

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.	Please provide your name and (if relevant) the organisation you represent Wayne Smith, CEO, TripleA Advisors Association.
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) The TripleA Advisors Association is a professional body / industry association for almost 250 independent financial advisers
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)

Principles for drafting the Code



A.	What comments do you have regarding the overarching theme of “good advice outcomes” and the underlying principles? The word “outcomes” needs to be removed from this general statement as it creates ambiguity and will therefore cause confusion for the consumer who is seeking wide ranging advice.
B.	Are there any further principles that should be included, or existing principles that should be removed? Principle 1 & 4 should be merged and reflect “good advice, at the time advice is given.”

Ethical behaviour

Act with honesty, fairness and integrity

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


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>No, they should not extend beyond strict legal obligations or what might be set as a generic standard in a clear industry wide code. It is flawed thinking that the system should devolve ethical standards down to the level of the firm. If that occurs it will not be able to be effectively monitored or policed.</p> <p>This requirement with disproportionately impact smaller adviser firms.</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>As above this is deeply flawed thinking. There should be a clear industry wide ethical standard set. The notion that the system might have a couple of thousand firm level ethical standard statements is a nonsense. It would be a pointless compliance costs again largely falling on smaller firms.</p> 

Manage and fully disclose conflicts of interest

F.	Should the Code include a minimum standard on conflicts of interest in addition to the legislation? Yes
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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>Partial agreement. The focus of this statement is on the “person” bringing the “profession” into disrepute but this misses the key point that financial advisers are not currently a recognised profession! If we were we would be setting our own educational standards and implementing our own professions code of conduct etc.</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 see comments above around “good advice outcomes”. The standard is to deliver good advice at the time advice is given. The term “no harm” will be a subjective notion that may emerge months or years after the advice was given.</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>
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>No. This will amount to nothing but pointless micromanagement. Simply set clear ethical standards for the industry to adhere to. Back this up with some clear whistleblowing standards. This is an issue that has been completely overlooked by the Code Working Party and the consultation document. It is particularly germane in a system where ideally you want employees to be empowered to go to regulators when they are being asked to behave unethically.</p> <p>Don’t descend into firm level detail which just represents large additional compliance costs that will fall disproportionately onto small adviser firms.</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>Comments above apply. Set a single clear industry standard.</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>Genuine leadership and high performing organisational cultures are driven by the soft (EQ) skills leaders have. The notion that it’s possible to set standards around soft skills is not realistic. Any attempt would be state micromanagement of business that will fail. The notion that central government can set standards around topics such as leadership and culture is a nonsense.</p> 
O.	<p>Do you propose other additional standards of ethical behaviour that should apply to Financial Advice Providers?</p> <p>Whistleblowing standards and protection measures are a glaring omission. We should learn from the Australian experience.</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>No. They should be required to adhere to an industry standard set for ethical behaviour by a code committee. That behaviour should be policed. Training on top of such adherence isn't the role of the state to interfere in. A person's ethics are integral to who they are. An assumption that training will improve an individual's behaviour is flawed. Each business will be different it's simply not pragmatic for the state to involve itself at this level.</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>As above the suggestion is micromanagement in the extreme. It won't be feasible or pragmatic for the state to involve itself at this level.</p> 
R.	<p>Should there be a requirement for ongoing refresher training on ethics?</p> <p>No because if someone is fundamentally unethical this isn't an issue training will fix. Conversely if someone is ethical in their behaviour they will strive to adhere to an industry ethical standard and if that is backed up with whistleblowing protection mechanisms they will be empowered to raise unethical behaviour with authorities by firms.</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>Comments above apply.</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>The Code of Conduct Consultation paper of March 2018 states in Point 140 the wish to minimise the risk of OVER-COMPLIANCE, unfortunately the above question may well create additional compliance costs for small independent advisers that would be disproportionate compared to large firms.</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>Comments above apply. Massive additional compliance costs to small adviser firms. Large entities, such as banks, already have internal audit and compliance functions so this proposal has little additional impact for them.</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>Comments above apply. Disproportionate compliance costs for small firms.</p> 
W.	<p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p> <p>You will see throughout his submission an icon like this </p> <p>This has been inserted at each question where, if implemented, there may well be <u>disproportionate compliance costs for small firms</u> vis-à-vis large firms such as banks.</p> <p>We need to reflect on the fundamental purpose of this legislative review which is to look after the interests of the consumer. The one body of advisers that do this are the truly independent small adviser firms. They will disappear if the net result of the review is significantly higher compliance costs for small business.</p> <p>There are 52 standard questions in this submission template. 20 of them (almost 40%) have this icon which hopefully will sheet home how disproportionate the proposals are when considered as a “set of proposals”.</p> <p>Add that sentiment to the consideration of all the following areas of compliance that an AFA currently performs: (1) Annual Common Reporting Standards, (2) Annual AML / CFT return, (3) FMA return (4) Bi-Annual AML/CFT compliance audit (5) Bi-annual FMA independent audit.</p> <p>Add to the current consultation document out around disclosure requirements and the yet unseen licensing requirements both of which will inevitably add further to compliance costs!!</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>Is this really pragmatic? Comments above apply.</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>Add whistleblowing mechanisms to safeguard employees who may be pressured to engage in unethical behaviour.</p>
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Conduct and client care

Advice situations


Z.	<p>Are there other delivery methods that should be considered when testing our thinking?</p> <p>No, if the focus is client-centric, why propose two categories of minimum standards, when one standard can cover all facets of financial advice, so that the client gets “Good Advice” to reasonably meet their circumstances. For example, there is not one building code for independent building firms and another second building code for franchised building firms!</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>Current Codes Standards 6, 7, 8, 9, 12, & 13 have worked very effectively in doing the right thing for the client. They just need to be applied to a single category of minimum standards.</p>
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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>The current wording in Code Standard 11 follows along similar processes that a person would make a complaint which triggered a potential claim on an adviser’s Professional Indemnity Insurance.</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>Through the current bi-annual independent, and ad hoc FMA, audits of AFA’s many of the above issues are being raised and then corrected by Advisers. So, when all advisers under the new Code, follow the existing AFA audit processes, no new client care standards need to be added to complicate the business of providing “Good Advice”.</p>
DD.	<p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p> <p>As commented on above the “net” result of what is being proposed in this consultation document is significantly higher compliance costs for small adviser firms. This will fall disproportionately on small firms which will advantage the major players such as banks. The net result of that over time is that the consumer will have less access to genuinely independent financial advice.</p> <p>The unintended policy consequence will be that consumers get poorer advice outcomes over the longer term.</p>
EE.	<p>Are there any additional matters that should be addressed in the advice-giving standards? Those listed above? Others?</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>No, please just keep things simple for the retail client to understand that the Code is only required to provide minimum standards of professional conduct when the retail client is receiving financial advice that accommodates a wide range of financial situations.</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, because how is the Code going to be able to cover all the wide range of advice situations in an advice process.</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>

	Making the Code simple and workable by all advisers so that the availability and quality of financial advice is there for people seeking advice to meet their wide-ranging needs.
II.	Should any of the key aspects that we have listed above be removed? If so, why? Refer to our answers in FF and GG above.
JJ.	Are there any situations in which an advice process need not be followed? Yes, when the advice is not personalised for a client but is that of a general nature as one reads in the local media Business pages or social media or on a website.

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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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. Increased compliance costs for small firms. 

General competence, knowledge and skills

NN.	Do you agree with our interpretation of the meaning of “competence, knowledge, and skills”? If not, why not?
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>We think the notion of combined or aggregate expertise is deeply flawed. An analogy would be a hospital saying they only need 1 or 2 doctors in order to say they have the “combined expertise” to operate. This is clearly an idea that advantages larger players.</p> <p>There should be a single industry standard base qualification that applies to all people giving financial advice. No exceptions whatsoever otherwise the only outcome will be that the system will be “gamed” and long-term we will end up with a situation the Australians are now unearthing.</p> <p>It would be impossible to police the notion of “combine expertise”. There would just be a sea of subjective debate as to what this might be at the firm level. No regulator would have the resources to be able to police such a notion.</p>
PP.	<p>What do you think are the advantages of this approach to general competence, knowledge and skills?</p> <p>There are no advantages to the notion of combined or aggregate expertise. The idea reflects the make up of the Code Working party. The policy outcome will be a reduction of quality advice to consumers and a reduction in outcomes for consumers.</p>
QQ.	<p>What do you think are the disadvantages of this approach to general competence, knowledge and skills?</p> <p>Back at question G the submission template talks about the “financial advice profession”. Can the Code Working Party or anyone else for that matter demonstrate any other “profession” where the notion of “combined or aggregate expertise” applies at a firm or any other level for that matter?</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>As advised in our response to question DD the result would be the unintended policy consequence that consumers will end up getting “sales” dressed up as “advice” and poorer outcomes over the longer term. Large firms will have a marketing field day telling consumers how wonderful their “combined expertise” is with the truth buried in the fine print!!</p>
SS.	What factors should we consider in determining whether to make the proposed unit standard a renewing obligation?

Particular competence, knowledge and skills

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>This question goes to the heart of feedback that has been given since the outset of this review process. The terms used “product advice” simply equates to “sales advice” and we should be honest about that fact. A nominated representative can undertake this task as long as the customer knows they are not getting financial advice.</p> <p>“Financial planning” equates to “financial advice”. This is a role undertaken by a qualified financial adviser (excluding robo advice). There should be an industry standard base qualification for all people providing financial advice. Additional specialist qualifications as required.</p> <p>Again, the hospital analogy is apt. Everyone practicing medicine is a qualified doctor. Those that want to go on and specialise further in their careers i.e. become a surgeon do so with further specialist training.</p> <p>Currently there are no advantages to the approach identified except for large entities such as banks who will be able to game the notion of combined expertise and a regulator that will have no effective ability to police the situation.</p> <p>The losers ultimately will be the mum-and-dad consumers.</p>
UU.	<p>How should RFA’s experience be recognised?</p> <p>Over 70% of our RFA’s members would have over 17 years’ experience, during which time have been performing many parts of a Financial Planning process and recommending ‘fit for purpose’ insurance, and/or Mortgage product solutions to meet their client’s needs. Possibly the CWG should look at some grandfathering option as a transition mechanism.</p>
VV.	<p>What do you think are the advantages of this approach to particular competence, knowledge, and skill?</p> <p>Not sure if any advantages have been articulated in the consultation document. Certainly, no evidence for any advantages has been provided.</p>
WW.	<p>What do you think are the disadvantages of this approach to particular competence, knowledge, and skill?</p> <p>Comments above apply.</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>The proposed standards will simply end up circumventing the legislative intent.</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>Higher education standards would increase the barriers to new entrants into the industry which would result in pushing advisers to offer product only advice (i.e. sales) rather than the full financial planning services that the legislation is leaning towards, so that New Zealanders have access to “Good Advice”. Current Code resulted in <1800 AFAs who could give full financial planning and investment advice to New Zealanders and 18,200 product advisers.</p>
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Other comments

ZZ.	<p>Are there any other comments you would like to make to assist us in developing the Code?</p> <p>No, but to reiterate this submission’s main points the consultation document.</p> <ol style="list-style-type: none"> 1. Injects confusion from the outset with the proposed use of the word “outcome”. 2. Should establish a single code applicable for all people (excluding robo advice) providing financial advice. 3. Should establish a single, base qualification for all people providing financial advice. 4. Should not establish a notion of “aggregate advice”. 5. Given the Australian experience should move to plug the glaring omission of no whistleblowing mechanisms being suggested anywhere currently in the proposals. 6. Give much better consideration to the large quantum of increased compliance costs that will fall on small, independent adviser businesses if the current proposals flow through to legislation / regulation.