

**Submission to the Code Working Group on the Code of Professional Conduct for
Financial Advice Services**

Generate Investment Management Limited

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Introduction

This submission has been prepared by Generate Investment Management Limited (“Generate”) in response to the Code of Professional Conduct for Financial Advice Services (“the Code”).

Generate is the manager of the Generate KiwiSaver Scheme. The Generate KiwiSaver Scheme is distributed through both QFE Nominated Representatives and third-party AFA and RFA advisers.

Generate welcomes the opportunity to submit on the Code and acknowledges the industry engagement and roadshows undertaken by the Code Working Group.

While we recommend some clarity in certain areas (detailed below), we believe that the creation of a code that applies to all involved in providing financial advice is a positive step.

Our submission is not only from the point of view of Generate but also from the point of view of third-party advisers providing advice on KiwiSaver. Those third-party advisers will be both future Financial Advice Providers and Financial Advisers.

Key Submission Point

Our key submission point is:

The Code should promote the availability and accessibility of advice by providing flexibility to demonstrate specific knowledge, competence and skill. We believe that particular knowledge, competence and skill can be achieved with regard to the financial adviser’s ability. To achieve the legislative objectives, it is necessary to ensure thousands of Financial Advisers do not exit the industry or unnecessarily limit the scope of their advice as a result of burdensome compliance costs. Where a Financial Adviser can demonstrate competency by reference to general advice principles and has received accreditation of their knowledge for a specific product, we believe a good advice outcome can be achieved.

Detailed submissions in response to questions asked in the Consultation Paper

A.	What comments do you have regarding the overarching theme of “good advice outcomes” and the underlying principles?
B.	Are there any further principles that should be included, or existing principles that should be removed

We are generally supportive of the theme and principle-based approach to drafting the Code. Applying a client-centric lens is also likely to mean advisers obligations are assessed in light of the potential harm caused to clients which is expected to promote the availability and accessibility of advice.

We understand a ‘good advice outcome’ will have been achieved when 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. We encourage the Code Working Group to consider ways to emphasise that this definition relates to the advice given and is disconnected from actual product performance.

We note the duty to give priority to a client's best interest contained in the Bill. We do not support the inclusion of an enforceable duty in the Code regarding clients interests first. Rather, we recommend a "spirit of the code" provision would be more useful for interpretation.

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

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.
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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?

We do not consider minimum standards for ethical behaviour should include meeting less formal understandings, impressions or expectations.

If incorporated into the ethical minimum standards, it may be challenging to identify situations where an unequivocal informal commitment has been made by an adviser. The potential consequences for failing to meet a commitment, such as an impression, may lead to additional paperwork being given to a client as a conservative approach to iron out any potential misunderstanding. Such additional paperwork may in turn restrict the availability and accessibility of advice.

If a client suffers harm as a result of a failure by an adviser to deliver on their promise, other mechanisms may be available to address the conduct of the adviser and provide remedy to the client. Depending on the nature of the failure, the consequences could be addressed by the proposed statutory duties or standards relating to client care.

We encourage the Code Working Group to articulate ethical standards by considering decision making and conduct as a whole. Imposing an ethical obligation to deliver on what has been promised may create an ethical dilemma. This is in situations where an adviser cannot deliver on what has been informally agreed due to another competing ethical obligation that may not have been known to the adviser at the time. In this situation, we consider the management of this ethical dilemma is likely to best reflect the adviser's ethics in keeping their commitments.

F.	Should the Code include a minimum standard on conflicts management? Should it focus on any particular situations?
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Yes. We are supportive of the inclusion of a code standard similar to Code Standard 3 of the current Code of Professional Conduct for Authorised Financial Advisers. Over time priority, concerns and potential for harm caused by conflicts of interest can evolve. Addressing specific conflict situations is less likely to be flexible or maintain perspective in the long run as new situations evolve.

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.
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H.	Is an additional minimum standard on doing no harm to the client necessary? If so, what standard do you propose?
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Financial advice can involve collecting a client's personal information and advising on long term financial products that may involve risk. The success of the financial advice industry depends on trust. We are supportive of a code standard that imposes an obligation not to bring the financial advice profession into disrepute.

We also agree with the Code Working Group's current thinking that doing no harm to a client will be met by compliance with other elements of the regime.

I.	In which situations, if any, should the retention, use or sharing of anonymised bulk customer data be subject to Code standards.
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We agree with the Code Working Group's current thinking that the use of anonymised bulk customer data should not be subject to specific Code Standards.

J.	Do you agree that the Code should cover the various aspects of maintaining client confidentiality discussed in this paper?
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K.	Are there any compliance costs or other aspects of maintaining client confidentiality to consider?
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We understand the need to ensure client confidentiality is maintained. The aspects listed in the Consultation Paper could be achieved by compliance with a code standard on conflicts of interest, broader ethical standards and principles of Privacy Law. The proposal to include a code standard that is framed generally could appear to impose further obligations in relation to client confidentiality which in turn could carry unintended compliance costs.

L.	Do you agree that the Code should require the Financial Advice Provider to document and maintain its “ethical processes”?
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?
N.	Should Financial Advice Providers also be subject to additional standards in respect of leadership and culture? If so, how should these be framed?
O.	Do you propose other additional standards of ethical behaviour that should apply to Financial Advice Providers?

We consider there is benefit for the Code to establish standards of ethical behaviour which would be useful to the industry. Irrespective of the scale of the adviser firm, this industry baseline may establish what a good advice outcome for clients looks like in an ethical context. It also sets the expectation for decision making and behaviour where no explicit rules apply.

There is unlikely to be additional benefit in firms creating its own code of ethics. However, documenting and maintaining its “ethical processes” may be a useful mechanism for Financial Advice Providers to obtain assurance over ethical decision making and conduct. Financial Advice Providers may choose to establish their own code of ethics over and above the standards set in the Code. We do not consider this should be required.

A Financial Advice Provider may choose to establish its own code of ethics (to at least the standard of the Code) and monitor and assess its adherence to its code of ethics and its effectiveness. In these situations where the Financial Advice Provider can evidence its actions, we recommend the Code Working Group consider whether the Financial Advice Provider could receive the benefit of a safe harbour provision that the Provider itself has complied with its ethical obligations relating to leadership and culture.

However, the Code of Ethics need not be publicly available. The objective of ensuring people involved in giving financial advice are supported to make good ethical decisions under pressure could be achieved by other means. This includes specific provisions relating to client care in client agreements or a Financial Advice Provider’s own monitoring processes. It is important that the Financial Advice Provider has the flexibility to develop processes that are fit for purpose.

P.	Do you agree that Financial Advice Providers should be required to meet standards relating to ethics training? If not, please state your reasoning.
Q.	Should ethics training requirements apply to all officers and employees of a Financial Advice Provider involved in financial advice processes, as appropriate to their role and contribution to the process of financial advice provision? If not, please state your reasoning.
R.	Should there be a requirement for ongoing refresher training on ethics?

We agree that Financial Advice Providers should be required to meet standards relating to ethics training relevant to officer and employee’s role and contribution to financial advice. This training need could be addressed as part of the implementation of the framework for resolving ethical dilemmas. Ongoing refresher training should be incorporated into overall CPD obligations.

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.

Yes.

T. Should there be a requirement for explicit sign-off on the soundness of financial advice provided directly by a Financial Advice Provider?

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 state your reasoning

V. Should this extend further into an internal audit obligation, having in place processes to systematically test for and detect violations of ethical behaviour?

W. Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?

We consider that fit for purpose mechanisms for sign off for soundness of financial advice should be set by the Financial Advice Provider in accordance with their risk appetite. Where the licensing standards include an assessment of capability, adequacy of advice processes and compliance assurance, the Financial Advice Provider should have the flexibility to articulate when and what level of sign off is required relating to the soundness of financial advice.

We agree that employees and other stakeholders should be able to have their concerns addressed by access to escalation procedures outside their normal reporting lines. However, the Code must retain flexibility to ensure this objective is achieved without rigidly prescribing a compliance function that may not fit within the Financial Advice Providers business model.

Compliance and internal audit functions can be effective for some business models that benefit from a level of independence in assessing their operations. However, both functions carry cost to Financial Advice Providers. There may be other efficient and effective means a Financial Advice Provider (depending on its nature or size) could apply to achieve assurance over soundness of financial advice and ethical behaviour. We do not consider it would be useful to impose a prescriptive obligation which impacts the organisational structure of a Financial Advice Provider. A principles-based approach will support the overall objective to promote innovation and flexibility.

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 broadly agree with this requirement. However, where part of the advice process is carried out by another person subject to ethical behavioural standards, the Financial Advice Provider should be able to reasonably rely on the other person fulfilling their own obligations.

Y. What principle or mechanism do you propose the Code could include to reinforce good ethical behaviour on a day-to-day basis?

We consider there is benefit for mechanisms to reinforce good ethical behaviour to be included in a Financial Advice Providers framework for training and resolving ethical dilemmas.

Z. Are there other delivery methods that should be considered when testing our thinking?

We have not identified other delivery methods that should be included.

AA. How do the current client care standards work in practice, especially in advice-giving situations not previously covered by the AFA code?

We are not aware of any instances where the current client care standards have been not appropriate, restrictive or create a particular compliance burden.

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?

We have not identified any area within the existing client care standards should be clarified or changed. However, we note testing of the suitability of the code to date is limited.

EE. Are there any additional matters that should be addressed in the advice-giving standards? Those listed above? Others?

We do not consider there are any additional matters that should be addressed as part of the advice-giving standards.

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 and advice process?

We are supportive of the proposed approach not to prescribe particular elements of an advice process. We expect guidance is likely to be useful provided it is principles based and

there is clarity around what is an obligation and what is suggested as a means to satisfy an obligation.

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?

We consider the aspects identified in the Consultation Paper capture the important considerations for an advice process. The advice process must be flexible to respond to a customer's needs. We note a customer should have the ability to exit the advice process where they feel they have sufficient (but not necessarily complete) information to make a decision. For completeness, we consider scope and disclosure to be very important in these circumstances.

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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We are supportive of the generic suitability analysis for a type of client in a particular situation. We are also supportive of the flexibility for Financial Advisers and Financial Advice Providers to be exempt from this code standard where it can demonstrate how a good advice outcome is achieved without personalised suitability analysis.

In a product advice situation, we encourage the Code Working Group to consider whether providing a customer with a Product Disclosure Statement would sufficiently meet the explanations required of Code Standard 10. We expect this would alleviate some of the risk of "over-compliance" which may arise if a Financial Advice Provider was required to provide a separate written explanation including sufficient information to enable the client to make an informed decision and a concise description of the principal benefits and risks relevant to the financial advice.

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?

We are comfortable with the proposed approach and don't foresee any prohibitive costs or disadvantages associated with it. This is on the basis that the organisational standards are flexible to allow balance between the need for documentation against the benefit of direct oversight applicable to smaller Financial Advice Providers.

There may be benefit in providing explanatory material or examples detailing the expectation of Financial Advice Providers to keep up to date with good conduct practice.

NN.	Do you agree with our interpretation of the meaning of “competence, knowledge and skill”? If not, why not?
OO.	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?

We agree with the interpretation of “competence, knowledge and skill” and have not identified any other factors that contribute to combined expertise not listed in the Consultation Paper.

PP.	What do you think are the advantages of this approach to general competence, knowledge and skill?
QQ.	What do you think are the disadvantages of this approach to general competence, knowledge and skill?
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?

In general, we are supportive of the approach to general competence, knowledge and skill. We consider the key advantage of the approach is the ability to demonstrate the obligations at a Financial Advice Provider level is likely to be more affordable, flexible and effective.

As to be expected with any new or changed regime, disadvantages of the approach is that it will take time for financial advice practices to implement processes, controls and limitations and for Financial Advisers or nominated representatives to develop an understanding of their obligations equivalent to unit standard 26360.

In our view, Financial Advice Providers having the flexibility to implement fit for purpose processes, controls and limitations significantly contributes to ensuring the quality and availability of advice and promoting innovation and flexibility. Further, ensuring Financial Advisers and nominated representatives understand the regime and its legislative purposes also strongly contributes to achieving these purposes. However, it is unclear how the knowledge to the standard of a person who has completed the unit standard within the previous three years will ensure the financial adviser or nominated representative understands the current regime.

We recommend the Code Working Group considers the time and cost involved for the financial adviser or nominated representative to complete the unit standard on a renewing basis. This consideration should be balanced with the benefit of ensuring current knowledge of the legislative framework for Financial Advisers.

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?

The key advantage of identifying two types of financial advice is that there is recognition that some advice situations are more complex and require a higher level of competency than others. This promotes the legislative purpose to improve availability and accessibility of advice.

We suggest the following quantifiable factors in assessing RFAs experience:

- Years of experience
- Number of clients
- Products advised on
- Type of advice given

We are supportive of the approach towards product competence and financial planning generally. We encourage the Level 5 qualification to remain focussed on the demonstration of the Financial Advisers ability as opposed to product speciality. We consider it is critical that the burden of completing the Level 5 qualification is not too onerous.

Not all products require speciality. General advice principles can be applied to achieve good advice outcomes for less complex products, such as KiwiSaver. Once a Financial Adviser has demonstrated competency on their ability, the particular knowledge, competence and skill for specific products could be achieved by other means, such as provider accreditation. KiwiSaver is a product that approximately 2.9m New Zealanders have. Statistics tell us a high percentage of people in KiwiSaver have not had any advice. This is reflected in the high number of New Zealanders who are invested in conservative or default funds.

Applying a product specialty approach to competency may present an unnecessary compliance cost and Financial Advisers may choose not to complete the investment strand. This would likely include current RFAs who are competent to provide class advice on KiwiSaver. The effect of removing thousands of advisers from the industry with regard to KiwiSaver advice will limit the availability and accessibility of advice in this area for many New Zealanders whose only financial product is KiwiSaver.