

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> | |
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| i. | <p>Please provide your name and (if relevant) the organisation you represent</p> <p>Chris Taylor, Executive Manager Regulatory Affairs and Compliance Suncorp New Zealand</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>Suncorp New Zealand represents the Suncorp Group’s New Zealand subsidiaries including Asteron Life Limited and Vero Insurance New Zealand Limited. Suncorp New Zealand insurers manufacture life, and fire and general insurance products for personal, commercial and corporate customers. A significant amount of Suncorp New Zealand’s products are distributed through independent intermediaries - both financial advisers and business partners.</p> <p>For more information about Suncorp New Zealand please visit www.suncorp.co.nz</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> | |
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| A. | <p>What comments do you have regarding the overarching theme of “good advice outcomes” and the underlying principles?</p> <p>We support the theme of “good advice outcomes” and the underlying principles. A “good advice outcome” means the advice is clear and understandable to the customer, not overly onerous for the financial adviser to deliver and supports healthy competition in the market. The word “outcome” could have connotations with product performance which is not the intention so we suggest that this be removed. An alternative could simply be “good financial advice”.</p> |
| B. | <p>Are there any further principles that should be included, or existing principles that should be removed?</p> <p>The principles should explicitly refer to providers of financial advice being suitably qualified as qualification requirements are a core part of the new regime.</p> |

Ethical behaviour

Act with honesty, fairness and integrity

| <i>Share your views</i> | |
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| 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

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| 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>No. Legislation already covers aspects such as misleading and deceptive conduct and fair dealing which would apply to less formal understandings, impressions or expectations. If the minimum standards for ethical behaviour go beyond the legislation, this could cause confusion in application of the law and potentially result in additional compliance costs without creating any new or additional benefit for clients.</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>FAPs should not be required to have their own code of ethics although they may choose to. The Code will have minimum standards for ethical behaviour so requiring FAPs to have their own code of ethics in addition to this may imply that the Code is lacking in some way and lead to duplication and confusion.</p> |

Manage and fully disclose conflicts of interest

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| F. | <p>Should the Code include a minimum standard on conflicts of interest in addition to the legislation?</p> <p>We consider it would be more effective if the Code elaborated on the practical application of the legislative requirement to give priority to client's interests rather than introducing a separate minimum standard on conflicts of interest. If there is to be one, then we consider the current Code Standard 5 in the AFA Code would be appropriate.</p> |
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Do no harm to the client or the profession

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| 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.</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. We agree that doing no harm to the client will be met by compliance with the legislation and the Code.</p> |

Keep your client's data confidential

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| 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 proposal that provided such data is anonymised the Code should not impose any standards on its use. Where it relates to an identifiable individual it will be governed by the Privacy Act so we do not consider a Code standard is required for this (see our comments in response to J below).</p> |
| J. | <p>Do you agree that the Code should cover the various aspects of maintaining client confidentiality discussed in this paper?</p> <p>No. The obligations are already in the Privacy Act and including them in the Code is unnecessary duplication and may lead to confusion (and unnecessary compliance costs) if there are inconsistencies. If it is considered that there are matters not currently in the Privacy Act that should be, we note that the Privacy Bill has been introduced to Parliament and there will be an opportunity to participate in consultations on this.</p> |
| K. | <p>Are there other aspects of maintaining client confidentiality to consider?</p> <p>No comments.</p> |

Ethical processes in Financial Advice Provider entities

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| L. | <p>Do you agree that the Code should require the Financial Advice Provider to document and maintain its "ethical processes"?</p> <p>We consider this would be more appropriate to be part of the FAP licensing process to ensure that there are appropriate policies and procedures to help achieve good advice outcomes for clients.</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>No. Please see our response to E above.</p> |

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| 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>This is covered in the proposed organisational standards for conduct and client care so it would be duplication.</p> |
| O. | <p>Do you propose other additional standards of ethical behaviour that should apply to Financial Advice Providers?</p> <p>No comments.</p> |

Ethics training

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| 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>No comments.</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>No comments.</p> |
| R. | <p>Should there be a requirement for ongoing refresher training on ethics?</p> <p>No comments.</p> |

Resolving ethical dilemmas

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| 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>We consider this is potentially too academic. We also question whether there would be any circumstances where ethical dilemmas would arise that are not covered by the legislation or the Code.</p> |
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Compliance functions

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| 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>We are not clear on what “soundness” means in this context or why it would specifically apply in the context of ethics.</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>No. The compliance costs for smaller FAPs would be excessive.</p> |

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| V. | Should this extend further into an internal audit obligation, having in place processes to systematically test for and detect violations of ethical behaviour? No. The compliance costs for smaller FAPs would be excessive. |
| W. | Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered? No comments. |

Responsibility for the whole advice process

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| 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. We consider it would be appropriate for any such requirement to apply where financial advice is being provided directly by the entity (eg, robo-advice). |
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Reinforcing good ethical behaviour

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| Y. | What principle or mechanism do you propose the Code could include to reinforce good ethical behaviour on a day-to-day basis? No comments. |
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Conduct and client care

Advice situations

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| Share your views | |
| Z. | Are there other delivery methods that should be considered when testing our thinking? No comments. |

Advice-giving standards

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| 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). No comments. |
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| 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>No comments.</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>No comments.</p> |
| DD. | <p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p> <p>FAPs will need to ensure that their Financial Advisers and Nominated Representatives comply with the client care standards. This will mean increased compliance costs for both large and small FAPs. If this means in practice that smaller FAPs would need a form of independent review of the advice-giving standards (due to not having in-house compliance or audit functions), then the cost of this would be onerous.</p> |
| EE. | <p>Are there any additional matters that should be addressed in the advice-giving standards? Those listed above? Others?</p> <p>No comments.</p> |

Advice process

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| FF. | <p>Do you think there are any other components that should be included in the design considerations of an advice process?</p> <p>No comments.</p> |
| GG. | <p>Should the Code include guidance material to help determine what needs to be considered when designing an advice process?</p> <p>No comments.</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> <p>We understand that there are situations where verbal advice may be appropriate and we agree that it should be recorded by the FAP. However, it would be helpful if there is guidance on when verbal advice alone is appropriate. We consider that verbal advice may only be appropriate when there are simple adjustments or small changes to an existing plan. Where advice involves any personalised suitability analysis, a written record of the verbal advice should be provided to the client. This will give the client the opportunity to work through and consider the advice – this is particularly important in complex situations with multiple products and/or strategies as a client may not remember all the options or recommendations from a verbal conversation only.</p> |
| II. | <p>Should any of the key aspects that we have listed above be removed? If so, why?</p> <p>No comments.</p> |

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| JJ. | <p>Are there any situations in which an advice process need not be followed?</p> <p>No comments.</p> |
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Personalised suitability

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| 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> <p>We support a proportionate and flexible suitability requirement and the use of fit-for-purpose advice processes that can be applied flexibly depending on the service being provided.</p> <p>Given the removal of the distinction between personalised and class advice, we consider that a personalised suitability analysis should not be required in certain circumstances. We agree with the example in paragraph 141 except we consider the second bullet point “they were satisfied that the individual client’s broader financial situation was not material to the advice” should be removed because this contradicts the concept of giving a suitability analysis on a generic level.</p> |
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Organisational standards

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| 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> <p>We appreciate that the FAP licensing requirements are not yet available. Based on the current requirements for a licence under the Financial Markets Conduct Act we consider there is potential that some of the proposed organisational standards may also be in the licensing requirements (eg, culture). We consider there should not be duplication between the licensing requirements and the Code as this will result in additional time and costs for FAPs with no additional benefit.</p> |
| 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> <p>No comments.</p> |

General competence, knowledge and skills

| <i>Share your views</i> | |
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| NN. | <p>Do you agree with our interpretation of the meaning of “competence, knowledge, and skills”? If not, why not?</p> <p>No comments.</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>No comments.</p> |
| PP. | <p>What do you think are the advantages of this approach to general competence, knowledge and skills?</p> <p>No comments.</p> |
| QQ. | <p>What do you think are the disadvantages of this approach to general competence, knowledge and skills?</p> <p>No comments.</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>No comments.</p> |
| SS. | <p>What factors should we consider in determining whether to make the proposed unit standard a renewing obligation?</p> <p>No comments.</p> |

Particular competence, knowledge and skills

| <i>Share your views</i> | |
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| 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>It is not clear where the line is between ‘product advice’ and ‘financial planning’ particularly in the context of insurance. We also consider that any financial advice provided could encompass elements of both. This distinction between the types of financial advice is imperative as it determines the qualification requirements so we welcome clarification from the CWG on this.</p> |

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| UU. | <p>How should RFA's experience be recognised?</p> <p>We would support RFAs having the option to demonstrate the equivalent of Level 5 rather than being required to complete the qualification. This could be demonstrated through a combination of written tests and practical assessments carried out by an external assessor approved by the Financial Markets Authority. The requirements for passing should be at the same knowledge and competence requirements as Level 5. If an RFA does not pass on all components then they should be re-assessed on the components he or she fails (after having undertaken any necessary education or training). The tests/assessments should be completed by the end of the two year transition period so the RFA would have demonstrated they are operating at a Level 5 equivalent when the new regime comes into full force (which is in line with the objective of the financial advice reform). This approach would mean that RFA does not need to do unnecessary educational courses (because he or she has demonstrated the required competency) and would minimise loss of productivity and costs for the RFA.</p> |
| VV. | <p>What do you think are the advantages of this approach to particular competence, knowledge, and skill?</p> <p>No comments.</p> |
| WW. | <p>What do you think are the disadvantages of this approach to particular competence, knowledge, and skill?</p> <p>No comments.</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>No comments.</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>Financial planning: The requirement to have a Bachelor's degree (at NZ Level 7 or higher) for financial planning may be too high if the financial planning only covers combinations of products such as insurance and/or mortgages. However, as noted in our response to TT above, it is not clear what the boundary is between 'product advice' and 'financial planning'.</p> <p>New financial advisers: There is a two year proposed safe harbour for existing financial advisers to achieve the new qualification requirements. However, there is no transition period for new financial advisers that enter the industry once the new regime comes into force. We recommend that consideration be given to a transition period for new financial advisers, similar to an apprentice type model. This would allow the prospective financial adviser to work while obtaining the necessary qualifications. During this period, it could be a requirement that any financial advice given must be reviewed and signed off by a qualified Financial Adviser or a FAP. This would also give the prospective financial adviser the opportunity to start building and maintaining a client base which is essential for his or her ongoing success. To not be able to work in the financial advice industry while obtaining the necessary qualifications means significant upfront costs (and potential loss of earnings) and may be a major barrier to entry for new financial advisers.</p> |

Other comments

Share your views

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| ZZ. | <p>Are there any other comments you would like to make to assist us in developing the Code?</p> <p>We fully support ensuring the availability and quality of all financial advice. We understand that it is not the intention of the financial advice reform to change the structure of the current business models. Given a large number of financial advisers operate as sole traders and small advice firms, it is important that there are not inadvertent barriers for them through overly onerous regulatory obligations. If there is, it could significantly change the structure of the advice network and potentially lead to consolidation of practices and create vertically integrated distribution models influenced by product providers - this would reduce competition and access to advice which is not in the best interests of the consumer.</p> |
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