

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 Andrew Kerr, Seneca Group 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 am Managing Partner of Seneca Group which thru Seneca Financial Services Ltd provides risk, investment/Kiwisaver & mortgage advice (3 Advisers + 3 support staff) <u>and</u> Seneca Insurance Brokers Ltd provides fire & general advice (5 Adviser/Brokers + 3 support staff). I am an AFA and have been in the industry 43 years having held exec roles in sales management, marketing & training in the risk industry as well as spending three years as Secretary/Treasurer/Board member of the Professional Advisers Association
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) Not applicable

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? I accept the 5 Principles outlined but am concerned that consumers will misinterpret the “good advice outcomes” phrase as meaning that the products/planning provided will ‘work’ for them in the context of a good <u>outcome</u> . Consideration may be given to utilising the term “good advice processes” as that is what the CWG appears to mean
B.	Are there any further principles that should be included, or existing principles that should be removed? Consideration should be given to separation in the Code of advice provided by a person and advice provided by other than a person (Robo-Advice). In my experience obtaining the best results for clients in terms of good advice is a multi-dimensional process involving hard & soft data reflecting the complexity of the situation &/or products being considered. I am concerned for the consumer’s sake that in trying to achieve a Code

	<p>that is agnostic in terms of delivery that they will consider all advice to be equal. This not dissimilar to issues that have arisen with the consumer not being able to differentiate between AFA, RFA & QFE advice channels.</p> <p>I accept that there is Product advice that lends itself to robo-advice or a combination of robo & personal advice. Perhaps the line needs to be differentiated in the CWG proposed Product Advice and Planning Advice</p>
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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 I agree with this requirement whole heartedly. It lies as a basic foundation requirement for an Advice profession</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 agree with minimum standards and agree with the CWG use of the IOSCO report as the Code standards.</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 see that the Code <u>may</u> allow a FAP (or their professional body) to set a <i>Code of Ethics</i> to a higher standard but would question the need to do so. This is especially so if that additional standard is not monitored or when breached gives rise to consequences that are not consistent with the Code itself. Where that occurs the consumer perception is of an industry serving itself and that the <i>Code of Ethics</i> was for marketing purposes only.</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 – absolutely and in line with the four elements outlined as Identify/Avoid/Manage/Communicate</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>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>Not submitted on</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>Not submitted on</p>
J.	<p>Do you agree that the Code should cover the various aspects of maintaining client confidentiality discussed in this paper?</p> <p>Agree.</p>
K.	<p>Are there other aspects of maintaining client confidentiality to consider?</p> <p>Not submitted on</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>They may do so but should not be required to. I believe the requirements of the Code should provide for this and it does not need to be restated as I have outlined in C, D, E & F above.</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>As per L above. They may have one but should not be required to.</p> <p>Not required if the ethical standards are in the Code itself</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.</p>

O.	Do you propose other additional standards of ethical behaviour that should apply to Financial Advice Providers? No.
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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. Should be part of Adviser CPT requirements
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.
R.	Should there be a requirement for ongoing refresher training on ethics? Yes.

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? Not submitted on.
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. Yes. As per current AFA Complaints Procedure
V.	Should this extend further into an internal audit obligation, having in place processes to systematically test for and detect violations of ethical behaviour? There are scale & compliance cost issues for small providers if this is imposed.

W.	<p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p> <p>Accordingly any Code requirement should be scaled appropriately in line with the CWG objectives of being practical across the various Adviser types/structures. A one to five person FAP does not have the resource typically to do so and external audit (e.g. as in AML/CFT cost towards \$1000 for a single AFA business).</p>
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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>Not submitted on.</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>The Code should in itself be a live reinforcement in itself.</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> <p>There is a serious concern that without the current Category 1 & Category 2 product classifications that simpler product transactions where the client advice expectation, daily transaction numbers and revenue earned (e.g. buying car insurance) are not high, that Adviser productivity & client satisfaction will cause a problem should compliance be onerous at transactional level. There is a need to explore making compliance requirements principled and proportional to the situation & context within the proposed Product Advice and Planning Advice concepts proposed by the CWG.</p> <p>The current Category 1 & Category 2 product classifications are not a solution as within fire & general and risk products there were complex products & situations that made their Cat 2 status incorrect in my view.</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>Principles of the AFA Code are practical for this purpose.</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> <p>Yes & Yes.</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> <p>Not submitted on.</p>
DD.	<p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p> <p>Absolutely. A single AFA audit for AML/CFT cost approx. \$1000 every 2 years and takes 5-10 hours preparation by 2 staff. Smaller Advice businesses need to be considered & compliance be scalable and appropriate</p>
EE.	<p>Are there any additional matters that should be addressed in the advice-giving standards? Those listed above? Others?</p> <p>Not submitted on</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> <p>Without suitably addressing the comments in ‘Z’ above there is a serious risk of driving Smaller businesses of Risk Advisers, F&G Brokerages & Mortgage Advisers into aggregation or vertically integrated distribution businesses with the inherent risks of ‘cookie cutter’ advice, single product provider distribution and ‘sales’ dressed as advice. This problem has been amply evidenced in the Australian Banks Commission of Inquiry. There is Adviser experience in NZ of similar behaviour in the churn of risk, mortgage & Kiwisaver product by banks</p>
GG.	<p>Should the Code include guidance material to help determine what needs to be considered when designing an advice process?</p> <p>Not submitted on.</p>
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>

	The advice process should address the differentiation between ethical & document 'replacement' in the client's interests and the 'churn' of product not in the client's interest.
II.	Should any of the key aspects that we have listed above be removed? If so, why? No.
JJ.	Are there any situations in which an advice process need not be followed? Subject to comments in 'Z' and 'FF' above re scalability

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? Clause 138 is key. In considering Clause 141 consideration should be given to single benefit product versus multi benefit products as a marker in assessing suitability
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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? Not submitted on
MM.	Would implementing these organisational conduct and client care standards create a particular compliance burden for your firm? If yes, please explain why. Yes. Subject to comments in 'Z' and 'FF' above re scalability. If what is anticipated relates to the current ABS for an AFA then that would be acceptable

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>Agree</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>Not submitted on</p>
PP.	<p>What do you think are the advantages of this approach to general competence, knowledge and skills?</p> <p>Not submitted on</p>
QQ.	<p>What do you think are the disadvantages of this approach to general competence, knowledge and skills?</p> <p>Not submitted on</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>There is a disadvantage if the situation outlined in ‘FF’ above occurred</p>
SS.	<p>What factors should we consider in determining whether to make the proposed unit standard a renewing obligation?</p> <p>Not submitted on</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>In general terms yes this is helpful as a start. There is a glaring gap with no agreed understanding or examples of what constitutes a ‘Planning Advice’ situation for other than the Investments. When does planning occur in a mortgage, fire & general or risk advice scenario?</p>

UU.	<p>How should RFA's experience be recognised?</p> <p>Anyone working for a prescribed period as an RFA could be deemed technically competent in their specific area of practise. That would allow experience to be recognised but only in conjunction with a suitable recognition of prior learning process which could involve client advice examples <u>and</u> a unit standard related to the legislative/regulatory requirements.</p>
VV.	<p>What do you think are the advantages of this approach to particular competence, knowledge, and skill?</p> <p>No additional comment</p>
WW.	<p>What do you think are the disadvantages of this approach to particular competence, knowledge, and skill?</p> <p>No additional comment</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>Provided the transition period for existing and new staff is practical then the overall standards proposed are in my view acceptable subject to jn comments in 'YY' below.</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>Provided the standards are to be applicable after a suitable time period 7-10 years then I do not object to holding a degree plus Level 5 discipline capability as the requirement.</p> <p>I do note though that there are no current suitable degree courses available in Australia or NZ for some of the areas & disciplines concerned. Tertiary providers would need time to develop such course offerings. This would impact on how any transition period might take.</p> <p>In my broad experience & interaction with degree holders across many professions I do not see their degrees as having prepared them adequately for 'financial advice' in the areas. The concept of a degree to demonstrate a level of thinking in conjunction with a Level 5 discipline capability is acceptable in the medium-longer term.</p> <p>The cross crediting/acceptability of Australian qualifications (e.g. AZIIF) should be addressed as being acceptable in the Code for meeting discipline capabilities.</p>

Other comments

<i>Share your views</i>	
ZZ.	Are there any other comments you would like to make to assist us in developing the Code? <i>No further comment</i>