

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 Karty Mayne, Rosewill Consulting Limited
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) I provide independent governance, risk and compliance services including helping businesses prepare for the licensing regime. My previous background was 11.5years providing financial advice, 5 years senior training, risk and compliance manager and 3 years licensing and monitoring market participants with the FMA.
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) <ul style="list-style-type: none"> 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? <ul style="list-style-type: none"> The term “outcomes” tends to be used by regulators and is not widely used by market participants. The term therefore can be confusing and often associated with performance rather than process and expectations. Market participants would be clearer if the expectations reflected common industry terminology. For example, “apply sound advice practices”. The underlying principles are substantially similar to the existing regime so no recommendations for changes.
B.	Are there any further principles that should be included, or existing principles that should be removed? <ul style="list-style-type: none"> Nothing to suggest.

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 <i>set out your reasoning</i>.</p> <ul style="list-style-type: none">• Yes

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> <ul style="list-style-type: none">• Yes, but only if it can be defined in a way that gives sufficient clarity to the adviser or provider how they can both identify and demonstrate this. Consumers can have unobtainable goals and may not take in all the information being explained to them so could take advantage of this if not set out correctly.
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> <ul style="list-style-type: none">• It would be more effective if it were a minimum standard for licensing.

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> <ul style="list-style-type: none">• Yes absolutely. From our experience, conflicts of interest, especially those at the business level are not well understood in New Zealand.• The focus should be on going through a regular process to identify exposes to conflicts of interest in every area of the business and include a requirement to provide ongoing training on managing conflicts of interest.
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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> <ul style="list-style-type: none">• Yes
H.	<p>Is an additional minimum standard on doing no harm to the client necessary? If so, what standard do you propose?</p> <ul style="list-style-type: none">• No.

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> <ul style="list-style-type: none">• Market participants already need to comply with the Privacy Act and data protection law changes in train. Feel this is already dealt with by that legislation. For specific concerns in this area, it could be dealt with by publishing industry guidance notes.
J.	<p>Do you agree that the Code should cover the various aspects of maintaining client confidentiality discussed in this paper?</p> <ul style="list-style-type: none">• Yes
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> <ul style="list-style-type: none">• Yes
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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> <ul style="list-style-type: none"> • Yes
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> <ul style="list-style-type: none"> • No
O.	<p>Do you propose other additional standards of ethical behaviour that should apply to Financial Advice Providers?</p> <ul style="list-style-type: none"> • No

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> <ul style="list-style-type: none"> • Yes
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> <ul style="list-style-type: none"> • Yes
R.	<p>Should there be a requirement for ongoing refresher training on ethics?</p> <ul style="list-style-type: none"> • Yes

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> <ul style="list-style-type: none"> • Yes
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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> <ul style="list-style-type: none">• No. This requirement could introduce a high compliance cost.
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> <ul style="list-style-type: none">• Yes
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> <ul style="list-style-type: none">• Yes, as long as the compliance cost was sustainable for small entities.
W.	<p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p> <ul style="list-style-type: none">• Vertically integrated providers promoting and selling their own products. Need to be clear on expectations for needs analysis and suitability.

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> <ul style="list-style-type: none">• Yes
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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> <ul style="list-style-type: none">• Promoting ethics and values through advertising and disclosure will assist. For example, transparency of ethic and conduct staff guidelines on a provider's website.
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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> <ul style="list-style-type: none">• Demonstration of how any third party independent advice has been considered in the advice process. For example, with UK pension transfers, financial advice from the UK is required but usually disregarded without an explanation of how it was considered and why it was discarded.

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> <ul style="list-style-type: none">• Unable to provide comment.
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.	<p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p>
EE.	<p>Are there any additional matters that should be addressed in the advice-giving standards? Those listed above? Others?</p>

Advice process

FF.	<p>Do you think there are any other components that should be included in the design considerations of an advice process?</p> <ul style="list-style-type: none">• That advice is able to be found and identified by a retail client at a later stage. In the example of digital advice, the consumer needs to be able to print or save evidence of
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	<p>the advice that they have been given and are intending to take. Otherwise they could be left exposed by partially implementing the advice because they don't have all the relevant information to hand.</p>
GG.	<p>Should the Code include guidance material to help determine what needs to be considered when designing an advice process?</p> <ul style="list-style-type: none"> • Yes. Guidance is always beneficial.
HH.	<p>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?</p> <ul style="list-style-type: none"> • Requirement to note down more than just a price comparison.
II.	<p>Should any of the key aspects that we have listed above be removed? If so, why?</p> <ul style="list-style-type: none"> • No
JJ.	<p>Are there any situations in which an advice process need not be followed?</p> <ul style="list-style-type: none"> • There could be a straight transactional process when the retail client requests a specific product or service and does not require advice. There should be a simple process to support a transaction only interaction.

Personalised suitability

KK.	<p>What comments do you have about a proposed minimum standard on personalised suitability analysis? What are your views on the example above?</p> <ul style="list-style-type: none"> • Suitability is an important component of financial advice and has a number of values: <ul style="list-style-type: none"> ○ Provides clarity to the client about the rationale for the recommendation/choice of provider. ○ Provides a defence for the financial adviser for financial services provider if the advice is challenged. ○ Enables differentiation between providers. ○ Above all demonstrates how the client interests have been taken into account. • Too many recommendations (mainly in the mortgage and insurance space) are being made on price comparisons only rather than a proper analysis of the policy wordings and benefits or disadvantages for the client. • Suitability can be as simple as a sentence or two for a simple recommendation, therefore affordability should not be seen as a barrier.
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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> <ul style="list-style-type: none"> • This seems to be a double up with the ethical framework. Culture and conduct in an organisation are influenced by many things but actions are more important than statements. • Not sure that this type of standard will realise the benefits sought but is a good exercise for applicants to go through prior to applying for a licence.
MM.	<p>Would implementing these organisational conduct and client care standards create a particular compliance burden for your firm? If yes, please explain why.</p> <ul style="list-style-type: none"> • N/A

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> <ul style="list-style-type: none"> • Yes
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> <ul style="list-style-type: none"> • Reference to a benchmark such as a recognised international standard.
PP.	<p>What do you think are the advantages of this approach to general competence, knowledge and skills?</p> <ul style="list-style-type: none"> • Financial advice providers need to demonstrate how they will fulfil these requirements as they will be ultimately accountable.
QQ.	<p>What do you think are the disadvantages of this approach to general competence, knowledge and skills?</p> <ul style="list-style-type: none"> • Large providers not investing sufficiently in frontline training and development.

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> <ul style="list-style-type: none"> • Supports as long as the expertise of the person actually providing the advice on behalf of the provider can be evidenced.
SS.	<p>What factors should we consider in determining whether to make the proposed unit standard a renewing obligation?</p> <ul style="list-style-type: none"> • Whether a renewing obligation will actually lift capability over time or just become a compliance tick box exercise.

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> <ul style="list-style-type: none"> • Good to acknowledge the very different activities of product advice and financial planning.
UU.	<p>How should RFA's experience be recognised?</p> <ul style="list-style-type: none"> • Existing experienced RFA's should be given the opportunity to go through an independent compliance review to review current practice with giving advice. This would prevent a classroom learning approach on online papers. This could be combined with sitting a legislative paper (similar to the old Standard Set B) to ensure their knowledge of current legislation is up to date. Advisers who pass could be grandfathered across without requiring sitting a new qualification. This would support those with decades of experience who could be tempted to exit the industry. Adult learners often do not respond well to online learning so this needs to be allowed for. • New advisers however would be required to meet the competence standard by sitting the qualification.
VV.	<p>What do you think are the advantages of this approach to particular competence, knowledge, and skill?</p> <ul style="list-style-type: none"> • As above

WW.	<p>What do you think are the disadvantages of this approach to particular competence, knowledge, and skill?</p> <ul style="list-style-type: none"> • As above
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> <ul style="list-style-type: none"> • The qualification needs to better align to the legislative expectation. For example, Level 5 requires a financial planning style approach but AFA's giving advice currently do not usually demonstrate the approach in the qualification. To be effective, the two need to be better aligned.
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> <ul style="list-style-type: none"> • For simple product advice, Level 4 provides the foundational knowledge and requirements but seems to have been overlooked. It seems to be a better entry point for many RFAs but because it is not widely trained seems to fall under the radar. • Financial advice on KiwiSaver seems to sit between the competence requirements. Given that under the current regime it can be sold under the class advice exemption it needs to be considered. Level 6 or 7 seems unnecessarily high for a simple superannuation scheme. There could be other investment products that sit in this category as well. • Therefore Level 6 and 7 could be reserved for financial planning relating to more complex, higher wealth portfolios.

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> <ul style="list-style-type: none"> • The CWG should be concerned at the relatively low turnout of RFAs at events. Please keep up the face to face regional engagements to reach these smaller adviser firms which will be significantly impacted by the changes. • There also needs to be ongoing calls to action that financial advice providers can start getting ready now, there is enough to get started on even if not everything is finalised as yet.