

# 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.	<p>Please provide your name and (if relevant) the organisation you represent</p> <p><i>Helen Hardcastle, Paraplanner, Ways to Wealth Limited.</i></p>
ii.	<p>Please provide your contact details</p> <p style="text-align: center;"><b>S 9 (2) (a)</b></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><i>We are a sole adviser practice, and I work in the back office. There are two of us in total in the business.</i></p> <p><i>We offer comprehensive holistic advice, investments and insurance to a small number of clients.</i></p> <p><i>We have a number of clients who are advice only – they have no products. Over 50% of our income comes from invoicing clients directly for advice; we also receive commissions on insurance but our default is spread commission – no high upfronts; and we charge fees on funds under management.</i></p> <p><i>We do not belong to any dealer groups, or receive overrides or qualify for other incentives.</i></p> <p><i>We try to do what’s right by clients. We care about them and we know them very well.</i></p> <p><i>We already feel over-burdened and overwhelmed by needing to stay on top of ever changing compliance requirements. We feel unheard and unaccounted for, disadvantaged by compliance requirements that are written for and favour the Big End of Town. But you already know this.</i></p> <p><i>I realise that because we are so small, the number of consumers we serve is miniscule compared to the big end of town. But what we do offer that is different to the BEOT is independent, personalised, and comprehensive advice. Nothing vanilla about us. Yet. No one wins if small businesses like us are forced out of business.</i></p> <p><i>If it truly is important that consumers’ needs are the foremost priority, then it is important that the new Code is not prescriptive, and that less paperwork and compliance is required of us, not more.</i></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>Ditch the word ‘outcomes’. It’s misleading. There has already been plenty said publically by others.</i></p> <p><i>The words ‘competent and fair financial advice’ would get my vote, as per mockingbird’s suggestion on Good Returns on 24 April.</i></p>
B.	<p>Are there any further principles that should be included, or existing principles that should be removed?</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>

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>
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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><b>No! Do not do this. We don't need more paperwork. Having ethical standards included in a principle based Code is sufficient.</b></p> <p><b>We already disclose fully in writing, we explain and document the fees and other charges, and we sit in front of clients, and eyeball them. They are people to us, with joys and sorrows, not just a transactional customer.</b></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><b>The consumer would be better served if all advisers disclosed to the level AFAs do now.</b></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><b>No. The suppression of critical comment is a huge risk.</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>

### 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>

## 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>Small firms should not have to. More compliance costs otherwise.</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><b>No separate code of ethics should be required when an FAP is below a certain (small) number of staff. We do not need more paperwork.</b></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>
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>
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>
R.	<p>Should there be a requirement for ongoing refresher training on ethics?</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>
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## Compliance functions

T.	Should there be a requirement for explicit sign-off on the soundness of financial advice provided directly by a Financial Advice Provider?
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>I should have thought this area was already well covered by current legislation around being an employer?</p> <p>If this is included in the Code then small businesses need to be exempted or you will increase our compliance costs further.</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>If this is included in the Code then small businesses need to be exempted or you will increase our compliance costs further.</p>
W.	<p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p> <p>See above.</p>

## Responsibility for the whole advice process

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

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

### 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.	<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>Needing to produce yet another process manual does not benefit our clients at all, and in fact reduces the time available to see existing and new clients.</p>
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 <b>combined expertise</b> , that we have not listed? We are particularly interested in factors that are relevant to financial advice that is given by a Financial Advice Provider directly, including by digital means.
PP.	What do you think are the advantages of this approach to general competence, knowledge and skills?
QQ.	<p>What do you think are the disadvantages of this approach to general competence, knowledge and skills?</p> <p><i>Ever increasing costs of compliance are already pushing us to reduce our holistic service in favour of selling more product.</i></p> <p><i>Higher education standards for existing advisers (there is no doubt in my mind that it will come eventually) would likely push us towards becoming an aligned adviser within a VIO or prescriptive dealer group of some sort. As stated elsewhere, we are already reducing our service as it is becoming too expensive to provide full financial advice.</i></p> <p><i>Higher education standards would increase barriers to entry, most likely pushing new entrants into the arms of VIOs who would provide the academic training and the sales systems, as to set up as an independent must already be incredibly difficult.</i></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.	<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>The names ‘product advice’ and ‘financial planning’ are misleading.</p> <p>I agree with the SIFA submission which offers a different interpretation for ‘general’ and ‘particular’, specifically:</p> <p><i>“We read the legislation as saying that</i></p> <ul style="list-style-type: none"> <li><i>– there are some things that will apply always to everyone and in all situations i.e. that apply generally; and</i></li> <li><i>– there are other things that will apply sometimes to some people in some situations.</i></li> </ul> <p><i>We would have thought general competence in CKS sense might have been expressed as the adviser has level 5 Core and Financial Advice strands. The specific competence for a life agent would be that they have the level 5 Personal insurance strand; a mortgage broker would have to have the Level 5 Mortgage strand, and so on.”</i></p> <p>We are already providing comprehensive financial planning, but the thought that this might allow the big end of town to continue their sales practices under the guise of ‘advice’ is deeply disturbing and frustrating. We hear instances time and again of someone going in to their bank for some reason or other, only to find out later that they have switched their KiwiSaver provider, simply because they answered ‘yes’ to the question ‘would you like to see your balance on your internet banking?’</p> <p>How do these terms convey to the public that they are NOT receiving advice from VIO staff?</p> <p>The public must understand when they are receiving actual advice and when they are being sold a product. Having clear names would be a start.</p>
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?
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## 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?