

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>R W M Dowler</p> <p>This is a personal submission</p>
ii.	<p>Please provide your contact details</p> <p>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>My professional career to date has involved more than 35 years working in the financial services industry in a variety of roles, including 12 years initially in the life insurance industry, then as a sharebroking investment adviser for 14 years employed in NZX Firms, then providing secretariat services to the Securities Industry Association for the last 13 years, which latter role ended on 31 March 2018. Just as important, I am a consumer of financial advice, products & services.</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> <p>The submission contains no confidential information, other than my contact details that I request not be published.</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>The word “outcomes” has the potential to create confusion between the advice and the actual product or solution outcome.</p> <p>I submit that the word “outcome” should be removed and, further, since the objective is “quality advice”, why not simply use the phrase, “quality advice”?</p>
B.	<p>Are there any further principles that should be included, or existing principles that should be removed?</p> <p>There are two key principles that I address under this section covering:</p> <ul style="list-style-type: none"> • Access to financial advice • Capability and preference of the financial advice provider and the consumer

Access to Financial Advice

Noting that ensuring access to financial advice is one of the key objectives, I suggest that one key submission question that should be asked when the draft code is released for consultation is as follows:

Is there anything in the proposed Code that you can identify that creates an inappropriate barrier to delivering to a consumer a product or service that such a consumer might otherwise reasonably expect to be available to them?

I regard the answer to this question as a critical test to determine whether Code provisions are set at the right level to provide appropriate access to products and services.

To demonstrate the importance of this concept, I relate a personal experience under the current regime.

I use my interaction with a bank as an example. There is no criticism of the bank, as it is evident that the issue arose because of inappropriate regulatory settings resulting in the bank determining as a matter of policy not to provide financial advice to avoid regulatory and compliance risks.

I approached the bank in 2016 seeking personalised advice regarding selection of the most appropriate credit card for me from within the range offered by the bank. The selection of credit card was not trivial, as the outcome resulted in differences in charges and rewards of some hundreds of dollars each year.

The bank declined to provide the requested personalised advice, despite it being evident that it was unlikely that I could obtain such advice on the bank's credit card products from anywhere else in the market.

Subsequently, I had the opportunity to review the bank's submission made to the Ministry of Business, Innovation and Employment on the Financial Advisers Act Review Options Paper in 2015. The bank's submission identified that, as a means of managing compliance risk, it was a matter of internal bank policy that the only bank staff permitted to provide personalised advice to consumers in any circumstance were those bank staff that were Authorised Financial Advisers (AFA). The bank's submission clearly stated the view that the regulatory regime precluded the bank delivering to its "Customer Promises" other than by the provision of personalised advice via an AFA.

In my own case, despite offering to pay the bank for an AFA to provide the requested service, the bank was unable to identify an AFA willing and competent to assist me.

It is clear from the bank's submission that the bank regarded the compliance risks as being so great as to preclude the delivery of a service to me that I might reasonably expect to be available, despite the clear intent in the bank's "Customer Promises" to provide such services.

I therefore use this as an example where the current regime has failed consumers, thereby providing a salutary lesson and appropriate test for the Code Working Group to apply to the development of new Code standards through the next consultation round on the draft Code by utilising the question outlined above.

Capability and Preference of the Financial Advice Provider and the Consumer

Accepting my first key point regarding consumer access to products and services, each financial advice provider and consumer will likely have their own degree of capability and a preference as to what products or services to respectively offer or receive.

I therefore consider that another key test of the proposed Code provisions is whether sufficient flexibility exists such that each financial advice provider (including related financial advisers and nominated representatives) and each consumer can respectively offer or receive the products or services within their respective capabilities and preferences.

Hence, an appropriate question for the next consultation on the draft Code could potentially be:

Is there anything in the proposed Code that creates a barrier to either the financial advice provider (including related Financial Advisers and Nominated Representatives) or the consumer from respectively offering or receiving the products or services within their respective capabilities and preferences.

Some further explanation may be helpful.

- Capability is a broader concept than simple competence in relation to a financial advice provider, encompassing the additional capacity, policies, processes and controls required to deliver “quality advice” (or, as currently being consulted upon, a “good advice outcome.”) In the case of a consumer, capability can be as simple as limited ability to pay for the service, or as complex as the consumer having a level of competence that exceeds that of the financial advice provider.
- Preference is the option for either party (the financial advice provider and/or the consumer) to determine the scope of the service to be provided. For example, referencing the point above, the “capability” or capacity and/or willingness of a consumer to pay may be a strong determining factor for both parties as to what it is possible to deliver, resulting in a preference for a particular product or service, perhaps limited in some way.
- Capability - Nothing should ever require a financial advice provider to deliver a product or service outside of the financial advice provider’s capability. As an example, take the vexed question of product replacement. While the ideal outcome would be for financial advice to provide a clear and complete comparison between both the new product and the product being replaced (which comparison some are suggesting should be mandatory), this is impractical and inappropriate where the financial advice provider does not have the capability to complete such a comparison. Such a lack of capability may arise for several valid reasons. For example, the financial advice provider may not have access to detailed information about the product being replaced to allow a complete comparison. Such a circumstance could arise because the product being replaced may be, for example, a legacy product. I would further suggest that the absence of such information about a legacy product might in itself be a justification to replace it with a product that can be fully supported, even while acknowledging the risks that could arise.
- Capability and preference – I note that some other earlier submissions and public commentary suggest that financial advice providers should always select the best product for a consumer from the complete product universe. I first state that I consider such an outcome to be fanciful, as no-one can ever know everything relevant about every possible product. Unsurprisingly, therefore, I state that I have no issues with financial advice providers limiting financial advice to a subset

of products or services in which they have appropriate capability, perhaps even just the products and services of that financial advice provider. In the absence of an ability to limit the range of products and services being advised upon, there has to be significantly increased risk that capability and competence standards cannot be met by the financial advice provider at all, thereby precluding any service delivery, or alternatively without significant investment and cost, which must then be passed on to the consumer. Then, referring again to my credit card example with the bank above, as a consumer, my clear preference was in hearing from the bank about the bank's own credit card offerings. I had no interest in having the bank determine whether any other credit card outside of the bank's own card range might be better for me, nor in paying for such an extended financial advice service. I submit that my preference should apply in such a circumstance, always subject to the bank's own preference as to whether to offer the desired service.

- Finally, and probably somewhat controversially, I submit that a consumer should not be blocked by a financial advice provider from following through with a product or service preference that the consumer has, even in the face of a belief by the financial advice provider that the preference being expressed by the consumer might exceed the capability of the consumer. This does not suggest that this should preclude the financial advice provider from exercising its own preference, for example, declining to provide the product or service, while recognising that the consumer can often complete the product transaction or obtain the service somewhere else without further advice. I am therefore implying that it should be sufficient for the financial advice provider to have sufficient capability in place to identify where there is uncertainty about consumer capability and to have appropriate policies, processes, and controls to manage this circumstance. This suggested approach recognises, in part, that financial outcomes are ever uncertain and, while advice may be given based on the best information and understanding available at the time, subsequent events can result in a different outcome, sometimes surprisingly favourable or unfavourable to the consumer. In other words, financial advice providers cannot see the future with sufficient clarity to always accurately predict an outcome. Cryptocurrency speculation is almost certainly one current example. Two examples from my own advisory past are also illustrative of the issue. One client sought my advice on investing what I perceived to be a material part of his financial wealth in a breeding pair of ostriches. I explained the risks that I foresaw and that I could not actually assist with completing the investment. The client went ahead with the ostrich investment elsewhere and lost the entire investment value. The second client that I advised related to the risks associated with borrowing several hundred thousand dollars to invest in a speculative mining company. The client went ahead and invested, and the investment subsequently became worth many tens of millions of dollars.

Concluding Comments

In summary, I reiterate my belief that the Code Working Group will have succeeded in its task when the resultant Code provides the degree of flexibility that does not preclude consumers from getting access to products and services that they might reasonably expect to be available to them, and both the financial advice provider and consumer can respectively offer and receive products and services within their respective capability and preference.

I can add that I understand the extent of the challenge, as I do not believe anywhere else in the world has yet succeeded in these objectives. This does not preclude New Zealand from getting there first, always remembering that, as an example, New Zealand led the world in giving women the vote. We can always lead the world again because, sometimes, “world best practice” just isn’t good enough.

If the Code Working Group would like to discuss this submission further, please contact me.