

# 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.	<p>Please provide your name and (if relevant) the organisation you represent</p> <p>Colin James The Skills Organisation</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>The Skills Organisation is the Industry Training Organisation with Gazette coverage for Financial Services, and is the developer of the current Level 4, 5, and 6 New Zealand financial services qualifications.</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>

## 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>
B.	<p>Are there any further principles that should be included, or existing principles that should be removed?</p>

# Ethical behaviour

Act with honesty, fairness and integrity

## *Share your views*

C.	Do you agree with a requirement to act with honesty, fairness and integrity? If not, please set out your reasoning.
----	---

Keep the commitments you make to your client

D.	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.
E.	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?

Manage and fully disclose conflicts of interest

F.	Should the Code include a minimum standard on conflicts of interest in addition to the legislation?
----	---

Do no harm to the client or the profession

G.	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.
H.	Is an additional minimum standard on doing no harm to the client necessary? If so, what standard do you propose?

## Keep your client's data confidential

I.	In which situations, if any, should the retention, use or sharing of anonymised bulk customer data be subject to Code standards?
J.	Do you agree that the Code should cover the various aspects of maintaining client confidentiality discussed in this paper?
K.	Are there other aspects of maintaining client confidentiality to consider?

## Ethical processes in Financial Advice Provider entities

L.	Do you agree that the Code should require the Financial Advice Provider to document and maintain its "ethical processes"?
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?
N.	Should Financial Advice Providers also be subject to additional standards in respect of leadership and culture? If so, how should these be framed?
O.	Do you propose other additional standards of ethical behaviour that should apply to Financial Advice Providers?

## 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.
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.

R.	Should there be a requirement for ongoing refresher training on ethics?
----	---

## 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.
----	---

## 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?  Ultimately, the advice from a FAP derives from the competency, knowledge, and skills of an individual or group of individuals who establish the advice models. There should be 'ownership' of the outcome by this group.
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.
V.	Should this extend further into an internal audit obligation, having in place processes to systematically test for and detect violations of ethical behaviour?
W.	Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?

## Responsibility for the whole advice process

X.	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.
----	--

## Reinforcing good ethical behaviour

Y.	What principle or mechanism do you propose the Code could include to reinforce good ethical behaviour on a day-to-day basis?
----	--

## 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?

### 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).
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?
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? It is difficult to visualise a situation where advice process need not be followed, though in particular circumstances it may be appropriate that it is abbreviated in places.

### 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?
-----	---

### 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.	<p>Do you agree with our interpretation of the meaning of “competence, knowledge, and skills”? If not, why not?</p>
OO.	<p>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.</p> <p>An important point is that the systems and process of a FAP that lessen the need for advisers or representatives to have personal competency, are themselves developed by other individuals within the FAP.</p> <p>Consideration needs to be given to:</p> <ul style="list-style-type: none"> <li>• How the expertise of these individuals, in respect of developing the advice models, will be determined.</li> <li>• How the systems and processes themselves are assessed robustly for the purposes of any initial ‘<i>if not, why not</i>’ submission.</li> <li>• How processes to monitor documentation and reviews of effectiveness will be implemented.</li> </ul>
PP.	<p>What do you think are the advantages of this approach to general competence, knowledge and skills?</p>
QQ.	<p>What do you think are the disadvantages of this approach to general competence, knowledge and skills?</p> <p>We see a danger of the requirements of individuals becoming uncertain, and of individuals having less scope to move between employers and advance their careers.</p> <p>This is best communicated by example. A particular FAP has certain systems and processes, and the advisers or representatives therefore have specific competency requirements at an individual level. Taken together an appropriate advice service is delivered to the FAPs customers.</p> <p>Any of the individual advisers or representatives who wish to progress to a new organisation could easily face a situation where that new FAP’s systems and processes are less robust, requiring a greater level of personal competency. Either the individual or the FAP would need to find ways to manage this on a case by case basis.</p> <p>In our view this creates barriers to employment flexibility and the ability for individuals to progress their careers, compared to a competency framework in which all individuals were required to meet the same standard.</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>Having a common, base line, standard for knowledge of the regulatory framework contributes to early understanding of the new environment. It is important that this standard be a personal requirement so that each individual is fixed with core knowledge of the new framework, rather than relying on their FAP's systems and processes. Relying on the FAP's systems and processes allows individuals to mentally opt out from understanding the requirements of the framework.</p>
SS.	<p>What factors should we consider in determining whether to make the proposed unit standard a renewing obligation?</p> <p>When an individual achieves a unit standard they hold it forever, so there are some practical matters to be addressed in order for this to operate. Re-passing the assessment on a periodic basis will require efficient, affordable, and flexible delivery mechanisms.</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>A distinction such as the one proposed is appropriate.</p>
UU.	<p>How should RFA's experience be recognised?</p>
VV.	<p>What do you think are the advantages of this approach to particular competence, knowledge, and skill?</p>

<p>WW.</p>	<p>What do you think are the disadvantages of this approach to particular competence, knowledge, and skill?</p> <p>Skills believes the approach is sound, however there is a danger of FAPs, Financial Advisers, and Nominated Representatives ‘managing’ the way their services are packaged so as to fall into the lower level competency requirements associated with product advice. Use of the term Financial Planning may be problematic. That term is generally taken to mean <i>comprehensive</i> advice, which comparatively few advisers provide.</p> <p>As Skills submitted at Question QQ we are concerned that advisers and representatives may be required to have a range of personal competency levels, according to the quality of their FAPs systems and processes.</p> <p>Skills also submits that there needs to be a robust process by which a FAP’s <i>if not, why not</i> proposal is assessed against the expected quality of outcomes delivered by a Level 5 qualified individual. In addition there needs to be robust monitoring subsequently to ensure the FAP is in fact providing the systems and processes specified in its <i>if not, why not</i> analysis.</p>
<p>XX.</p>	<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>Skills agrees that Level 5 has widespread recognition as a robust, but achievable, competency standard, and is therefore an appropriate standard for those giving product advice.</p> <p>Skills also agrees that an enhanced <i>financial planning and advice</i> qualification at Level 6 is appropriate at the more advanced level. However, we submit that an individual needs to have technical competence as well as planning skills. This leads us to submit that any Level 7 degree should have some finance, commerce, economics or similar content (similar to the expression in the competency alternatives schedule of the AFA Code). It is likely that a level 6 financial planning and advice qualification would recommend entrants had technical competency at the level expressed in level 5, or equivalent knowledge and skills.</p>
<p>YY.</p>	<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>Skills believes the baselines are appropriate, subject to the comment above relating to technical competency being a prerequisite to planning and advice.</p>

## Other comments

<p><b>Share your views</b></p>	
<p>ZZ.</p>	<p>Are there any other comments you would like to make to assist us in developing the Code?</p>

