

Submission on the Code of Professional Conduct for Financial Advice Services

by the

NZ AMP Advisers and Adviser Businesses
Association Inc.

Submission to:

code.secretariat@mbie.govt.nz

Code Working Group
c/o Code Secretariat (Poppy Haynes and Max Lin)
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand

Information about us

Share your details

- | | |
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| i. | Please provide your name and (if relevant) the organisation you represent

Simon Manning
CEO

On behalf of the Board of

The NZ AMP Adviser Businesses and Advisers Association Inc. ("The Association") |
| ii. | Please provide your contact details

Simon Manning
CEO, The Association |

	<p>2B 33 Ponsonby Road Ponsonby Auckland</p>
iii.	<p>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)</p> <p>The Association is an organisation representing approximately 60 SME Financial Advisory Businesses comprising approximately 200 Financial Advisers, with its chief responsibility being to represent the interests of its members in their relationship with AMP, other AMP distribution channels and other industry participants, including Regulators.</p> <p>The AMP Advisers' Association has now been in place and working with AMP and other industry participants since 1921.</p> <p>Most of our members operate as Advisers within AMP's QFE. The following points are important and often misunderstood features of our members businesses;</p> <ol style="list-style-type: none"> 1. Our members generally operate diversified businesses offering products and advice across categories including investment, life insurance, mortgages, general insurance, health insurance and Kiwisaver. 2. Our members distribute products from a wide range of NZ providers, including those of AMP and many of AMP's competitors. Our members do not have any contractual quota or requirement to sell any particular level or proportion of AMP (or any other suppliers) products. <p>There are an estimated 250,000 NZ consumers and several thousand New Zealand workplaces serviced by our members.</p>
iv.	<p>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)</p> <p>No concern</p>

Principles for drafting the Code

Share your views

A.	<p>What comments do you have regarding the overarching theme of “good advice outcomes” and the underlying principles?</p> <p>We agree with a concept of ‘good advice’ (which itself is an outcome) and have sympathy with the thinking behind the CWG’s focus on outcomes.</p> <p>However there is a risk that factors such as customer choices, product performance, market change or other unforeseen circumstances (especially where out of the hands of the person or entity that provided good advice) can affect the client experience and therefore we think use of the phrase “Good Advice Outcomes” could well become problematic.</p> <p>Good advice will not always lead to good advice outcomes. We also believe that good advice should be “fit for purpose”</p>
B.	<p>Are there any further principles that should be included, or existing principles that should be removed?</p> <p>No comment</p>

Ethical behaviour

Act with honesty, fairness and integrity

<i>Share your views</i>	
C.	<p>Do you agree with a requirement to act with honesty, fairness and integrity? If not, please set out your reasoning.</p> <p>Yes</p>

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>Yes but only if the CWG can demonstrate an area (or areas) of financial advice that is not covered by legal obligations for ethical standards, but should be, then the Code could include this.</p> <p>Otherwise and in our view, this is not necessary and risks overlap, duplication and confusion with other standards, laws and/or regulations that address aspects of ethical behaviour.</p>
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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 believe this not should be a requirement as it adds cost and complexity with no clear benefit. A simple minimum standard could be part of the Code. An Adviser or entity could of course choose to voluntarily have their own code of ethics that meets or exceeds the Code.

Commercial behavioural patterns that surpass the code, are rewarded by customer satisfaction and the behaviours that do not comply with the code are able to be tasked by legislation and client channels such as dispute resolution.

Assisting public expectations can be an ongoing education programme , potentially carried out by the FMA or other bodies.

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 approach would infringe into the broad principles approach of the code. Therefore our answer is no, unless, the CWG can demonstrate an area (or areas) of financial advice that is not covered by NZ's legal and regulatory obligations and standards (including FSLAB legislation) for conflicts of interest, but should be - then the Code could include this.

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 believe that a person or an entity who gives financial advice should not do anything or make an omission that would or would be likely to bring the financial advice profession into disrepute. However we do not believe your statement above should be in the Code.

We recognise that this is a highly subjective and contentious area in modern times of social media and consumer activism.

Hence we are very concerned about the subjective nature of this area in terms of consequences. We have seen in other industries (and indeed in other areas such as sport and politics) that decision making in such situations can depend very much on the viewpoint of the observer and the level of noise and outrage created.

	<p>We only need to look at recent extreme reactions by overseeing bodies to media scrutiny and social media backlash to realise that often a punishment may not fit a perceived 'crime' due to pressure - if in fact there has even been a crime.</p> <p>Therefore our preference is to not include this type of conduct in the Code and hence to not place such a subjective responsibility in the hands of the regulator and CWG.</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</p> <p>We believe that a person <u>or an entity</u> who gives financial advice <u>should</u> not do <u>anything</u> or make an omission that would or would be likely to cause harm to a customer.</p> <p>However there are times where this may be unavoidable (for example where an Adviser acts as a whistleblower, reporting the activities of his or her client to an authority or third party). This possibility should be recognised by any Code.</p> <p>Harm caused and the extent of harm caused is subjective. For example what is the yardstick and at what time is the measure being used?</p> <p>Many outcomes rely on third parties which is outside the control of the Adviser and the client.</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> <p>In our view, this is not necessary and risks overlap, duplication and confusion with other standards, laws and/or regulations that address data privacy and confidentiality.</p> <p>If the CWG believes there are situations to do with bulk data not already covered by other existing legislation then surely the best outcome would be for other that legislation or regulation to be modified.</p> <p>If the CWG has such concerns then it should recommend to the Minister that those other standards, laws and/or regulations be amended.</p>
J.	<p>Do you agree that the Code should cover the various aspects of maintaining client confidentiality discussed in this paper?</p> <p>See above. We believe that NZ has sufficient client and client data privacy laws already.</p>
K.	<p>Are there other aspects of maintaining client confidentiality to consider?</p> <p>Two areas of client confidentiality that are common in (and perhaps unique to) our industry and which occasionally creates challenges in maintaining customer privacy are;</p>

	<ol style="list-style-type: none"> 1. shared customer data (for example between two specialist Advisers who each work with a customer) and 2. An insurer and a Financial Adviser who each may hold different and sensitive data for a customer. <p>In each case, one entity may be aware of facts pertaining to a customer that it is required to protect maintain customer confidentiality whereas the other may expect all data, some of which it is not entitled to.</p> <p>As stated we believe the current NZ legislative and regulatory framework is working and contains sufficient protections in this area however the CWG should consider some of these real-life scenarios above when considering any Code in this area.</p>
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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>We believe it should be voluntary for an organisation to maintain documented ethical processes over and above a basic requirement set out in the Code Standard.</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>No, this should be voluntary. The CWG should be able to create minimum standard Code in this area. Adherence by a FAP to the various regulations and the code standard is a sufficient level of compliance. Otherwise we risk creating additional unnecessary workload for every entity and for the regulator for what could be a very subjective area.</p> <p>In addition ,the CWG is in danger of moving from a high level principles based code to prescriptive details</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>No. Leadership and culture is an individual and organisational right that is the underlying basis of competitive choice.</p> <p>For instance you might have two entities - one in ‘run off’ mode and one in a growth phase. Each would require different leadership and culture styles. Each may attract different customers and both would succeed or fail by their strategy.</p> <p>Both those entities are both under the existing code and need to abide by those laws.</p> <p>We do have some concerns about a scenario where a strategy was changed to be at odds with existing customer interests, perhaps because a customer was unable to leave the provider (due to a product lock in, exit fee or underwriting issue) and so was effectively</p>

	trapped into a changed model - perhaps higher pricing or disadvantageous product terms. This would be of concern.
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. See below
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. We agree that all Financial Advisers and Nominated Representatives should have a documented understanding of the Code Standard for ethics, plus any additional and voluntary standards their FAP has implemented. For Financial Advisers this could be achieved through the Code Standard or equivalent education pathway. In terms of applying to all employees, some FAP's will have employees with no possible connection to the giving of financial advice (e.g. cleaner) and therefore we believe that extending this requirement to all employees is too broad. The CWG could consider extending this requirement to Directors and anyone directly involved in the areas of the development or giving of financial advice and in the development or distribution of financial products. Ethics training gives a record of attending an event, it most probably will not change a persons behaviour, ethics , like behaviour can be explained away and is not constant across people or organisations..
R.	Should there be a requirement for ongoing refresher training on ethics? We have no firm view but suggest that if this was a requirement it could be managed through CPD for Financial Advisers.

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. No we believe this is overly complex for what may be small businesses. "Ethical" and other frameworks should be at the discretion of the entity that the client is dealing with.
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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>Yes and we also believe that such a sign off should be traced to a person currently employed or contracted to the FAP. We also suggest that person should be a Financial Adviser</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>If this is referring to whistleblower type requirements then we agree with the caveat that the requirements should not be overly complex or onerous for what may be small businesses.</p> <p>If this is not specifically related to Whistleblower legislation , then the compliance functions should be principled base at a high level and not dive down to this level of business interference.</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>No as we believe the vast majority of FAPs will be small businesses and this will introduce a significant layer of cost and complexity also the ethical behaviour should be caught in the overlying principles outlined in the CWG.</p> <p>However if the CWG insists on this being policed, then the requirements should extend into the relationship a FAP may have with other entities and that the behaviour between those entities is tested for the Behavioural /ethical principles the CWG is testing for (such as a product provider having a relationship with a FAP and the actions of the FAP not being unduly influenced by the product providers commercial outcome requirements.)</p>
W.	<p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p> <p>We are mostly concerned with the implications for small to medium Financial Advice Providers.</p> <p>In our view many of the suggestions here will introduce significant compliance costs and complexity and, taken in aggregate, are highly concerning. We believe there is a high risk of fall out from the industry, and a reduction in financial advice practitioners.</p> <p>The CWG has raised the concept of Good Advice Outcomes (which we have already commented on). Setting aside our concerns with this concept potentially becoming a public mantra, the increase in compliance costs that will undoubtedly occur must eventually be met by customers. In the broad sense, someone judging a Good Advice Outcome would include the price of that advice. We see only a negative direct impact from these compliance requirements, that might be offset by uncertain indirect improvements.</p> <p>There appears to be a recurring theme of imposing elements of a corporate style governance structure which we respectfully suggest shows little understanding of the current NZ fabric of small to medium advisory businesses that are operating.</p>

	Is there a sound understanding (backed by data that can be independently verified) amongst the CWG of the level of current issues and incidents that are occurring?
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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.
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In our view the FAP is responsible for the delivery of its advice and the customer should be made aware of this responsibility. See above comments regarding additional standards of ethical behaviour.

The FAP should be able to demonstrate that it can uphold all of the standards and not just when that is tested against "ethics"

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?
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In our view this is not required, the promotion of the broader behavioural principles on an ongoing basis will assist the public of NZ to know what they should expect from any person giving regulated advice services.

Conduct and client care

Advice situations

Share your views

Z.	Are there other delivery methods that should be considered when testing our thinking? the ability to give advice
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No comment

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).
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	No comment
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>CS7, could allow for information about the adviser to be delivered by other than Written, for example by video</p> <p>“Complaint” needs to more than a client statement, eg “this insurance is getting more expensive” is not necessarily a complaint. We are aware of occasions when client are led to making a complaint by overzealous customer call centre staff, where in fact the client had no intention of making a complaint. Our view is that the current code seems to work okay regarding complaints</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>No</p>
DD.	<p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p> <p>All of them add cost to deliver in an environment where clients are reluctant to pay more</p>
EE.	<p>Are there any additional matters that should be addressed in the advice-giving standards?</p> <p>Those listed above</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>That the advice process can be ‘one to one’ or ‘one to many’ and delivered by remote link such as audio or audio visual methodologies.</p> <p>Acknowledgment that the depths of each step can vary for different clients, for example the code should also recognise that reviews do not necessary require large volumes of advice that add no value to the client or adviser.</p>
GG.	<p>Should the Code include guidance material to help determine what needs to be considered when designing an advice process?</p> <p>Other than requirements around clear, concise and understandable, no</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> <p>That the delivery for such things as Statements of advice could be via video and not solely written.</p> <p>Standardised documents retained by the FAP and verbal recordings require at least a client acknowledgement that can be recorded that the client is aware of the document and or recordings and is accepting of that.</p>

II.	Should any of the key aspects that we have listed above be removed? If so, why? No (however the code should be clear enough for the adviser to know that there is flexibility)
JJ.	Are there any situations in which an advice process need not be followed? When the client requests that they do not want to go through a process and are prepared to acknowledge the potential outcomes and risks of this stance.

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? The code paragraph 141 is a mixture of the existing class advice in disguise and limited advice/simple product delivery. The existing code covers this area in regards to scope and limitations of advice however lacks the discussion and objectives you are laying out. Maintaining the existing code accompanied by the some of the CWG commentary may be an alternative (ie it states what the manufacturers of the document has in mind).
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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? There are no practical advantages either to the organisations, or the people who will police the code. For example the majority of organisations in Australia that are involved in the current Royal Commission, will no doubt have this type of standard hanging on their walls or their websites and this did not prevent the behaviours exposed by the Commission.
MM	Would implementing these organisational conduct and client care standards create a particular compliance burden for your firm? If yes, please explain why. Any small to medium enterprise will face increased compliance cost from the introduction, maintenance and operation of such standards. The cost will extend to include the people policing the compliance, and will be passed onto the captured licencees/advisers

General competence, knowledge and skills

<i>Share your views</i>	
<p>NN.</p>	<p>Do you agree with our interpretation of the meaning of “competence, knowledge, and skills”? If not, why not?</p> <p>Yes each individually, however the aggregate approach is dangerous if the front line interaction or person cannot communicate to the client in a suitable manner that delivers the “good advice outcomes”</p>
<p>OO.</p>	<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>Learnings from life experiences and personal development that are outside the profession. e.g. the ability to listen and empathise with customers is an important skill that can be honed over the years.</p>
<p>PP.</p>	<p>What do you think are the advantages of this approach to general competence, knowledge and skills?</p> <p>It creates a principles based approach that accepts there are many ways to get an outcome</p>
<p>QQ.</p>	<p>What do you think are the disadvantages of this approach to general competence, knowledge and skills?</p> <p>The collective approach could reduce the quality of the client interactions</p>
<p>RR.</p>	<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>See above, a guidance note may be useful</p>
<p>SS.</p>	<p>What factors should we consider in determining whether to make the proposed unit standard a renewing obligation?</p> <p>Cost : both monetary and time for advisers, degree of law change.</p> <p>We question why this is necessary - the current code covers this by the FMA publishing changes and relying on participants to be aware.</p> <p>Several organisations currently offer education which allows AFAs to gain education credits and stay abreast of requirements.</p>

Particular competence, knowledge and skills

<i>Share your views</i>	
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>Conceptually, the approach has merit, in action it will have unintended outcomes that could prevent the core foundation of the purpose of the code.</p> <p>For example your case states replacing a product. If this was a risk product, then it cannot be replaced unless the advice giver has the Level six qualifications. Is the “Advice giver” or the complete FAP the interacting point with the customer in this instance?</p> <p>If it is the FAP, customers could receive advice that the Advice giver does not understand and so the customer may not get the good advice outcome you desire. It could also create more instances of sales disguised as advice</p> <p>In our experience as practitioners, it should not be assumed that change or replacement of product is always driven by the Advice giver.</p> <p>This feels to us like a protection mechanism for the incumbent product holder and not the customer.</p> <p>To protect the customer, it is the appropriate process of the Advice giver being client centric and having due diligence, appropriate process and documentation so that the client is aware of what is happening and the benefits and and product differences are understood. In our view this works fairly well under the current AFA code requirements.</p>
UU.	<p>How should RFA’s experience be recognised?</p> <p>We suggest you use a similar approach to when the change was made introducing the AFA status.</p>
VV.	<p>What do you think are the advantages of this approach to particular competence, knowledge, and skill?</p> <p>No comment</p>
WW.	<p>What do you think are the disadvantages of this approach to particular competence, knowledge, and skill?</p> <p>No comment</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>No comment</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>Planning capability does not necessarily require a relevant degree, particularly as Planning is for any product (and is broader than the current AFA requirement</p>

definitions), the hurdle for an adviser to enter into Planning is not high and for many areas of giving salient financial advice, a degree or level six is not required.

Degrees and higher education alone does not solve for the outcome of “good client outcomes” (this is reinforced by the regrettable outcomes the current Royal commission in Australia).

Any approach requires being pragmatic, providing a pathway into advice that allows a growth/development trajectory for the adviser and providing choice for consumers to settle on a preferred adviser and/or way to access advice.

The approach should also allow for those advisers who want to operate differently, for instance, we anticipate a difference between advisers who advise SME’s and corporate clients (where a corporate client may require and value different accreditations and attributes) compared to an Adviser who specialises in personal clients with less complex expectations and needs.

Other comments

Share your views

ZZ. Are there any other comments you would like to make to assist us in developing the Code?

Thank you for the opportunity to contribute our views.