>What do you think are the disadvantages of this approach to general competence, knowledge and skills?</p> <p>There's quite a gap between the two layers; unless the "product advice" definition is improved to be more than just product based. While the Level 5 qualification is more extensive than pure product, the practice in the field varies significantly.</p>
SS.	<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>If the minimum standards around "product advice" are improved to factor in estate planning and asset protection, then there's a chance of improving the quality of advice and promoting innovation and flexibility.</p> <p>While some advisers will deem ongoing training as an 'unnecessary compliance cost', every profession has this requirement and the mindset simply needs to change. Plus, there's an opportunity for providers to step-up into providing access or incentives around meeting training costs perhaps.</p> <p>So, setting the bar higher with sufficient lead-in time; and then letting the industry respond on how training/education costs are provided and met is a positive step.</p>
TT.	<p>What factors should we consider in determining whether to make the proposed unit standard a renewing obligation?</p> <p>That there are providers and facilitators to deliver it . . . and provide reasonable access to all advisers not just to urban-based advisers! I'm now heavily involved in developing online training modules and they take an immense amount of time, resource, thought, input and expense. And also involve somewhat of a financial risk as continuous professional development hasn't necessarily translated yet into advisers seeking new ways to expand on their advice and deepen their client conversations.</p>

## Particular competence, knowledge and skills

<i>Share your views</i>	
UU.	<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>Agree with most of what's documented.</p> <p>Re paragraph 184, I believe the emphasis in Level 5 on demonstrating <b>knowledge</b> of the advice process and product specialty is more useful for good advice outcomes.</p> <p><b>Ability</b> really can only be assessed through proper infield coaching and is a lifetime's work through continuous improvement. Plus 'ability' only applies to those actually delivering advice. There are many support people, managers, compliance, training and other roles where the knowledge is very helpful but they're not actually 'able' (through their job description) to deliver advice.</p>

VV.	<p>How should RFA's experience be recognised?</p> <p>RFAs can speak to their experience as a point of difference if they like. I've seen brand new advisers, well coached, who are far more effective than advisers who've been around for 40+ years.</p> <p>Having become a voluntary AFA and built up a channel of QFE advisers to an AFA standard, I'm dismayed that some RFAs have sat in wilful ignorance about what the Code Standards of an AFA actually are. It's heartening to see some mandatory requirements coming through as suggestions for general and specific competence, knowledge and skill.</p>
WW.	<p>What do you think are the advantages of this approach to particular competence, knowledge, and skill?</p> <p>It's simple, it's clear and it's recognising the different levels of expertise required; whilst having a base mandated knowledge.</p>
XX.	<p>What do you think are the disadvantages of this approach to particular competence, knowledge, and skill?</p> <p>That some advisers can still opt out of having a professional qualification when so many of us incurred the cost and time commitment of stepping up to get qualified.</p>
YY.	<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>
ZZ.	<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>Over the past 2-3 years I've become aware of how limited our client conversations are around estate planning and asset protection, yet the basic principles are so interlinked with insurance and mortgage advice. Level 5 needs a mandatory strand (currently it's elective and after research of the 5 NZQA-approved providers none have ever delivered the course through lack of demand).</p>

## Other comments

### *Share your views*

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| AAA. | <p>Are there any other comments you would like to make to assist us in developing the Code?</p> <p>In the corporate world it's become commonplace to promote 'generalist business leaders' over business units that are delivering quite specific and technical financial advice. It's a concern that these generalist leaders don't have to have a base qualification. After battling this issue unsuccessfully within a QFE I wonder if the Code could somehow mandate that those overseeing or managing financial advisers should have a minimum Level 5 qualification.</p> |
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