

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.	Please provide your name and (if relevant) the organisation you represent Michael Gallagher AFA – Financial Advice Hawkes Bay
ii.	Please provide your contact details S 9 (2) (a)
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) AFA and CFP with 22 years experience.
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) Nothing confidential

Principles for drafting the Code

<i>Share your views</i>	
A.	What comments do you have regarding the overarching theme of “good advice outcomes” and the underlying principles? Client first is paramount – as it is now. Good advice should always follow if this is an advisers working proposition. I don’t like the word “outcome” as this suggests that the entire process of advice will provide a great outcome for the client. Firstly clients must implement the advice which doesn’t always happen. As advice given may be for a long period of time (20yrs+ for retirement etc) which is impossible to monitor as this advice may change over time as clients needs change. Focus must be on quality of advice given at the time.
B.	Are there any further principles that should be included, or existing principles that should be removed? No as above. Client first should be the basic principal all advisers should work from.

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</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. We are dealing with peoples financial wellbeing and as such it is only fair that clients should expect the highest ethical standards from those giving them the advice. One can argue it is a lack of ethical standards from advisers that has created many of the bad situations in the advice industry.ie the never ending issue of churn, switching KS accounts. I am unsure of how to frame this but having high defined standards is important.</p>
E.	<p>If there was a minimum standard requiring Financial Advice Providers – or Financial Advice Providers in some situations – to have their own code of ethics in addition to the Code, how would you frame the requirement for it to deal with keeping commitments?</p> <p>I don't think they should have their own. The standard in the code needs to be very high....if Advisers and FAPs want to set their own higher standards that's fine. We have seen the industry will go for the easiest option if allowed..ie QFE status rather than getting people qualified.</p>

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>Ultimately no because if advisers have the client first approach this shouldn't be an issue. However its not the case but perhaps the code needs to define the conflicts that need to be disclosed.</p>
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Do no harm to the client or the profession

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

Keep your client's data confidential

I.	In which situations, if any, should the retention, use or sharing of anonymised bulk customer data be subject to Code standards?
J.	Do you agree that the Code should cover the various aspects of maintaining client confidentiality discussed in this paper?
K.	Are there other aspects of maintaining client confidentiality to consider?

Ethical processes in Financial Advice Provider entities

L.	Do you agree that the Code should require the Financial Advice Provider to document and maintain its "ethical processes"? Yes but it is good practice for a business to have an ethics statement. AFA's have this in their ABS.
M.	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?
N.	Should Financial Advice Providers also be subject to additional standards in respect of leadership and culture? If so, how should these be framed?
O.	Do you propose other additional standards of ethical behaviour that should apply to Financial Advice Providers?

Ethics training

P.	Do you agree that Financial Advice Providers should be required to meet standards relating to ethics training? If not, please state your reasoning. Yes
Q.	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.
R.	Should there be a requirement for ongoing refresher training on ethics?

Resolving ethical dilemmas

S.	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.
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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? Yes as there need to be checks on Robo advice for example to make sure it is fit for purpose.
U.	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. It is good business practice to have a complaints process
V.	Should this extend further into an internal audit obligation, having in place processes to systematically test for and detect violations of ethical behaviour?
W.	Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered? Not particularly

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>Yes definitely otherwise is creates a double standard and an out for the FAP vs advice provided by an adviser.</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.	<p>Are there other delivery methods that should be considered when testing our thinking?</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>
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>
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? The six step advice process used by CFPs is internationally recognised as best practice. This should be the basis used in the code. It works for investment and insurance advice
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?
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MM.	Would implementing these organisational conduct and client care standards create a particular compliance burden for your firm? If yes, please explain why.
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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>I do not agree with the combined expertise model you are proposing. This is just the QFE model dressed in different clothes. My understanding of the purpose of the FAA Act during the first round of regulation was to improve the quality of advice by raising the bar for those giving it. At that time it was made very clear further regulation would come in the next 5 years or so and when we look globally this has been the trend. Standards for giving advice are only going up yet this model does not seem to be following the global trend....which I find troubling. To be honest higher standards (including education ones) have been talked about since the early 2000's so advisers who have chosen to do nothing don't have any excuses....the message has been loud and clear for a loooooong time. Get yourself educated!</p>
OO.	<p>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.</p> <p>The assumption is that a large FAP will ensure “good advice” is given....regardless of who the messenger is. 22 years of giving personal financial advice has taught me that the messenger (Me) is vital in making sure that clients needs are identified but also met and that the advice given is ultimately understood. I struggle to see how an unqualified person (eg bank teller or sales person) can deliver complex insurance or investment advice and recommendations from the FAP in a way that provides a “good advice outcome” for clients. As an AFA I am responsible for my advice....that needs to a bottom line....people can't hide behind big companies.</p>
PP.	<p>What do you think are the advantages of this approach to general competence, knowledge and skills?</p> <p>I don't really see any except in the field of true sales situations like opening bank accounts or selling fire and general insurance where a simple product solution can meet the need. Anything beyond that doesn't work.</p>
QQ.	<p>What do you think are the disadvantages of this approach to general competence, knowledge and skills?</p> <p>Already outlined above but ultimately bad advice outcomes where clients are sold products rather than advised.</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>The proposed competency standard will ensure that larger FAPs like banks wont have all their front line staff qualified so it benefits them and reduces there costs....but at the expense of the clients and “good advice”.</p>
SS.	<p>What factors should we consider in determining whether to make the proposed unit standard a renewing obligation?</p>

Particular competence, knowledge and skills

<i>Share your views</i>	
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>It wont affect me as I am an AFA. I understand the two type approach but feel it does dilute the profession. You don't have two different types of Lawyers, Accountants or Doctors....what you have a Lawyers, Accountants and Doctors who specialise in certain fields as it is difficult if not impossible to be an expert in all fields. I feel financial advice is the same and there is a base for everyone and then we specialise.</p>
UU.	<p>How should RFA's experience be recognised?</p> <p>It shouldn't be....it wasn't for initial regulation to become an AFA so shouldn't be now. Many chose not to become AFA's because of the qualification standards that had to be met.....you can't just let them in now when that wasn't good enough 7 years ago!</p>
VV.	<p>What do you think are the advantages of this approach to particular competence, knowledge, and skill?</p> <p>It will be easier for those who don't see themselves as Financial Planners</p>
WW.	<p>What do you think are the disadvantages of this approach to particular competence, knowledge, and skill?</p> <p>It creates an uneven playing field that will be abused just as the RFA – AFA one has. Product advice advisers will go beyond their line in the sand with advice. The submission states the adviser does not need to have level 5....this is wrong and level 5 or is new equivalent needs to be the minimum everyone must attain.</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>Quality of advice will suffer as stated above, product advice will cross over to Financial Planning</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>Need to remove the in aggregate wording. Advisers need to be responsible for their advice. Until that happens the standards will not lift. Its human nature that you will care more in your performance if you have more to lose. Again Accountants, Lawyers and Doctors all may work for larger institutions but they also belong to their industry bodies who control the standards and hold each individual to account for their actions. This is why the public have confidence in these professions. We must do the same if we expect the confidence to have confidence in our profession.</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>