

# 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 David Pine, Pine Financial (2010) Ltd, coach / trainer for the adviser industry
ii.	Please provide your contact details <b>S 9 (2) (a)</b> <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)  I was an adviser for 37 years, with AMP and later non-aligned, advising on investments, life and health, fire and general, and mortgages. I'm a past National President of the NZ AMP Agents Association and of the Insurance and Investment Advisers Association. I have a BBS degree and am a CLU. I also hold the NZ Certificate in Adult Education and Training level 4.
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)  <b>Nothing confidential</b>

## 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?  The theme and principles appear sound
B.	Are there any further principles that should be included, or existing principles that should be removed?  I don't believe so. The requirements are clear and I believe would be easily understood by the majority of clients and advisers.

# 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. And I like the comments you make in the “Ethical Behaviour” section. I firmly believe it should be possible to have a single code of ethics for all adviser businesses regardless of the number of advisers attached to that business. I believe it is most important to enable one-man-bands to continue if that is what the adviser wants to do. A single code for all advisers would hopefully keep compliance costs down.</p> <p>I recommend that you look at MDRT’s code of ethics, which may be helpful although not necessarily entirely relevant for your purposes. All 50,000 of MDRT’s adviser members worldwide are bound by the same code, regardless of their location in the world. So it should be possible to devise a code to suit all NZ adviser businesses regardless of their size. Please visit <a href="http://mdrt.org">mdrt.org</a> and go to <b>Membership</b></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>I think the best way to do this would be to use a phrase along the lines of: “ ... the adviser must act in a way that a reasonable client would regard as being in the client’s best interests”</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 believe you should avoid this at all costs and instead create a code that would stand as the minimum requirement. If adviser businesses wanted to voluntarily add their own code as well, then that would be OK.</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>Only if the legislation for some reason does not fully cover the situation in our industry.</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>Yes, absolutely. This is fundamental.</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>I don't believe this is advisable. A 100% ethical and honourable adviser could conceivably still cause harm to the client in the eyes of the client's (clever) lawyer, so the definition of 'doing no harm' could become a legal battlefield.</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> <p>None. Confidential means confidential. The only time it should happen would be if a court ordered the information to be released. That said, there may be an existing legal framework in place relating the release of big data and if there is, then that should be sufficient.</p>
J.	<p>Do you agree that the Code should cover the various aspects of maintaining client confidentiality discussed in this paper?</p> <p>The section from the AFA code should be sufficient</p>
K.	<p>Are there other aspects of maintaining client confidentiality to consider?</p> <p>No</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>Yes.</p>
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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?  Absolutely yes, this should be required in all cases.
N.	Should Financial Advice Providers also be subject to additional standards in respect of leadership and culture? If so, how should these be framed?  No.
O.	Do you propose other additional standards of ethical behaviour that should apply to Financial Advice Providers?  No.

## 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.  Yes, it should extend to all staff who are engaged in, or who support, the advice process.
R.	Should there be a requirement for ongoing refresher training on ethics?  Yes, this is most important.

## 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.  Yes.
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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.
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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.</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.</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, I don't believe so. The smaller ones would need to find efficiencies within their processes to accommodate this requirement. This might include belonging to one of the national adviser groups.</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>Yes, definitely. For an FSP with a dedicated adviser force (eg a bank) it should certainly be a requirement that all of their advisers behaved ethically at all times. We have seen far too many cases where a bank adviser replaced a superior product with an inferior one. This needs to be addressed in a robust manner.</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>Compulsory CPD sessions at regular intervals; random audits by FMA; publicity to advisers that these random audits could occur at any time.</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? Robo Advice will grow rapidly over time and so there needs to be strict control over how these platforms can operate.

## 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).  No comment
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.)  No comment
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)?  <i>No comment</i>
DD.	Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?  As stated elsewhere, please don’t make compliance so onerous that smaller operators are squeezed out. There are 400,000 SME’s in NZ. A large proportion of these are serviced by smaller adviser firms because the SME owner prefers it that way.
EE.	Are there any additional matters that should be addressed in the advice-giving standards? Those listed above? Others?  <i>No comment</i>

## Advice process

FF.	Do you think there are any other components that should be included in the design considerations of an advice process?  No, the six step process is robust and internationally recognised so I don’t think we should change this.
GG.	Should the Code include guidance material to help determine what needs to be considered when designing an advice process?



	No
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? No comment
JJ.	Are there any situations in which an advice process need not be followed? No, I believe it should always 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? No comment
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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? Minimum standards generally are a good idea as long as they do not have the effect of shutting smaller firms out of the market.
MM.	Would implementing these organisational conduct and client care standards create a particular compliance burden for your firm? If yes, please explain why. See previous answer

## 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? Yes
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. No comment
PP.	What do you think are the advantages of this approach to general competence, knowledge and skills? Reassurance to the public
QQ.	What do you think are the disadvantages of this approach to general competence, knowledge and skills? None
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)? See my answer to LL above.
SS.	What factors should we consider in determining whether to make the proposed unit standard a renewing obligation? Renewing is a good idea because it requires the provider to regularly revisit their processes

## Particular competence, knowledge and skills

<i>Share your views</i>	
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? No comment
UU.	How should RFA’s experience be recognised? Years of service and levels of production. An RFA who has been in the industry for a long time but has written only small amounts of business should be treated less leniently than an adviser who has written large amounts of business.

VV.	<p>What do you think are the advantages of this approach to particular competence, knowledge, and skill?</p> <p>It seems logical and fair</p>
WW.	<p>What do you think are the disadvantages of this approach to particular competence, knowledge, and skill?</p> <p>None.</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><b>No comment</b></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><b>Specialist strand ok;</b></p> <p><b>Level 5 OK as long as there is a phase-in period of, say, 2 years;</b></p> <p><b>Degree/level 6 in my view is bordering on overkill, so this should be encouraged but not required in my view. If you do decide to go this way, a phase-in period is most important.</b></p> <p><b>The last thing the industry needs is for large numbers of good quality advisers to walk away, talking their knowledge, skills and sound business practices with them.</b></p>

## Other comments

<b>Share your views</b>	
ZZ.	<p>Are there any other comments you would like to make to assist us in developing the Code?</p> <p>I think that generally, you are on the right track with all of this. I am personally of the view that financial advisers should be seen by clients in the same light as their solicitor or accountant. The only way that will happen is if financial advisers are required to complete relevant study programmes in the same way as the other professions are required to do.</p> <p>At the risk of labouring the point, there are large numbers of high quality advisers out there who do an excellent job for their clients and would never dream of doing the wrong thing. We need to ensure that these advisers stay in the business. They are the ones who will in time encourage younger advisers into the business by employing them and nurturing them through their early years.</p>