

# 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 <a href="#">Gavin Greaves, Director, Apex Advice Group Limited</a>
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) <a href="#">Financial Advice: Risk, Investment, Mortgage</a>
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) <a href="#">Not confidential</a>

## 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><a href="#">I think this should be Good Advice.</a></p> <p><a href="#">If you include outcomes what an adviser considers a good outcome and a client considers a good outcome can change based on returns, interest rates etc. And the outcome can be effect by factors out of the advisers control and despite an adviser’s best efforts to take these factors into account and explain them to clients a client forgets over time and will naturally react to the immediate conditions that are presented to them like a newspaper front page saying market crash.</a></p> <p><a href="#">You could add “reasonable” as you could put the same client in front of 10 advisers and each will provide slightly different advice all with reasonable justification</a></p> <p><a href="#">Based on that a better wording would be “Quality Advice”</a></p>
B.	<p>Are there any further principles that should be included, or existing principles that should be removed?</p> <p><a href="#">Principle 1 – Good advice outcomes should be quality advice</a></p>

	<p>P2 – Good</p> <p>P3 – Clear, Concise and effective is more for the regulator the client wants “simple”. I think this needs to be worked into this somewhere.</p> <p>P 4 – I am not in favour of the term Good advice outcomes if a client reads this they think of an outcome 20 to 30 year away.</p> <p>P5 - Good</p>
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## 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? If not, please set out your reasoning.</p> <p>Yes, you could also add reasonable</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. If yes, please propose how a standard for such commitments might be framed.</p> <p>Yes, this should be set as the example of how we interact with clients no matter the extent of the advice or conversation or medium.</p> <p>This is more of a written policy or pledge as to how we will operate. This is impossible to administer but is what we will be accountable to if an adviser is audited or is dealing with a complaint. This is just like a mission statement for a business.</p>
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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>I believe ethics are ethics of our industry and they apply to all participants in the same manner.</p> <p>Ethics are about making the right decision based on your values even when no one is looking</p> <p>This suggests ethics are the values we adhere to as members of this industry.</p>
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### 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>This is irrelevant as it is in the legislation and as such we have to outline the conflicts of interest by law.</p>
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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>Agree</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</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>
J.	<p>Do you agree that the Code should cover the various aspects of maintaining client confidentiality discussed in this paper?</p> <p>Yes</p>

K.	<p>Are there other aspects of maintaining client confidentiality to consider?</p> <p>No</p>
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## 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>No. These are the overarching values of the industry. These values need to be consistently promoted and rewarded by the industry. Having a written process only adds more costs the business unfortunately this will have no impact on those people who chose to act unethically it is about identifying who they are through audits and removing them from the industry.</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>No this should be industry based so that 1 set of values is promoted to the market.</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>No</p> <p>As a company you are already bound by the act and the laws and the directors are liable via the companies act. Having this just creates another layer and more expense to the industry for something that is already covered.</p>
O.	<p>Do you propose other additional standards of ethical behaviour that should apply to Financial Advice Providers?</p> <p>No</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. There should be continuous training from the industry on this as prescribed by the FMA not the FAP. There should be reward and recognition of good examples of ethical behaviour that are identified through FMA audits.</p>
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>Yes. Again, this should come back to the FMA not the FAP. There should only be one set of ethics for the industry not a different set of ethics as interpreted by each individual or FAP.</p>
R.	<p>Should there be a requirement for ongoing refresher training on ethics?</p> <p>Yes, every 2 years. There should be relevant examples pushed out to the industry from the FMA as they come across them to keep the ethics and good behaviour in the spotlight. Ethics is not a line in the sand it is an ongoing journey about helping the participants in the industry make better decisions in a fluid environment. This can only be done with experience and sharing experiences of good and bad decision making.</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>Yes.</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>If this is referring to Robo advice I think the robo advice should be signed off by the FMA as part of an application process to put in place a robo advice solution.</p>
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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>Yes. They should either have an internal compliance/Best practice officer or contract to an external Compliance/Best practice support</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>Yes. Sampling advice on a regular basis and a feedback form from clients</p>
W.	<p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p> <p>Absolutely. We need to minimise this but make sure there is the right checks and balances.</p> <p>It adds layers to the advice process also time and a significant cost that all need to be balanced</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>NO! It is almost impossible to control individuals 100% of the time despite best practice and processes. It is impossible to audit every piece of work that is undertaken. Based on this the individuals should take some responsibility.</p> <p>In addition, advisers are trained educated and if they want to be considered a professional they have a responsibility to act professionally and ethically and need to take responsibility for their actions. It is like saying the Auckland city council should take responsibility for all the crimes committed in Auckland and not persecute the offender.</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>It is about encouragement and providing good examples to the industry. And then routing out poor behaviour.</p> <p>Ethics is assumed by the clients. It is also assumed by the FAP of its employees otherwise they would not have employed them likewise the FMA would not approve someone for a licence to advise.</p>
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## Conduct and client care

### Advice situations

<i>Share your views</i>	
Z.	<p>Are there other delivery methods that should be considered when testing our thinking?</p> <p>No</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>CS7 – Should be Ensuring client can make an informed decision to use the service provided.</p> <p>This will include adviser service, robo service.</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>Yes, we need to be positive not negative. Complaint is very negative. Also, most complaints are related to the product provider or the returns not the adviser.</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.	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?  No
GG.	Should the Code include guidance material to help determine what needs to be considered when designing an advice process?  Yes  Templates on processes/policies that you expect the FAPs to maintain Training on ethics with good and bad industry examples Guidance note on best advice process
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?
II.	Should any of the key aspects that we have listed above be removed? If so, why?
JJ.	Are there any situations in which an advice process need not be followed?

## 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?  There should be minimum standards. There needs to be a way to limit or opt out of the advice process.  You need to be able to justify your advice.
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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>In-house trainings for ensuring that FMA's expectations are correctly communicated to FAPs</p> <p>Template of good advice outcome documentation that you expect the FAPs to maintain</p> <p>Examples of best advice process</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>

## General competence, knowledge and skills

<i>Share your views</i>	
NN.	<p>Do you agree with our interpretation of the meaning of “competence, knowledge, and skills”? If not, why not?</p> <p>Yes</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>
PP.	<p>What do you think are the advantages of this approach to general competence, knowledge and skills?</p>
QQ.	<p>What do you think are the disadvantages of this approach to general competence, knowledge and skills?</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>Definitely adds compliance costs and by imposing multiple requirements on RFAs disrupts the industry</p>
SS.	<p>What factors should we consider in determining whether to make the proposed unit standard a renewing obligation?</p> <p>Type of business, volume of business, How many trained financial advisers, every business has a different need and that should be catered to, codes should not be left worded broadly and should be more descriptive with examples</p>

## Particular competence, knowledge and skills

<i>Share your views</i>	
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<p>TT.</p>	<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>Financial advice is not complicated in the NZ market because the tax system is very simple. I would like to see what you consider Financial planning. I have come from the Australian Financial planning environment and there you do model all of the cash flows and recommend non- product based advice on a regular basis as it has significant tax implications. In NZ there are limitations in this due to the simple tax system. Financial planning in NZ for the better part is understanding a client’s financial footprint and what is important to them for example:</p> <p>Is it Growing their wealth for retirement</p> <p>Buying or paying down their house</p> <p>Protecting their financial shortfalls if their health changes.</p> <p>Nearly all advice outside some budgeting advice will entail a financial vehicle or product to facilitate achieving the goal.</p>
<p>UU.</p>	<p>How should RFA’s experience be recognised?</p> <p>If the RFA already has Lvl 5 certification and has not become an AFA due to the burden of the registration expense and additional compliance costs they should be recognised as an AFA.</p> <p>If they have not gone and achieve the lvl 5 then this should be a minimum requirement. There should be some form of formal certified education to go along with experience.</p>
<p>VV.</p>	<p>What do you think are the advantages of this approach to particular competence, knowledge, and skill?</p> <p>Adds to the learning and skill of the entire industry. Creates one standard that is highly visible either you have the formal education or you do not because a client will not know if your experience is appropriate or not.</p>
<p>WW.</p>	<p>What do you think are the disadvantages of this approach to particular competence, knowledge, and skill?</p> <p>If this is too high the barrier to entry will have an effect of seeing some good advisers leave the industry or stop new entrant from entering.</p> <p>Also as a practice if a degree is required then the time to get an adviser to market will be 3 years so unless they have studied this out of school the ability to bring someone on and then have them study if too costly. As a practice you will only want to pick up a new employee who has completed the study and if the course is not attractive and there are limited people coming through this channel the industry will suffer.</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 current standard to not consider flexibility and compliance costs. The transition will disrupt the industry.</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>I think years of experience should have some weight. Someone fresh to industry who has just completed his Lvl 5, but has no industry experience can't be considered more trained than someone with 10-15 years of experience in the industry but no formal education.</p> <p>I would like to understand what this planning capability you are referring to is. If you refer to our response to TT above the system here is not that complicated and detailed financial modelling has limited relevance. I would like to see what is considered detailed financial planning.</p> <p>I would think that if an adviser is selecting discretionary portfolios and or shares then they should be degree qualified as an Investment Analyst with portfolio construction education as this is a service beyond financial planning or financial advising.</p> <p>For the most part I would assume 95% of the market this level of specialisation does not exist. It may be that you identify what are specialist services and have the relevant education requirements for these.</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> <p>We need to address the disclosure requirements the current disclosure with 2 disclosure documents for an AFA is excessive and confusing for the client.</p> <p>Maybe the disclosure is limited to factors that directly affect the advice to be given like registration, qualifications the advice process. Essential facts about what to expect from your service so they can make an informed decision about whether to use your service or not.</p> <p>I think items like the dispute process is a given if we are professional and is not required in the disclosure as this does not have anything to do with deciding to use a particular adviser's services over another as all advisers have this as a part of their registration.</p> <p>If someone feels the need to complain they will be pushed back to the adviser in the first instance and then the adviser will provide the complaints process to the client.</p> <p>I think having things like this in the disclosure is not only redundant information but almost sets an expectation with the client they are going to complain. I have never purchased a service off anyone and started the relationship talking about the fact they have a complaints process and they are a member of a disputes resolution scheme.</p> <p>Similarly, fees. We can disclose how and when a fee will be decided and state there will be no cost until this is identified. If you charge an hourly fee then this obviously needs to be provided in a quote of estimated work. If you are commission based this will be disclosed in the Written advice which the client will either accept and proceed or not and disengage with that adviser. I do not believe the current detail and expectation to agree on the fee in the secondary disclosure is appropriate.</p>