

30 April 2018

Code Working Group
c/o Code Secretariat (Poppy Haynes and Max Lin)
Ministry of Business, Innovation and Employment
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By email: code.secretariat@mbie.govt.nz

Submission on the Code of Professional Conduct for Financial Advice Services

Thank you for the opportunity to comment on the approach that will be taken for the Code of Professional Conduct for Financial Advice Services (**Code**).

ANZ Bank New Zealand Limited (**ANZ**) supports improving and simplifying financial advice legislation to help New Zealanders get the financial advice they need and want.

We commend the Code Working Group on their continued engagement with the industry on this important topic and the careful approach to develop the Code. We strongly support the underlying principles identified by the Code Working Group for drafting the Code, in particular that the Code will take a principles-based approach that allows for flexible application to a wide range of situations. We believe that this flexibility, backed up by appropriate processes and controls of the Financial Advice Provider and a heightened focus on ethical conduct will best reconcile the aims of increasing access to advice and ensuring quality of advice.

We would like to specifically draw your attention to our key messages set out below. We provide further detail on those key messages in Appendix I. ANZ's responses to the specific questions in the consultation paper are set out in Appendix II.

Key Messages

- 1. The theme of 'good advice outcomes' and meaning of the client's 'reasonable expectations' should be clarified further.**
- 2. The Code should contain minimum ethical standards that all Financial Advice Providers need to comply with.**
- 3. Financial Advice Providers should be able to develop and provide training in-house (to the equivalent standard).**
- 4. The client care standards under the Code should be drafted so as to permit flexible application to a wide range of circumstances.**
- 5. The Code should not impose obligations that are the subject of other legislative regimes.**

About ANZ

ANZ is the largest financial institution in New Zealand. The ANZ group comprises brands such as ANZ, UDC Finance, ANZ Investments, ANZ New Zealand Securities and Bonus Bonds.

ANZ offers a full range of financial products and services including a significant range of financial advisory services, personal banking, institutional banking and wealth management services. ANZ is a Qualifying Financial Entity under the current Financial Advisers Act regime and has over 4,000 QFE Advisers providing advice on 32 different product types. ANZ is also an employer of over 100 Authorised Financial Advisers.

Disclosure of Potential Conflict

ANZ notes that Melanie Biss, an ANZ employee, is a member of the current Code Committee. To avoid any conflict, Melanie was not involved in preparing ANZ's submission.

Contact for submission

ANZ welcomes the opportunity to discuss our submission with Code Working Group officials. Please contact Jason Moss, Head of Regulatory Affairs s9(2)(a)

Once again, we thank the Code Working Group for the opportunity to comment on the draft Code of Professional Conduct for Financial Advice Services.

Yours sincerely

S 9 (2) (a)

Bruce Macintyre
Chief Risk Officer

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Appendix I – More detail on ANZ’s Key Messages

1. The theme of ‘good advice outcomes’ and meaning of the client’s ‘reasonable expectations’ should be clarified further.

While we are supportive of the Code Working Group’s (CWG) overarching theme, we note that “good advice outcomes” may arguably go further than the financial advice process and have the unintended consequence of capturing the overall performance of the underlying product/service recommended as part of the financial advice. We suggest that this be further clarified and the phrase “good advice” be used instead.

The CWG also outlines that in order to achieve a good advice outcome a FAP must be accountable for “doing the right thing” for the client. In the CWG’s view that means considering and meeting the client’s “reasonable expectations” given the nature and scope of the advice. We would welcome further clarification on the meaning of “reasonable expectations” and how in practice a Financial Advice Provider (FAP) might evidence that it has considered the client’s reasonable expectations given the nature and scope of the advice.

2. The Code should contain minimum ethical standards that all FAPs need to comply with.

All FAPs should be subject to the same minimum standards of ethical behaviour. This will ensure scalability and consistency of application of the standards. FAPs should then have the flexibility to operationalise those standards in the way that best suits them. That could mean adoption of the Code’s ethical standards or inclusion of the standards into their own code of ethics/conduct.

3. FAPs should be able to develop and provide training in-house (to the equivalent standard).

FAPs are well placed to provide the training on relevant products. As long as FAPs are able to train advisers in-aggregate to the applicable standard (or its equivalent), this should satisfy the knowledge, competence and skill requirements.

As a Qualifying Financial Entity under the current advice regime, ANZ already has existing structures in place to provide appropriate training to those that give advice and support the advice giving process. To require FAPs to train their advisers externally would potentially require FAPs to set up new external processes, which would significantly increase the cost of compliance. Therefore, FAPs should have flexibility to develop and provide training in-house or alternatively if they choose to, use external providers.

Similarly, we contend that a bachelor’s degree should not be required in order to provide financial planning services. We do not believe this requirement will “ensure the availability of financial advice for people seeking advice”, a purpose of the new financial advice regime. It may have the opposite effect and provide a barrier for new advisers to enter the industry.

4. The client care standards under the Code should be drafted so as to permit flexible application to a wide range of circumstances.

In general we consider that the current client care standards covered by the Code of Professional Conduct for Authorised Financial Advisers (AFA Code) work well in practice

and should work well in the broader range of advice giving situations under the new regime. However, some of the additional provisions in the AFA Code setting out further detail about the application of the Code Standard will clearly need modification. We set out further comments in this regard in Appendix II.

5. The Code should not impose obligations that are the subject of other legislative regimes.

In general the Code should not seek to address areas that are best left for an appropriate legislative response. We do not agree with the specific inclusion of aspects of maintaining client confidentiality or use of data in the Code. We note a revision of the Privacy regime is underway and introduction of limits or restrictions on the use of client data/information is best dealt with through that regime. We note that if drafted adequately, the unethical use of client data could arguably be captured within the other ethical behaviour standards. We also query whether there is a risk that the changes proposed in this area would put strain on the CWG's "principles-based approach".

Appendix II – ANZ response to specific questions in the consultation paper

Principles for drafting the Code

A. What comments do you have regarding the overarching theme of “good advice outcomes” and the underlying principles?

Please see our Key Message 1.

While we are supportive of the CWG’s overarching theme, we note that “good advice outcomes” may arguably go further than the financial advice process and have the unintended consequence of capturing the overall performance of the underlying product/service recommended as part of the financial advice. We suggest that this be further clarified and the phrase “good advice” be used instead.

The CWG also outlines that in order to achieve a good advice outcome a FAP must be accountable for “doing the right thing” for the client. In the CWG’s view that means considering and meeting the client’s “reasonable expectations” given the nature and scope of the advice. We would welcome further clarification on the meaning of “reasonable expectations” and how in practice a FAP might evidence that it has considered the client’s reasonable expectations given the nature and scope of the advice.

B. Are there any further principles that should be included, or existing principles that should be removed?

No.

Ethical behaviour

C. Do you agree with a requirement to act with honesty, fairness and integrity? If not, please set out your reasoning.

We agree with a requirement for FAPs to act with honesty, fairness and integrity.

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.

No, we don’t believe a specific ethical standard that extends beyond strict legal obligations needs to be introduced. The ethical standards around “acting with honesty, fairness and integrity” may go some way towards achieving this. Matters that extend beyond strict legal obligations or formal understanding have the potential to become reputational matters for FAPs and the industry and that offers some protection to clients.

Please also see our Key Message 2.

E. If there was a minimum standard requiring FAPs – or FAPs 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?

Please see our Key Message 2 and response to Question D above.

F. Should the Code include a minimum standard on conflicts management? Should it focus on any particular situations?

We support the Code including a minimum standard on managing conflicts. Code Standard 5 of the existing AFA Code may be helpful in this regard. The materiality threshold provided by the legislation should also be appropriately referred to and should sit consistently with any obligations around disclosure of conflicts of interest.

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.

We agree.

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

We do not believe that such an additional minimum standard is necessary. The ethical standards around "acting with honesty, fairness and integrity" and not bringing the financial advice profession into disrepute goes some way towards achieving this in any event.

Similar to our comments in Key Message 2 regarding "good advice outcomes", unless carefully drafted a standard of this nature may risk going further than the financial advice process and have the unintended consequence of capturing the overall performance of the underlying product/service recommended as part of the financial advice.

I. In which situations, if any, should the retention, use or sharing of anonymised bulk customer data be subject to Code standards?

We do not believe the Code should specifically address the use of customer data. Please see our Key Message 5.

J. Do you agree that the Code should cover the various aspects of maintaining client confidentiality discussed in this paper?

No. Please see our Key Message 5.

K. Are there any compliance costs or other aspects of maintaining client confidentiality to consider?

Please see our Key Message 5.

L. Do you agree that the Code should require the FAP to document and maintain its "ethical processes"?

Yes, unless it can be incorporated through the licensing process.

M. Should the FAP 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?

We have no issue with all FAPs being required to have publicly available corporate codes of ethics, subject to our points made in Key Message 2.

N. Should FAPs also be subject to additional standards in respect of leadership and culture? If so, how should these be framed?

We don't consider that these additional standards are necessary.

O. Do you propose other additional standards of ethical behaviour that should apply to FAPs?

No.

P. Do you agree that FAPs should be required to meet standards relating to ethics training? If not, please state your reasoning.

Yes. We believe that this is already adequately captured in the current standards. Under the current AFA Code, authorised financial advisers are required to undertake ethics training as part of their ongoing continuing professional development (CPD).

Q. Should ethics training requirements apply to all officers and employees of a FAP involved in financial advice processes, as appropriate to their role and contribution to the process of financial advice provision? If not, please state your reasoning.

Yes. However, this should be scaled to their role and contribution to the advice process.

R. Should there be a requirement for ongoing refresher training on ethics?

We agree that there should be a requirement for an ongoing refresher training in ethics. We believe that this could be satisfied through ongoing CPD or a regular ethics refresher course. FAPs should have flexibility to determine the frequency of such training depending on the role and contribution to the advice process.

S. Do you agree that FAPs 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.

Yes.

T. Should there be a requirement for explicit sign-off on the soundness of financial advice provided directly by a FAP?

No. Instead, Quality Assurance (QA) should be undertaken in order to assure that good or quality financial advice has been given.

In respect of "robo-advice", we believe it would be prudent to carry the requirements of Financial Advisers (Personalised Digital Advice) Exemption Notice 2018 over to the new regime.

U. Do you agree that FAPs should be required to have in place a compliance function aimed at following up some concerns raised by employees and other stakeholders? If not, please set out your reasoning.

We agree with this proposal.

V. Should this extend further into an internal audit obligation, having in place processes to systematically test for and detect violations of ethical behaviour?

While we agree that there should be testing to detect violations of ethical behaviour, there may be a period of development required to determine if and how best to actually detect

and test such violations. We consider any obligation in this regard should be qualified "to the extent practicable". We would also welcome guidance from the CWG as to what this might look like in practice.

We also consider that FAPs should be left to determine how they implement that in practice and to ensure scalability we suggest referring to the process rather than a specific function i.e. internal audit.

W. Are there any potential compliance costs for small and/or large FAPs that need to be considered?

Yes, there will be an increase in compliance costs. FAPs will need to implement new processes or enhance existing processes to monitor and evidence compliance.

X. Do you agree that FAPs should be required to be able to demonstrate that they meet the standards of ethical behaviour as if the FAP carried out the whole advice process directly itself? If not, please set out your reasoning.

Yes.

Y. What principle or mechanism do you propose the Code could include to reinforce good ethical behaviour on a day-to-day basis?

We believe that the reinforcement of good ethical behaviour should be on a principles basis through good culture and oversight, not using prescriptive measures. This should help reduce the risk of this becoming a box-ticking exercise. For example, we prefer advisers are enabled to have natural conversations with clients rather than having to read out prepared statements. We are open to other mechanisms or principles to reinforce good ethical behaviour.

Conduct and client care

Z. Are there other delivery methods that should be considered when testing our thinking?

We agree that the standards need to be 'delivery agnostic' and they need to ensure that all scenarios on the advice spectrum are captured i.e. existing class advice to personalised advice. All existing mediums also need to be considered, i.e. phone, direct meeting, video conference and e-mail. Subject to scope of advice, FAPs may be able to take a more proactive approach to the provision of personalised financial advice such as electronic direct messaging, so care should be taken to ensure the Code does not limit these delivery methods.

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).

In general we consider that the current client care standards covered by the AFA Code work well in practice and should work well in the broader range of advice giving situations under the new regime. However, some of the additional provisions in the AFA Code setting out further detail about the application of the Code Standard will clearly need modification.

Our specific comments are:

- Code Standard 6: the additional provisions for Code Standard 6 will require modification. Currently these state that an AFA must "make recommendations only

in relation to financial products that have been assessed or reviewed by the AFA to a level that provides the AFA with a reasonable basis for any such recommendation, or by another person if it is reasonable in all the circumstances for the AFA to rely upon that other person's assessment or review". To fit with the design of the new regime, this provision would need to be amended so that it is clear that there is no requirement for a Financial Adviser or Nominated Representative to assess or review the relevant products, or conduct their own assessment of whether it is reasonable to rely upon a review of the product conducted by the FAP. Rather, the Code Standard should permit the assessment or review of the financial product to be conducted by the FAP, and a Financial Adviser or Nominated Representative should be able to rely on that assessment. The same considerations apply in respect of the current additional provision requiring an AFA, when transmitting the advice of another person, to take reasonable care to ensure the person who provided the advice has an appropriate level of competence, knowledge and skill.

- Code Standard 7: we question whether there is a need for a specific Code Standard covering disclosure. The Disclosure Regulations will cover these topics and providing for additional standards in the Code has the potential to cause duplication and confusion. Those Disclosure Regulations will need to enable disclosure obligations to be met by a range of mediums.
- Code Standards 10 and 12: to the extent these standards require written advice and records to be kept in writing there will be a significant increase in the scope of this requirement with a commensurate increase in compliance costs. In our view, this result does not fit with the goal of increasing access to advice. We also consider that the requirement to record advice in writing is not necessary in all situations (for example, where advice is given over the telephone on a recorded line) or practical in the case of simple product advice and is inconsistent with the underlying principle which the CWG has identified of taking a "principles-based approach that allows for flexible application to a wide range of situations."

In our view, the Code Standards should be amended to provide that FAPs should ensure that they have in place adequate processes and controls to demonstrate compliance with the other client care standards. This could include written records, telephone or other recordings, or other controls and processes suitable to meet the required standard.

BB. Could any aspect of the current client care standards be worded better? (For example, we are aware that the definition of "compliant" could be improved.)

See our comments above in respect of wording changes that will be required to apply the existing client care standards under the new regime. Other than that, we have no comments on this question.

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)?

We have no comments on this question.

DD. Are there any potential compliance costs for small and/or large FAPs that need to be considered?

As set out in our response to Question AA, imposing a requirement for written advice and records in all cases will have significant compliance costs as a result of materially increasing the time required to provide advice.

EE. Are there any additional matters that should be addressed in the advice-giving standards? Those listed above? Others?

We don't believe 'client confidentiality' should be included. Please see our Key Message 5.

We don't believe 'cyber risk and cyber security' should be included.

We also consider that further standards in respect of "transferring a client from one adviser to another", "where a trail commission is paid" and "replacement business" are unlikely to be necessary, as the standards of client care in the existing AFA Code (modified appropriately to reflect the considerations discussed above) should be sufficient to ensure good advice is provided. Providing for specific client care standards to address these and other particular scenarios also undermines the principle of ensuring the Code is flexible enough to deal with a wide range of scenarios. It is also likely to be impossible to capture all the variations which may impact on the advice process. Additionally, rules around transferring a client from one adviser to another would need to be carefully crafted to be workable in large organisations which provide simple mass market advice, where clients do not have an allocated adviser but rather deal with a variety of staff in various different contexts.

FF. Do you think there are any other components that should be included in the design considerations of an advice process?

No. However, we consider that care will need to be taken in defining the "complexity of financial advice being provided". In our view, advice on a "complex" product (for example, an interest rate swap) will not necessarily require a complex advice process, as, within the nature and scope of the relevant advice, good advice could nevertheless be provided having regard to only a limited range of factors (for example, the client's interest rate exposure on its loans) and following a relatively simple advice process.

GG. Should the Code include guidance material to help determine what needs to be considered when designing an advice process?

Yes, this would be beneficial. However, any guidance material should be by way of example only, to avoid the guidance becoming prescriptive.

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?

No.

II. Should any of the key aspects that we have listed above be removed? If so, why?

See our response to Question AA above in respect of issues regarding a universal requirement for advice and other matters to be recorded in writing.

We also note that care needs to be taken regarding the obligation to ensure the client actively acknowledges that they understand the risks and benefits, as this may not always be practical and could hinder availability of advice. This could occur where a client can execute the recommendation without involvement of the adviser.

JJ. Are there any situations in which an advice process need not be followed?

When meeting similar duties under legislation, as set out below, this should not be regarded as financial advice.

For example, meeting the lender responsibility principles under the Credit Contracts and Consumer Finance Act 2003.

Similarly, we consider that the advice process should not be followed when meeting the suitability assessment requirements for offers of derivatives to retail customers under the Financial Markets Conduct Act 2013 (**FMCA**). We believe that retail customers are already adequately protected under the FMCA, without the need to provide added protection under the financial advice regime.

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

We agree that a personalised suitability analysis standard should not apply where, having regard to the nature and scope of the advice provided, the FAP can demonstrate how a good advice outcome is achieved without a personalised suitability analysis having been undertaken. In our view, the Code should stop there, without attempting to elaborate further on the circumstances in which this is not required. This will provide for maximum flexibility in the regime, furthering the goal of increasing access to advice and enabling innovation in the provision of financial advice.

Nevertheless, if there is a desire to provide further guidance on when a personalised suitability analysis is not required, a range of examples could be provided to indicate those simple or lower risk situations where this is not required, for example:

- a. the financial product is relatively simple or common, like a simple savings account;
- b. the financial product carries little or lower risk to the customer, such as financial products that the customer can exit or cancel at any time for little or no cost;
- c. the customer has specifically sought advice on a particular product offered by that FAP, or asks for guidance on choosing a product within a range that is likely to meet their needs.

In these instances, we believe that the suitability requirements for such products can be met on a generic basis.

Otherwise, we agree that there will be a risk of over-compliance with the requirement of personalised suitability. This will enable FAPs to confidently and efficiently provide the kind of simple day to day advice which customers often need, but which FAPs are wary about providing currently.

LL. 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?

We agree with including organisational standards in the new regime. However, we would welcome further information on the proposed organisational standard that a FAP must have processes to evidence how it considered the client's reasonable expectations given the nature and scope of the advice. The concept of the client's "reasonable expectations" is used in a number of places throughout the consultation paper, but is not elaborated upon.

Furthermore, we believe that these standards would be better dealt with under licensing when transitioning to the new regime, rather than under the Code.

MM. Would implementing these organisational conduct and client care standards create a particular compliance burden for your firm? If yes, please explain why.

We expect this will create a compliance burden, particularly for large or complex FAPs, as they will no doubt look to design an assurance process to provide comfort that the standards are being met across the organisation.

General competence, knowledge, and skill

NN. Do you agree with our interpretation of the meaning of "competence, knowledge, and skill?" If not, why not?

We believe the difference between competence and skill requires further clarification as we are not clear what the difference is.

OO. Are there other factors, which contribute to combined expertise, that we have not listed? We are particularly interested in factors that are relevant to financial advice that is given by a FAP directly, including by digital means.

This seems to give broad coverage of various factors.

PP. What do you think are the advantages of this approach to general competence, knowledge, and skill?

We think this provides flexibility for FAPs to structure their business in a way that suits the advice proposition.

QQ. What do you think are the disadvantages of this approach to general competence, knowledge, and skill?

Whilst we understand the principle that the individuals be aware of the 'general legal, Code and consumer protection obligations', this should be able to be tailored depending on the nature of the FAP's business to help ensure engagement of staff. That may mean a focus on the processes of the FAP rather than a focus on knowledge of particular legislative requirements and should be able to be provided through training developed internally.

RR. In what ways do you think this proposed approach 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)?

Permitting capability to be assessed 'in aggregate' and focussing on equivalence of outcome will add to the legislative purpose of making advice more available.

SS. What factors should we consider in determining whether to make the proposed unit standard a renewing obligation?

FAPs should be able to develop training in-house to suit their business needs, to the equivalent standard. This may in some case reduce the cost of compliance or be included as part of other training and development.

Particular competence, knowledge, and skill

TT. 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?

We think the main disadvantage of including the two types of advice will be around determining the boundaries between those to ensure the relevant standard is being met, particularly in relation to financial planning.

UU. How should RFA's experience be recognised?

We believe that experienced RFAs should be treated as similar to AFAs in the transition to the new regime.

RFA's should be able to transition to give advice on the financial products of which they are experienced in. At a very minimum those RFAs previously qualified as AFAs should be able to transition.

VV. What do you think are the advantages of this approach to particular competence, knowledge, and skill?

We think this provides flexibility for FAPs to structure their business in a way that suits the advice proposition, particularly through use of an "if-not-why-not process". This approach focuses on the client experience being equivalent to that given by a person holding the relevant qualification, not that each person giving the advice necessarily has that qualification.

WW. What do you think are the disadvantages of this approach to particular competence, knowledge, and skill?

This approach may require significant initial and ongoing training or costs to ensure compliance with the obligations.

XX. 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)?

Provided the proposed standard retains flexibility through use of an "if-not-why-not" process, it does have potential to contribute to the legislative purposes outlined.

YY. 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?

We believe that the 'relevant degree' is too narrow, and should be widened to any bachelor's degree. We also query whether in some cases a Level 4 equivalent may be a more suitable baseline for providing financial advice.

Other comments

ZZ. Are there any other comments you would like to make to assist us in developing the Code?

We are supportive of the approach enabling standards to be met by FAPs in-aggregate or by way of an if-not-why-not approach, both on a general and particular basis. However, we believe some discussion on how the CWG envisages this working in practice would be

beneficial for the industry given planning is now underway to transition into the new regime.

We also note the Ministry of Business, Innovation & Employment has issued a discussion paper regarding disclosure requirements in the new financial advice regime. Care needs to be taken to ensure the Code and those disclosure requirements work seamlessly together.