
From: Tony Walker **S 9 (2) (a)** >
Sent: 16 April 2018 17:19
To: code secretariat
Subject: Submission to Code Working Group
Attachments: 1803 CWG roadshow TW comments.pdf

Good afternoon

I attended the recent CWG Roadshow in Auckland.

I have made comments in the pdf of the presentation which was sent – and attach the annotated file as my submission.

As a financial advice practice which has no product involvement (i.e. we receive no product remuneration and do not recommend specific financial products to clients), I believe we have a rather different view of the role of financial advice for the consumer – and a view which needs to be understood.

One reason we have taken this philosophical position is that we became tired of the “product battle” which inevitably occurs when clients purchase products. We wanted to focus on the “strategic advice”(big picture) issues, because most clients need this help first before purchasing a product. We believe it is impossible to provide independent financial advice and sell products. Yet this conflict is often poorly understood – or ignored (as the example in my submission shows).

Much of the so-called “compliance” burden which financial advisers are subjected to is focused around products and remuneration.

We would be happy to develop this discussion with the CWG if appropriate.

Certainly, our view is that much of the message in the Draft we have seen to date is focused on product advice, not on big picture advice.

Yours sincerely

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Code of Professional Conduct for Financial Advice Services

CODE WORKING GROUP – CONSULTATION – MARCH 2018



Minister

Consumers & financial advice industry

Appoint

Consult

CWG

Key concepts
High level approach
Assumptions

FSLAB modifies FMCA
and repeals FAA

Parliamentary
Select Committee

Disclosure obligations

FMA licensing

Code

regulated financial advice
given to retail clients



Legislative duties

include among others:

the **care, diligence, and skill** that a prudent person would exercise

if there is a conflict give **priority to client's interests** 

reasonable steps to ensure client
understands nature and scope of advice, including any **limitations**

comply with code standards of **ethical behaviour, conduct & client care**
and don't give advice unless you meet code standards of
competence, knowledge, and skill (including CPT requirements)

Summary of Comments on 1803 CWG roadshow FINAL

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Number: 1 Author: Tony.Walker Subject: Sticky Note Date: 16/04/2018 16:56:04

There is a fundamental problem here. Many advisers do not know (or do not recognise) when a conflict exists. Consider the following example. A consumer has \$1 million left to him in a will. He approaches an "investment adviser" who offers "financial planning advice". The investment adviser is remunerated by fees charged against an investment portfolio under his "advice". Truly independent financial advice cannot be provided by this adviser because there is a commercial interest to steer the consumer towards a managed portfolio investment solution.

Principles

taking into account Oct/Nov 2017 focus group feedback

QUALITY OF ADVICE

2. Client has basic knowledge, not expert understanding

3. Clear, concise, effective and principles-based



AVAILABILITY OF ADVICE

5. Ethics consistent for all situations and relevant to business, officers, advisers

4. Delivery agnostic

1.
Good
advice
outcome

Good advice outcome

the client is given advice

that meets a reasonable client's needs

in the particular client's circumstances

having regard to the nature and scope



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Number: 1 Author: Tony.Walker Subject: Sticky Note Date: 16/04/2018 16:57:28
What are "reasonable expectations"?

Number: 2 Author: Tony.Walker Subject: Sticky Note Date: 16/04/2018 16:58:28
A good advice outcome is where the client obtains a satisfactory answer to the question "what does this mean to me?"

Compliance: clarity and costs

reduce processes?



business size
(identical advice)

nature and
scope of advice



greater reliance on adviser
competence, knowledge, and skills
(and their hands-on involvement)


fewer variables assimilated to
achieve good advice outcome



act with

honesty, fairness and integrity

Advice-giving and ongoing organisational IOSCO framework

- Conflicts management 
- Harm
- Confidentiality (inc bulk data)

Routines to reinforce good behaviour
on a day-by-day basis?

Own code of ethics for each business?
(eg non legally-binding promises
made on its behalf)

Ethical arrangements in place

- Ethics training
- Resolving ethical dilemmas
- Compliance functions
- Whole advice process responsibility

Ethical behaviour

seeking views not definitive proposals

Number: 1 Author: Tony.Walker Subject: Sticky Note Date: 16/04/2018 17:00:07

It is impossible to provide independent advice if financial products are involved. But the problem is that most advisers do not understand that there is a conflict (see earlier example)

Conduct and client care

AFA Code (is it working ok?)

D. MINIMUM STANDARDS OF CLIENT CARE	
Standard 6	Behaving professionally
Standard 7	Ensuring retail clients can make informed decisions about using an AFA
Standard 8	Agreeing the nature and scope of service
Standard 9	Suitability of personalised services for retail clients
Standard 10	Ensuring retail clients can make informed decisions about personalised services
Standard 11	Complaints processes
Standard 12	Keeping information about personalised services for retail clients
Standard 13	Record retention



Suitability
not needed when
achieve good advice
outcome without it



Organisational standard
how support delivery of
good advice outcomes

Number: 1 Author: Tony.Walker Subject: Sticky Note Date: 16/04/2018 17:02:17

The complaints processes do not work well. Too few potential complainants will follow through. They don't know how to follow through, or they don't want to "put their head up above the parapet". This applies to Dispute Resolution, Fair Trading, Consumer Guarantee, Credit Contracts - and others.

General

competence, knowledge, and skill

Combined expertise


1st minimum standard:

Have expertise necessary to deliver good advice outcome.

Have processes, controls, and limitations to ensure combined expertise will deliver good advice outcome. Document them and review for effectiveness.

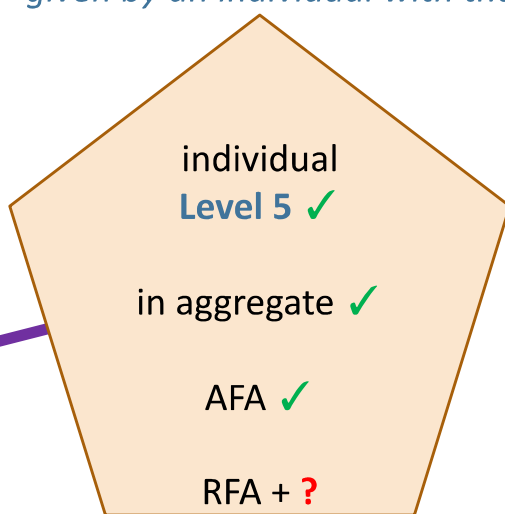
2nd minimum standard:

Have up-to-date and clear understanding of the general legal, Code and consumer protection obligations.

- Level 5 Unit Standards 26360 (or equivalent) in last 3 years, or
 - Have processes, controls, and limitations to ensure that the financial advice complies with those obligations.
- 

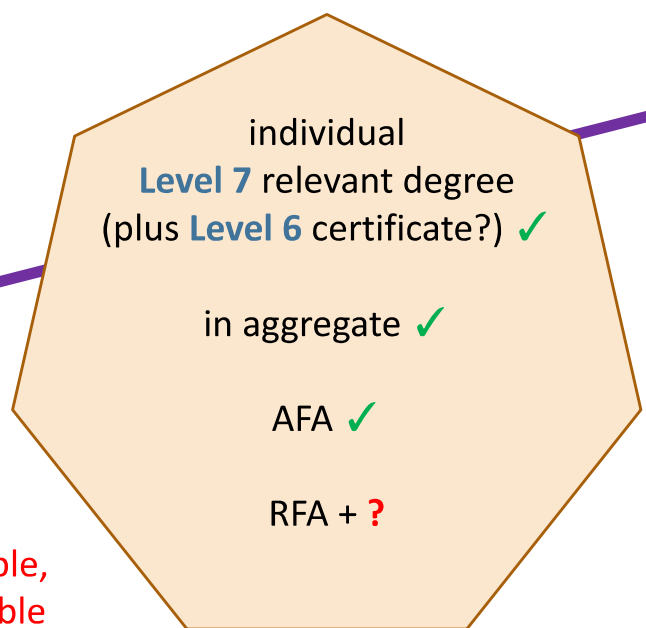
Particular competence, knowledge, and skill

*Reference point levels.
Focus on output not input:
client experience equivalent to that
given by an individual with that level.*



product advice

measurable,
quantifiable



financial planning 

Number: 1 Author: Tony.Walker Subject: Sticky Note Date: 16/04/2018 17:07:03

What is financial planning?

In my view there are three levels of financial advice:

1. Implementation advice
2. Product selection advice
3. Strategic financial advice

The last one of these is the "Big Picture" stuff which is often called "financial planning". But, in practice, consumers need #3 before #2 and then they get #1.

Unfortunately, most financial advisers do #2 or #1 without #3.

No wonder consumers have a poor view of the generic "financial adviser" label.

Timeline

provisional and subject to
Parliamentary Select
Committee timing

Date	Activity
Now	Consultation on key-concepts and high-level approach
Mid-2018	Consultation on wording of the draft Code
Mid to late 2018	Rework the draft Code based on feedback (more consultation?)
Late 2018	Submit the draft Code for Ministerial approval
Late 2018	Code of Professional Conduct approved and published
Approx 3 months after Code approved and published	FMA commences transitional licensing of FAPs
Approx 9 months after Code approved and published	New regime takes effect

How to be involved

Submissions by Monday 30 April 2018 at 5pm to
code.secretariat@mbie.govt.nz

You are welcome to comment only on those questions or sections that
are of interest to you

mbie.govt.nz/cwg

