

# 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.	Please provide your name and (if relevant) the organisation you represent Guy Dobson, Founder Director, Dynamique Ltd (NZ) and Dynamique Associates Ltd (UK) Wholesale market research, CPD, workshops, consulting and fund performance measurement software and risk analytics. Background in financial services in UK and more recently NZ covering fund management, global investor services, private banking, stockbroker, financial authoring, guest speaker plus. AML CFT and Technical Financial CPD
ii.	Please provide your contact details <b>S 9 (2) (a)</b>
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) <a href="http://www.dynamique.co.nz">www.dynamique.co.nz</a>
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) No restriction on circulation or usage disclosures

## Principles for drafting the Code

<i>Share your views</i>	
A.	What comments do you have regarding the overarching theme of “good advice outcomes” and the underlying principles? Generally in agreement although measuring good advice outcomes can be challenging as it comes down to judgement.
B.	Are there any further principles that should be included, or existing principles that should be removed? Fine with principles as they stand at this stage. The Principle of appropriate compensation and financial incentives should be “worked in” somehow.

# Ethical behaviour

Act with honesty, fairness and integrity

<i>Share your views</i>	
C.	Do you agree with a requirement to act with honesty, fairness and integrity? If not, please set out your reasoning. <b>Agree – this is standard “101” stuff as was considered an expected “given” for all those who joined banks in several decades ago. The Big Bang in UK capital markets and removal of US Glass Steagall heralded the era as it is in some firms today a “devil may care” attitude towards customer outcomes sacrificed on the altar of the institutional imperative and unwarranted level of bonuses.</b>

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. <b>This comes down to corporate culture as evidenced by Royal Commission in Australia and no doubt in NZ as senior boards are responsible for ensuring a high standard of ethics through mission statements acceptable behaviour. Performance standards KPIs could be applied throughout firm. They must be agreed by all as workable and deliverable.</b>
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? <b>“Do unto others as you would have done to you”- this is a good opening position on which to build</b>

Manage and fully disclose conflicts of interest

F.	Should the Code include a minimum standard on conflicts of interest in addition to the legislation? <b>No: legislation should suffice.</b>
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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. <b>Agree absolutely- whether you are a lawyer, accountant, or capital market professional no firm can have a “wrecking ball” on board vis-à-vis reputational risk.</b>
H.	Is an additional minimum standard on doing no harm to the client necessary? If so, what standard do you propose? <b>No : covered by FMA and Code already</b>

## 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? <b>Customers must be advised that their data will be aggregated anonymously and that safeguards are in place to protect customer from errors of data harvesting disclosure: a la Cambridge Analytica and Facebook.</b>
J.	Do you agree that the Code should cover the various aspects of maintaining client confidentiality discussed in this paper? <b>YES</b>
K.	Are there other aspects of maintaining client confidentiality to consider? <b>Comments as above need to be taken into account along with existing Privacy Laws and updated Privacy Acts going through NZ Parliament.</b>

## 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"? <b>This can only be done in general terms with plenty of situational examples as they occur. A databank of examples can be set up and kept up-to-date to help with ethical dilemmas.</b>
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? <b>Corporate ethics should be stated on corporate website and updated with the evolving nature of firm's business, products, services and client types.</b>
N.	Should Financial Advice Providers also be subject to additional standards in respect of leadership and culture? If so, how should these be framed? <b>Not necessary.</b>
O.	Do you propose other additional standards of ethical behaviour that should apply to Financial Advice Providers? <b>Behave to the highest standards looking after your clients interests first at all times.</b>

## 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. <b>Ethics training comes down to common sense and balance between client interests, profit /institutional imperative. As part of an FAP employment contracts an ethics clause should be always there.</b>
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. <b>Good ethics should be a "skewer" that goes from the Board all the way down to the lowliest of employees and contract works / temps.</b>

R.	Should there be a requirement for ongoing refresher training on ethics? <b>There should be a 6 monthly ethics refresher and update for all employees, directors etc which takes into account changing dynamics of the business. This could be done as an on-line CPD, half-day classroom or nutshell start of day 1 hour sessions.</b>
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## 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. <b>As commented previously – database covering dilemma issues will be helpful but invariably no two events are the same and precedent can only give guidance.</b>
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## 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? <b>Ideally yes: but, pragmatically, who would sign it off? Would all financial advice case notes resulting in an investment placement for external or in-house products have to signed-off by a director? What happens if offices are scattered, delays occurring in sign-off with volatile markets etc...</b>
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. <b>YES - an anonymous data capture facility needs to be maintained by compliance so any observations considered detrimental to the firm or client can be recorded, investigated and reported back to board director responsible and line or business unit manager for action and comment.</b>
V.	Should this extend further into an internal audit obligation, having in place processes to systematically test for and detect violations of ethical behaviour? <b>Covered off by above comment. Random checks should be carried out by internal audit to check that agreed process of remediation has been followed and acted upon.</b>
W.	Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered? <b>Can't comment specifically – but would have been covered off under existing compliance budget. Data would be collected under usual senior management systems and controls.</b>

## 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. <b>Yes agreed.</b>
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## 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? <b>A client should never been disadvantaged or lose money as a result of a failure in process, human error, negligence, incompetence or fraud.</b>
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## 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? <b>NO: all main ones covered off</b>

### Advice-giving standards (*NO COMMENTS FOR THIS SECTION*)

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? <b>This would be helpful as all firms should follow “due process” whether robo/AI or human. Structures tend to mitigate errors and omissions.</b>
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?

### 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.



## General competence, knowledge and skills

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

## Particular competence, knowledge and skills

<i>Share your views</i>	
TT.	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?
UU.	How should RFA’s experience be recognised?
VV.	What do you think are the advantages of this approach to particular competence, knowledge, and skill?
WW.	What do you think are the disadvantages of this approach to particular competence, knowledge, and skill?
XX.	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)?
YY.	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?

## Other comments

<i>Share your views</i>	
ZZ.	Are there any other comments you would like to make to assist us in developing the Code? The Code must be too prescriptive so as to do away with advisers thinking creatively about client para-planning and investment solutions. New Zealand financial product range is narrow compared with other markets. Advisers need to be encouraged to “think outside the square” as the market deserves better. Risk is a driver of investment returns which can be applied within clients’ risk appetite and delivered by a strict and robust due process backed up by strong ethics and cultural integrity. Computerised advice can create a “rush to the average” and must only be applied with backup and oversight of an appropriate finance professional.