

# 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

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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><b>S 9 (2) (a)</b> Select Wealth Management Limited (<b>Select</b>)</p>
ii.	<p>Please provide your contact details</p> <p><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>Select is a DIMS provider, and the Select product offering is distributed through a network of independent AFAs.</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>Please remove name and contact details from i and ii above respectively</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>To address the concerns that have been raised about “outcomes”, we suggest that this overarching theme could instead be written as “good advice processes” or “good advice practices”. Either option would continue to incorporate important foundations such as competence, conduct and variations in business models while acknowledging the different potential interpretations of the word “outcomes”.</p> <p>If “good” is also found to be the subject of differing interpretations, we suggest that “reasonable”, “quality” or “well-designed” could be used in its place.</p> <p><u>Principle 1</u></p> <p>We suggest that the overarching duty referred to in point 62 (“good client outcomes”) could be reworded to define the principal role of the FAP and its FAs/NRs as being the delivery of a “good advice process” for that client (or similar wording as outlined in the section immediately above).</p>

	<p><u>Principle 3</u></p> <p>In addition to the potential use of examples to assist with explanations of the standards (which we encourage), we also suggest that the FMA consider the periodic release of its industry observations in respect of the adoption of the Code, and its comfort (or otherwise) with those observations.</p>
B.	Are there any further principles that should be included, or existing principles that should be removed?

## 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, and we suggest this could be achieved by requiring that a FAP address this requirement within its code of ethics.</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>In respect of keeping commitments, the code of ethics could be required to note the factors which the FAP will have regard for when resolving any issues that involve a difference in understanding or expectation between the FAP and its clients.</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>Yes</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, agree.</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>No.</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>We agree with the proposed approach that provided such data is anonymised, the Code should not impose any standards on its use.</p>
J.	<p>Do you agree that the Code should cover the various aspects of maintaining client confidentiality discussed in this paper?</p> <p>Yes</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>Yes, and we support the discretion that is being proposed (i.e. that FAPs will be able to exercise discretion in respect of design, documentation, implementation and monitoring). To support an environment in which discretion is permissible/encouraged, it would be helpful to consider the availability of both initial guidance material and also the release of ongoing commentary on the FMA's industry observations and their comfort (or otherwise) as to the exercising of this discretion.</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>Yes, in our view this represents a reasonable form of disclosure. We believe that a Code of Ethics is likely to be required in all situations. However, this should be "right-sized" to take into account the nature and scale of the FAP.</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> <p>No, we believe that these factors need to be addressed by:</p> <ul style="list-style-type: none"> <li>➤ the licensing minimum standards (Governance and Culture) which a FAP will need to meet before being granted a license under the FMC Act; and</li> <li>➤ the ongoing monitoring of the above post licensing.</li> </ul>
O.	<p>Do you propose other additional standards of ethical behaviour that should apply to Financial Advice Providers?</p> <p>No</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> <p>Yes, and these standards should incorporate the role and scale considerations set out in points 109 and 110 respectively.</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> <p>Yes.</p>
R.	<p>Should there be a requirement for ongoing refresher training on ethics?</p> <p>Yes, as it seems inevitable that one-off or irregular initiatives are unlikely to be fully effective over longer timeframes.</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> <p>Yes, and we encourage the kind of discretion in these frameworks that is envisaged in our response to L above.</p>
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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> <p>Yes, although we suggest that this need not occur for every individual instance of financial advice provided directly by a FAP. In instances such as the provision of robo-advice, it should be sufficient to require the FAP to have ongoing monitoring and change management frameworks as a means to support the soundness of financial advice given in this way.</p>
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>In principle yes, although we query the use of the word “function” in this standalone sense. In our view this could be achieved via the broader Compliance function (likely more relevant to larger organisations) or through the nomination of individuals associated with the FAP such as independent directors or potentially external candidates whose sole responsibility is to be the recipient of such concerns.</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>In principle yes, although some care will be required in designing these processes to ensure their effectiveness. One possible approach would be to require the internal audit testing to consider the FAP’s ethical processes (refer L above) as the appropriate scope and to test for violations of the undertakings set out within these processes.</p>
W.	<p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p> <p>The internal audit obligation in V above is likely to be an example of a new compliance cost for most FAPs. One possible means to address this is to ensure firstly that the ethical processes can be “right-sized” for the FAP (i.e. to permit discretion on behalf of the FAP that reflects the scale and nature of operations) and then target the audit obligation at these processes (per V above). For this to work well in practice, it will be important for service providers such as auditors to receive clear guidance on the FMA’s expectations (to allow audit scope and procedures to be appropriately designed).</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 in principle, although we believe some recognition is required of the limits to the lengths FAPs can go to in verifying the ethical behaviour of other parties (outsource partners as one example). We consider that the FAP should be able to demonstrate that reasonable endeavours have been made to ensure that the standards of ethical behaviour have been met as if the FAP have carried out the whole advice process directly itself.</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> <p>We understand that across the industry, there is a sense that CS-7 (Ensuring a client can make an informed decision about using the adviser) may currently be leading to situations in which advisers are providing a new primary disclosure statement each time advice is given (both initial advice and subsequent instances). We support any moves which attempt to ensure that the level of disclosure is appropriate for the scale and nature of advice being provided.</p>
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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?  Yes. If the Code is to be designed to permit some discretion by FAPs in the tailoring of the advice process to reflect particular circumstances (and we support this approach), then it would be helpful to include such guidance material in the Code.
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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	We are supportive of the proposed approach to personalised suitability analysis. In respect of the guidance that could be included in the Code, we suggest that it would be useful to describe the factors which a FAP should consider when determining whether a personalised suitability analysis is required. Examples of these factors are likely to include those mentioned in the consultation paper, such as complexity of the recommendations and materiality of the client’s broader financial situation.
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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?
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.	What do you think are the disadvantages of this approach to general competence, knowledge and skills?
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>	
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>We believe that it is appropriate to recognise the distinction between product advice and financial planning, and to introduce higher order competence, knowledge and skill requirements where the consideration of many variables is required.</p>
UU.	<p>How should RFA's experience be recognised?</p> <p>We share the views both that there will be RFAs who have considerable experience that it would be valid to recognise, and also that such recognition is difficult to achieve in a repeatable, objective manner. As such we support the suggestion that exemption from Level 5 would be difficult to justify. We also support the proposed introduction of a transitional arrangement.</p>
VV.	<p>What do you think are the advantages of this approach to particular competence, knowledge, and skill?</p> <p>See XX below.</p>
WW.	<p>What do you think are the disadvantages of this approach to particular competence, knowledge, and skill?</p> <p>See XX below.</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>We believe that the focus on outcomes rather than inputs, and further on aggregate process outcomes, is likely to permit greater innovation in business models. However relative to a model under which all individuals are required to have achieved certain minimum educational standards, it may also present some challenges in understanding for non-expert customers.</p> <p>On a related note, we believe that it will be important for the wider industry to feel comfortable that those providers who are relying less on the individuals and more on the process environment are achieving the requisite aggregate outcome. It may be sufficient here that the FMA undertakes a review after an initial period and then makes available some high-level feedback and insights.</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>We note that the concept of a relevant degree is designed to address the higher-level thinking necessary to exercise appropriate discretion. We suggest that there are additional disciplines which are likely to deliver a similar outcome (Engineering or Law as examples), and are therefore of the view that the definition of a relevant degree could be set more broadly.</p>
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## 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>