

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 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.

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. 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.	<p>Please provide your name and (if relevant) the organisation you represent</p> <p>Chris Hardcastle, AFA, Ways to Wealth Limited</p>
ii.	<p>Please provide your contact details</p> <p style="text-align: center;">S 9 (2) (a)</p>
iii.	<p>Please provide any other information about you or your organisation that will help us understand your perspective (e.g. the financial advice situations you have experience with)</p> <p>We are a sole adviser practice, also with an administration person providing paraplanning and secretarial services.</p> <p>We work with a small number of clients providing them a fee for service, personalised, comprehensive financial planning service. This is a true financial planning function. We know our clients very well. I believe our model is quite unusual as our philosophy is embedded in holistic bespoke planning, rather than a product focus.</p> <p>I have been doing this type of work for 20 of the 22 years I have been in this profession.</p> <p>Half of our total income comes from direct fees to clients for planning advice and we also receive commissions from personal insurance products and fees from funds under management.</p> <p>We are independent of any requirements to place specific amounts of business with product providers, are not associated with any aggregation groups, nor dealer groups.</p> <p>The regulatory burden for a small business such as ours is huge, both financially and time involved, but also ongoing increasing demands as each tranche of new legislation comes into force. As such it now takes up a very significant amount of time that would otherwise be devoted to clients' needs. The inability to grow the business and serve new clients is an increasing possibility.</p> <p>I am not alone in being concerned that the voice of the 'small end of town' will be drowned out by larger corporate interests and that the needs of individual consumers will not be able met in the future with the impending changes. It is likely many small practices providing a high/holistic level of service to the public will be forced out of business, or have to devolve to purely product sales.</p>
iv.	<p>Please indicate whether your submission contains any information that is confidential or whether you do not wish your name or any other personal information to be included in a summary of submissions. (See page 2 of this document)</p>

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>I think the inclusion of the word ‘outcomes’ presents the general public with a perception and expectation that nothing can go wrong with the advice given and performance of specific products. It seems to be setting an unrealistic expectation.</p> <p>I don’t think the overarching theme should use these words.</p>
B.	<p>Are there any further principles that should be included, or existing principles that should be removed?</p> <p>I believe a principle based approach is more appropriate than a prescriptive approach as it allows scope for individualised planning processes and client circumstances to be addressed.</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? If not, please set out your reasoning.</p> <p>Agree in principle</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>People and businesses are ethical, and principled, or they are not. I think it would increase the burden on small businesses to have a separate ethics ‘manual’ and is unnecessary. The Code is the appropriate vehicle for this to be framed.</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>It would seem appropriate that ALL public facing advisers come under the Code, whether or not they work for a small or very large organisation. Therefore it would not be necessary to have an additional requirement on the FAP.</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>Disclosure at the adviser level should apply across the board, all should have to disclose to the level AFA's do now.</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>I think there is a risk that this could be used as a lever to stifle questioning, comment or critical thinking in the profession and as such should not be included.</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>Unnecessary – there are other legislative requirements that cover this off. Clients already have degrees of this protection as a result. Doing “NO” harm could be applied unfairly where conceivably there was absolutely no intention to harm a client but though no one’s fault, harm occurred.</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>
K.	<p>Are there other aspects of maintaining client confidentiality to consider?</p> <p>The jurisdiction that data is stored under may undermine Privacy Act requirements. For example if a Provider stores data in the cloud, and the cloud servers are overseas, data could well be mined from those servers under that jurisdiction, however, this would be a breach of the Privacy Act by the service provider.</p>

Ethical processes in Financial Advice Provider entities

L.	<p>Do you agree that the Code should require the Financial Advice Provider to document and maintain its “ethical processes”?</p> <p>I do not agree. I think the Code should set out the standards, and I do not think it appropriate that an organisation should have to have a separate Code of Ethics manual. This section appears to be suggesting the creation of another raft of burdensome compliance. We have sufficient Legislation in place now to cover off these issues.</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</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>
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>No – see my response to ‘L’</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>No – see my response to ‘L’</p>
R.	<p>Should there be a requirement for ongoing refresher training on ethics?</p> <p>No – see my response to ‘L’</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>No – see my response to ‘L’</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>No – see my response to ‘L’</p>
U.	<p>Do you agree that Financial Advice Providers should be required to have in place a compliance function aimed at following up on concerns raised by employees and other stakeholders? If not, please set out your reasoning.</p> <p>No – see my response to ‘L’</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>No – see my response to ‘L’</p>
W.	<p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p> <p>No – see my response to ‘L’</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>I think all advisers should be covered by the Code, thus making this proposal unnecessary.</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>
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Conduct and client care

Advice situations

<i>Share your views</i>	
Z.	Are there other delivery methods that should be considered when testing our thinking? <i>If ALL advice/product selling requires those doing so to come under the Code, there is a level playing field and greater protection applies for the public.</i>

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).
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?
GG.	Should the Code include guidance material to help determine what needs to be considered when designing an 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?
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Organisational standards

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

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?
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 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.	<p>What do you think are the disadvantages of this approach to general competence, knowledge and skills?</p> <p>AFAs have reached the level required for giving personalised and product advice, and it is pleasing to see that there are no additional burdens being put on them.</p> <p>Level 5 is the appropriate qualification level for existing advisers. It seems absurd to require RFAs to do a degree.</p> <p>I would speculate that if existing small business AFAs at some point in the future are ultimately required to obtain a degree and Level 6 particularly after being in the profession a long time, that they would drop the planning advice part of their work and focus to product sales, particularly if time was running out for them to be able to obtain a degree part time while still needing to run a business and deal with all the other legislative requirements!</p>
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)?
SS.	What factors should we consider in determining whether to make the proposed unit standard a renewing obligation?

Particular competence, knowledge and skills

<i>Share your views</i>	
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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?
UU.	How should RFA's experience be recognised?
VV.	What do you think are the advantages of this approach to particular competence, knowledge, and skill?
WW.	What do you think are the disadvantages of this approach to particular competence, knowledge, and skill?
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)?
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?

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?