

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

Share your details	
i.	Please provide your name and (if relevant) the organisation you represent NZbrokers Management Ltd
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) NZbrokers is a collaborative group of more than 58 independent general insurance broker businesses throughout New Zealand. Within our group we handle the non-life insurance policies for 140,000 mostly retail clients. These clients pay approximately \$550m premium annually.
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 confidential information is in this submission.

Principles for drafting the Code

Share your views	
A.	What comments do you have regarding the overarching theme of “good advice outcomes” and the underlying principles? We support the principles subject to the regulations being appropriate for relatively simple general insurance products, which are arranged or renewed in high volume where the remuneration, for example, averages less than \$150 per house insurance policy, often less for other policies. On average the group arranges or renews about 3,500 policies per work day, often with personal dialogue between the client and the broker. Over-automation detracts from the quality of advice being provided and over-regulation will add significant costs which will need to be passed on to clients.
B.	Are there any further principles that should be included, or existing principles that should be removed? No

Ethical behaviour

Act with honesty, fairness and integrity

Share your views	
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.	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. No – in the absence of formal understandings or legal definitions there are too many vagaries about what is or is not ‘ethical behaviour’. Ethical standards often need to be tailored to different parts of the same industry therefore best solution is for FAPs and/or industry bodies to develop their own standards. Over-arching ethical standards could be inappropriate for some circumstances and cumbersome to adhere to.
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? Allow FAPs and/or industry bodies (preferably the latter) to develop their own ethical standards which could potentially be approved by the FMA under broad criteria and, if necessary, dialogue to properly understand the circumstances.

Manage and fully disclose conflicts of interest

F.	Should the Code include a minimum standard on conflicts of interest in addition to the legislation? This issue is adequately provided for under 431J of the Bill; Advisers or their employers should have appropriate written guidelines about conflicts that will be appropriate for their circumstances, which will not be the same across the financial services industry.
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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. We agree
H.	Is an additional minimum standard on doing no harm to the client necessary? If so, what standard do you propose? No, there is already adequate provision in the Bill and additional or duplicated standards will confuse and hinder the objectives of the legislation.

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? No comments
J.	Do you agree that the Code should cover the various aspects of maintaining client confidentiality discussed in this paper? Current privacy laws should be adequate and confidentiality should form part of the nature and scope of services; it's not necessary to over-regulate within the Code.
K.	Are there other aspects of maintaining client confidentiality to consider? No

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"? We support good ethical processes but they must be appropriate for the business without over-regulating, detracting from the quality of advice and the efficiency with which it is provided. Therefore a business should be able to determine their own ethical processes. On average the NZbrokers group arranges or renews about 3,500 policies per work day, often with personal dialogue between the client and the broker. Over-regulation will add significant costs which will need to be passed on to clients, alternatively clients will utilise robo-advice services which are inferior advice models.
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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? No, while we encourage businesses to have a code of ethics, how it is displayed should be voluntary.
N.	Should Financial Advice Providers also be subject to additional standards in respect of leadership and culture? If so, how should these be framed? No, once again we support these types of aspirations by providing funds, scholarships and awards, we believe it is the responsibility of businesses to attain these standards. Regulating such standards replace 'in-built aspirations' with 'mandatory requirements' and diminish the outcome.
O.	Do you propose other additional standards of ethical behaviour that should apply to Financial Advice Providers? No

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. Yes, provided it can be delivered simply and efficiently, something similar to the privacy education available online. However if ethical standards are established by business or industry association it will be necessary for those entities to establish a tailored training model which will add cost to the business and probably for the client.
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. Yes, if ethics training is mandatory, it should be as appropriate to their role.
R.	Should there be a requirement for ongoing refresher training on ethics? Yes, if ethics training is mandatory, it should be refreshed every 3 or 5 years. But a requirement such as this will add cost to the business and therefore for the client, which detracts from one of the Bill's objectives to make financial services more available.

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. Not as part of the Code. Such resolutions should be developed within the business. Over-regulation will add significant costs which will need to be passed on to clients, which detracts from one of the Bill's objectives to make financial services more available.
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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? The competence, knowledge, client care and other provisions are adequate. On average the group arranges or renews about 3,500 policies per work day, often simple house, contents and car policies, where many clients would not return the 'explicit sign-off' by the time when the cover was required. Such a requirement could leave clients uninsured simply because they did not return the sign-off document. The requirement will also add time and costs which will be passed on to clients. When practices like this are imposed on the adviser they are also an imposition on the client. Regulators must understand that obtaining completed documents or acknowledgements from clients is difficult and should not be regarded as a 'given'.
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. This is not an appropriate issue to be addressed in the Code. If imposed, such a requirement will add costs which will be passed on to clients, detracting from the Bill's objectives.
V.	Should this extend further into an internal audit obligation, having in place processes to systematically test for and detect violations of ethical behaviour? Absolutely not. This is not an appropriate issue to be addressed in the Code. If imposed, such a requirement will add significant costs which will be passed on to clients, detracting from the Bill's objectives.
W.	Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered? Yes, the likely compliance costs many and substantial. Such additional costs are disproportionate for smaller businesses which supply services and advice into all kinds of communities throughout New Zealand. The financial burden will, in some or many cases, overcome the business and those communities will be left with large and distant corporate or robo suppliers/advisers as their only option. Over-regulation and extra compliance costs will reduce the availability of professional personal advice.

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. This proposal is over-regulating the requirement for standards of ethical behaviour. If imposed, such a requirement will add extra compliance costs will reduce the availability of professional personal advice, detracting from the Bill's objectives. We fully support strong standards for good ethical behaviour however it should be implemented and monitored by the business or the industry association as it currently is by our body, IBANZ.
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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? We do not believe the Code requires any 'mechanism'. We believe that standards for good ethical behaviour should be implemented and monitored by the business or the industry association as it currently is by our body, IBANZ. However if a regulator <u>must</u> monitor or approve the standard then we suggest that be a role for the FMA.
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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? Probably.

Advice-giving standards

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). What the CWG regard as ‘current care standards’ will not be practical for businesses that handle high volumes of simple finance products and additional compliance obligations will, without doubt, add costs which the client will ultimately pay. This will reduce the likelihood of insurance buyers seeking professional personal advice. An alternative for the insurance buyer might be robo-advice which is an inferior model because it relies on the client having an understanding about the cover they require (they don’t know what they don’t know). The client care standards utilised by members of IBANZ (see page 12 onwards) is adequate and we encourage the CWG to make themselves familiar with that.
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.) The current wording is inappropriate for high volume and simple transactions.
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)? The current wording is inappropriate for high volume and simple transactions.
DD.	Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered? We support appropriate client care standards but many general insurance brokers handle relatively simple products, which are arranged or renewed in high volume where the remuneration, for example, averages less than \$150 per house insurance policy, often less for other policies. On average the group arranges or renews about 3,500 policies per work day. Therefore the businesses are sensitive to extra compliance costs which will add significant costs that will need to be passed on to clients. The smaller the business then the more disadvantaged they will be.
EE.	Are there any additional matters that should be addressed in the advice-giving standards? Those listed above? Others? No. Bearing in mind the CWG’s objectives appear to be principle based, there is an undue interest to prescribe not only standards but also methods and practices. This will not be appropriate across the broad spectrum that makes up the financial advice sector.

Advice process

FF.	Do you think there are any other components that should be included in the design considerations of an advice process? No.
GG.	Should the Code include guidance material to help determine what needs to be considered when designing an advice process? Yes, particularly for the purposes of helping advisers understand requirements because

	regulators often use different language and terminology from people who actually participate in specialised parts of the financial advice sector.
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? The Code should not prescribe an advice process. The type of advice and the specialised/different services within the sector and the client's circumstances is too varied for a prescribed set of processes. The Code should simply determine the outcome so the adviser can determine the appropriate way to meet that standard.
II.	Should any of the key aspects that we have listed above be removed? If so, why? Yes. For example, how can the adviser economically inform every client, for which the broker may receive less than a \$150 commission, about their specific risks and benefits associated with following a recommendation? We have the impression that the CWG believes each transaction earns the adviser a large fee or commission; that is true for life insurance products but not for general insurance products where the volume of transactions is much higher and the remuneration much lower. Over-regulation will add inefficiencies and significant costs which will need to be passed on to clients, which detracts from one of the Bill's objectives to make financial services more available. We support high client care standards but strongly believe the <u>client care standards utilised by members of IBANZ</u> (see page 12 onwards) is adequate and we encourage the CWG to make themselves familiar with those.
JJ.	Are there any situations in which an advice process need not be followed? The process followed must be relevant to needs of the client and the scope of the advice. The process does not need and cannot be prescribed; it is the quality and relevance of the advice that is important.

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? Similar to our response to II we challenge the concept of a proposed minimum standard with a typical example that happens in each general insurance broker's office many times each day, where the broker receives less than a \$150 commission to arrange or renew a simple house insurance policy. This level of income, across a high volume of transactions, will not support the proposed standard of personalised suitability.
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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? Our responses to II and KK should adequately express our deep concern about prescribing organisational standards.
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MM.	Would implementing these organisational conduct and client care standards create a particular compliance burden for your firm? If yes, please explain why. Our responses to II and KK should adequately express our deep concern about prescribing organisational standards. There is no doubt provincial and small general insurance brokers (15 or less employees) could not sustain their services or their businesses with the type of compliance burden being prescribed by the CWG.
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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? Yes, provided we are all of the same understanding and while the CWG has talked about the aggregation of “competence, knowledge and skill” so that the client receives an output that is measurable as Level 5 does that mean an insurance broker business can operate a team which includes a qualified Financial Adviser and attain the same output. Will that structure be acceptable? Please bear in mind that many general insurance brokers are professional and competent with many years of experience, but no formal qualification. This part of the financial advice industry and the clients would be far worse off if these people were no longer available to give advice.
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. When competence, knowledge and skill are used with their widest meaning it appears these encompass the relevant factors.
PP.	What do you think are the advantages of this approach to general competence, knowledge and skills? It allows a business to operate, delivering good advice outcomes, by a combination of formal and informal qualifications which are both important to the general insurance sector.
QQ.	What do you think are the disadvantages of this approach to general competence, knowledge and skills? Any form of minimum standard or compulsion to re-qualify (paragraph 162 in the consultation paper) will impose disproportionate extra expenses on small businesses. In a typical example that happens in a general insurance broker’s office many times each day, where the broker receives less than a \$150 commission to arrange or renew a simple house insurance policy. This level of income, across a high volume of transactions, will not support onerous minimum standards.

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)? Many of these small businesses provide good advice outcomes into all kinds of communities throughout New Zealand. The financial burden of over-regulation will, in some or many cases, overcome the business and those communities will be left with large and distant corporate or inferior robo suppliers/advisers as their only option. Over-regulation and extra compliance costs will reduce the availability of professional personal advice. We fully support innovations and efficiencies but buyers of general insurance products will not understand the importance or availability of special policy clauses and extensions (they don't know what they don't know). The result is they will buy an insurance product based on price and because it has a similar name to other products. But these products are not the same; they are complex products that should not be purchased without good advice. For example, how many SME owners know what a 'deferred indemnity period' or 'retroactive date' means? Why should they? Their business survival could be dependent on selecting the right period or date. Both are vital considerations in almost every SME general insurance package.
SS.	What factors should we consider in determining whether to make the proposed unit standard a renewing obligation? Any form of minimum standard or compulsion to re-qualify (paragraph 162 in the consultation paper) will impose disproportionate extra expenses on small businesses. Over-regulation and extra compliance costs will reduce the availability of professional personal advice in many small communities, throughout New Zealand.

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? General insurance brokers sell products but they also provide risk advice, the two go hand in hand, they are complimentary. So the question is whether any of this type of advice is 'financial advice'. Therefore this ambiguity is the problem with a model that identifies two types of advice. We don't see any advantages with a 'two types of advice' model, only confusion.

UU.	How should RFA's experience be recognised? We understand there is provision for existing RFAs to continue operating through the transition period, during which adequate competency levels must be achieved. We believe, for these RFAs, adequate competency should recognise historic qualifications (e.g. ANZIIF Associate, Diploma etc) and a minimum amount of experience, for example 5 or 10 years. During the transition period these RFAs should demonstrate knowledge of relevant laws (Level 5 paper 26360, as proposed). During the transition period and into the future Financial Advisers and Nominated Representatives (ex-RFAs) must attain minimum hours of continuing professional development (CPD), perhaps 15 or 20 hours. A variety of appropriate qualifications, of Level 5 standard, need to be available through a multiple courses and providers (IQ College, ANZIIF, LMI, Universities, Tech Institutes etc). To help the more mature and experienced general insurance brokers to continue to provide good advice outcomes, qualification by Recognition of Prior Learning (click here) should be permitted.
VV.	What do you think are the advantages of this approach to particular competence, knowledge, and skill? Apart from meeting the expectations of clients and regulators, we believe the approach we recommend above, in UU, will improve the level of formal and measurable qualifications within the general insurance industry. It will not over-burden businesses with compliance and education costs. It will offer a range of educational opportunities and broaden the competency and experience within many businesses. In terms of selecting an adviser and receiving advice, the overall result will be better for clients. We also support the concept that the required standard of product advice (assuming it includes risk advice and other activities of general insurance brokers) is measured by outcome. Therefore a Financial Advice Provider can rely on a formally qualified (equivalent to Level 5) adviser to establish the advice outcome, but deliver the advisory services through less qualified advisers. We liken this to a team approach where guidelines are established, there is adequate supervision and monitoring and an evidence based model.
WW.	What do you think are the disadvantages of this approach to particular competence, knowledge, and skill? The approach proposed in the consultation paper will deliver ambiguity and confusion.
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)? The approach proposed in the consultation paper will deliver ambiguity and confusion. It will also restrict educational choices and ultimately result in many experienced, currently competent general insurance brokers leaving the industry. Advisory services with good outcomes will become less available.

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? We believe the approach we describe in the preceding questions, TT to XX, described the best model for general insurance brokers and to meet the objectives of the Bill: Availability – particularly in small communities around New Zealand; Quality – improved, defined and measurable competency levels; Priority to client interests – more attention to meeting expectations, eliminating conflicts, better transparency and improved record keeping.
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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? In respect of general insurance brokers our deepest concern is the risk of over-regulation which will actually reduce the availability of financial advice and increase the price for receiving that advice. As an example, the NZbrokers group arranges or renews about 3,500 policies per work day (approximately half of which are house, contents and private car policies), often with personal dialogue between the client and the broker. Over-regulation will add significant costs which will need to be passed on to clients, alternatively clients will utilise robo-advice services which are inferior advice models. We need to retain those advisers in the general insurance broker profession, who may not be formally qualified, but who already provide good advice outcomes and currently meet the objectives of the legislation.