



9 November 2018

Financial Advice Code Working Group
Ministry of Business, Innovation and Employment
15 Stout St
Wellington 6011

Via e-mail: code.secretariat@mbie.govt.nz

Dear Sir / Madam

Draft Code of Conduct for Financial Advice Services

Thank you for the opportunity to comment on the draft and provide feedback.

Chartered Accountants Australia and New Zealand (CA ANZ) supports the rationale for the development of the Code – being, to ensure consumers can access the financial advice they need; improve the quality of financial advice; avoid any undue compliance costs, complexity or barriers to innovation; and ensure access to redress.

Members of CA ANZ work in a wide range of roles in the financial services industry, as individual advisers as well as in small businesses, small and medium-sized accounting practices, the corporate sector, major financial institutions and financial product manufacturers. While many of our members will fall within the exemption for advice provided in the course of an accounting business, the Code will be important for our members who are financial advisers.

Overall, the draft Code seems logical and clear.

Response to feedback

The draft sets out the areas where the Financial Advice Code Working Group (CWG) has responded to feedback from earlier submissions. Overall, the responses appear reasonable and we commend the Code Working Group for responding to feedback.

In particular we would like to thank the CWG for responding to the points we made in our earlier submission regarding

- The meaning of “good advice outcomes”;
- Prescribing principles rather than process;
- Keeping compliance costs reasonable; and
- Transition arrangements.

Compliance costs

Compliance burdens associated with licensing costs, disclosure requirements and other administrative matters will reduce productivity and may impede the delivery of high quality, affordable financial advice to consumers.

As we have previously submitted, it is important to achieve a balance between necessary requirements and compliance costs. While the draft Code will impose additional costs on financial advisers, we believe that the Code Working Group has worked hard to achieve that balance.

Should you have any questions about our submission or wish to discuss it, please contact Jolayne Trim via email at

Yours sincerely

s 9(2)(a)

s 9(2)(a)

John Cuthbertson CA
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Appendix one

Responses to specific questions posed in the consultation document.

[Standard 1] Treat clients fairly and act in their interests

1. Overall, do you agree or disagree with this standard and proposed commentary?

Agree

2. Comments

We believe that this standard is more appropriate than that previously drafted, which referred to “good advice outcomes”. This standard is a better reflection of what financial advisers should try to achieve. We would like to thank the Code Working Group for responding to feedback.

[Standard 2] Act with integrity

3. Overall, do you agree or disagree with this standard and proposed commentary?

Agree

4. Comments

As we have previously submitted, our members are required to act with integrity.

The NZICA Code of Ethics 2017 paragraph 100.5 provides that members must comply with the fundamental principle of Integrity – to be straightforward and honest in all professional and business relationships. Paragraph 110.1 provides that Integrity also implies fair dealing and truthfulness.

The draft Code states that acting with integrity includes being honest and consistently doing the right thing. We agree with this description.

[Standard 3] Manage conflicts of interests

5. Overall, do you agree or disagree with this standard and proposed commentary?

Agree

6. Comments

Again, CA ANZ members are required to manage conflicts of interest appropriately.

The NZICA Code of Ethics 2017 paragraph 100.5 requires that members must comply with the fundamental principle of Objectivity – to not allow bias, conflict or undue influence of others to override professional or business judgements. Conflicts of interest are covered in further detail in section 220 and 280 for members in public practice and section 310 for members in business, including examples of where such conflicts might arise and actions that should be taken.

We have previously submitted that the standard be broadened to encompass the principal of objectivity, and we continue to believe that this would be beneficial for both financial advisers and their customers, and would be in the public interest.

[Standard 4] Take reasonable steps to ensure that the client understands the financial advice

7. Overall, do you agree or disagree with this standard and proposed commentary?

Agree

8. Comments

We believe that the commentary to this standard should also refer to a client's individual situation or circumstances. Some clients may need more assistance than others and this is not reflected in the commentary at present. An example could be helpful here – for example, a person with very low financial literacy may need more explanation than someone who is familiar with the business environment and with financial products. This is different from the requirements under suitability (below).

[Standard 5] Give financial advice that is suitable for the client

9. Overall, do you agree or disagree with this standard and proposed commentary?

Agree

10. Comments

None

[Standard 6] Protect client information

11. Overall, do you agree or disagree with this standard and proposed commentary?

Agree

12. Comments

CA ANZ members already have confidentiality requirements. Confidentiality is one of the fundamental principles that a professional accountant must comply with.

New Zealand members are subject to the NZICA Code of Ethics 2017. Paragraph 100.5 requires that members respect the confidentiality of information acquired as a result of professional and business relationships. Information should not be disclosed to third parties without proper and specific authority, unless there is a legal or professional right or duty to disclose. Section 140 of the NZICA Code explains in further detail the circumstances in which the principle of confidentiality applies.

Confidentiality is also addressed in NZICA Engagement Standard 2009 – Financial Advisory Engagements paragraph 30 and A19 to 21.

One issue that always arises with confidentiality is whether information may be provided in an aggregated or anonymised form. The draft standard is clear that the information may not be used by a third party for another purpose in an anonymised form. We agree with this.

[Standard 7] Resolve complaints

13. Overall, do you agree or disagree with this standard and proposed commentary?

Agree

14. Comments

None

[Standard 8] Not bring the financial advice industry into disrepute

15. Overall, do you agree or disagree with this standard and proposed commentary?

Agree

16. Comments

The integrity of financial advisers depends on the integrity of all financial advisers. We agree with this requirement and believe it is in the public interest.

In our previous submission, we recommended that the Code include a requirement for advisers to act professionally. This has been encompassed in standards 1, 2 and 3.

[Standard 9] Have general competence, knowledge and skill

17. Overall, do you agree or disagree with this standard and proposed commentary?

Agree

18. Comments

We have previously submitted that Financial Advice Providers and any Financial Adviser or Nominated Representative involved in giving the financial advice have an up to date and clear understanding of all current regulatory obligations, in addition to legal and Code requirements.

We believe that for individual Financial Advisers or Nominated Representatives to obtain a standard of general competence, knowledge and skill at the current Level 5 Unit Standard would be the minimum level of acceptable qualification for providing financial advice.

The draft is not prescriptive and has been drafted in a way that suggests current Financial Advisers would not need to obtain a Level 5 qualification, but that future Financial Advisers should do so. In our view, given that the standard is a minimum, we believe all Financial Advisers should be given any training and support needed to obtain the qualification if they wish to do so.

The competence, knowledge and skills requirements of our members in New Zealand are addressed in NZICA Code of Ethics 2017 paragraph 100.5 and section 130 on Professional Competence and Due Care. The aspects relating to professional competence require members to maintain professional knowledge and skill at the level required to ensure that a client receives competent professional services based on current developments in practice, legislation and techniques. Section 330 of the NZICA Code also provides further specific requirements for our members in business on acting with sufficient expertise.

From an enforcement perspective, in general we understand that most cases would come under the failure to act with reasonable care, not for a lack of competence. A person could generally have the necessary competence but in a particular instance may not have carried out the engagement with due care. We have previously submitted that both the general and particular standards of “competence, knowledge and skill” be expanded to include due care and diligence and we continue to believe that this would be in the public interest.

[Standard 10] Keep competence, knowledge and skill up to date

19. Overall, do you agree or disagree with this standard and proposed commentary?

Agree

20. Comments

CA ANZ members have ongoing Continuing Professional Development (CPD) requirements that they must meet as part of their membership

[Standard 11] Have particular competence, knowledge and skill for designing an investment plan

21. Overall, do you agree or disagree with this standard and proposed commentary?

Agree

22. Comments

We note the comments in the Consultation Draft that this standard is an interim standard. As we have previously submitted, we believe that the CWG should give consideration to requiring a tertiary degree qualification in business, finance, law or accounting. We would be happy to consult further with you on this point.

[Standard 12] Have particular competence, knowledge and skill for other types of financial advice

23. Overall, do you agree or disagree with this standard and proposed commentary?

Agree

24. Comments

Financial advisers should have the expertise for the areas in which they are giving advice.

Members of CA ANZ may only undertake significant tasks for which they have (or can obtain) sufficient training or experience. If the person does not have the expertise, time, resources or information to undertake the work, the CA ANZ Code of Ethics requires that safeguards be applied such as obtaining additional advice or training, obtaining assistance from someone with the necessary expertise, or consulting with experts.

General questions

25. Is there anything missing from the draft Code?

No

26. If you answered yes, what is missing?

Not applicable

27. Do you have any feedback on the examples, or suggestions on other examples that should be included in the draft Code?

Nothing beyond where we have already commented above.

28. Is there anything else you want to say?

No

Final questions – tell us about yourself

29. What is your name?

John Cuthbertson / Jolayne Trim

30. Your role or professional title

New Zealand Tax and Financial Services Leader / Senior Tax Advocate

31. Is this an individual submission or on behalf of an organisation?

This submission is on behalf of an organisation.

32. If you give financial advice, are you an AFA, RAF QFE adviser or other

Not applicable

33. What types of financial advice do you or your organisation give?

Not applicable

34. What [is] your organisation's name?

Chartered Accountants Australia and New Zealand.

35. What type of organisation is it?

Member body for Chartered Accountants.

36. Is your organisation's size small, medium or large?

Large (50+ staff)

37. If there are other things we should know about you or your business that would provide context to your answers, please provide details below.

Chartered Accountants Australia and New Zealand is a professional body comprised of over 117,000 diverse, talented and financially astute members who utilise their skills every day to make a difference for businesses the world over.

Members are known for their professional integrity, principled judgment, financial discipline and a forward looking approach to business which contributes to the prosperity of our nations.

We focus on the education and lifelong learning of our members, and engage in advocacy and thought leadership in areas of public interest that impact the economy and domestic and international markets.

We are a member of the International Federation of Accountants, and are connected globally through the 800,000-strong Global Accounting Alliance and Chartered Accountants Worldwide which brings together leading Institutes in Australia, England and Wales, Ireland, New Zealand, Scotland and South Africa to support and promote over 320,000 Chartered Accountants in more than 180 countries.

We also have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents 788,000 current and next generation professional accountants across 181 countries and is one of the largest accounting alliances in the world providing a full range of accounting qualifications to students and business.

38. 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.

Our submission is not confidential, apart from our personal contact details. Our names are not confidential.

39. Please provide your contact details

s 9(2)(a)