

Code of Professional Conduct for Financial Advice Services

Consultation on draft standards

Consultation opens Thursday 11 October 2018
Submissions close Friday 9 November 2018

The draft Code of Conduct and online submission form
are available at <https://www.mbie.govt.nz/cwg-consult>

How to be involved

1. We seek submissions on the questions set out in this document **by 5pm on Friday 9 November 2018**.
2. We welcome submissions on any or all consultation questions. You are welcome to comment only on some standards.
3. We ask that you use our online form at <https://www.mbie.govt.nz/cwg-consult> to make your submission.
4. More information on how we plan to use and publish submissions, as well as how to make a submission if you are unable to use our online form is included on page 7 of this document.

About this consultation

5. This paper seeks feedback on the draft Code of Professional Conduct for Financial Advice Services (Code of Conduct).
6. This consultation is being run by the Code Working Group. We are nine individuals who were appointed by the Minister of Commerce and Consumer Affairs to draft the Code of Conduct for Financial Advice.
7. You can read more about us at www.mbie.govt.nz/cwg. Annex 1 on page 6 of this document also includes brief background information on what activities are captured, and the role of the Code Working Group and the Code.
8. The Code is one part of a wider regime that regulates the provision of financial advice. You can learn more about the wider regime at <https://www.mbie.govt.nz/faareview>.

How we got here

9. Our role in developing the Code of Conduct is to set minimum standards of ethical behaviour, conduct and client care, and competence, knowledge and skill that will apply to anyone who gives financial advice to a retail client.
10. We need to set these in a way that ensures the availability and quality of financial advice.
11. In March/April this year we consulted on the key concepts and high-level approach for the Code of Conduct.
12. We ran 10 roadshows in Auckland, Wellington, Christchurch, Dunedin, Balclutha, Hamilton, Tauranga and Napier, which were attended by around 800 people. More people dialled in to a webinar.
13. We received around 160 submissions – nearly 2000 pages.
14. Some of the key messages we heard in submissions, which have informed the development of the draft code, are set out below along with changes we have made in response to the feedback.

Key feedback from submissions	Our response
The meaning of “good advice outcomes” is unclear, and could, for example, imply the product has to perform well	We do not use the phrase “good advice outcomes” in the draft Code. Our proposed overarching standard now talks about treating clients fairly and acting in their interests.
The Code should stick to principles and not be too prescriptive about process	We have pulled back from a number of the proposals we consulted on in March/April that targeted firms’ processes – eg we did not proceed with the proposal to require financial advice firms to have their own code of ethics.
Compliance costs need to be reasonable	As above – we have written standards with the intention that they do not impose unnecessary process or compliance costs.
The Code should stick to setting minimum standards and not try to regulate best-practice	We have drafted all the standards as minimum standards and acknowledge the role of industry bodies and other groups in advancing best-practice above and beyond this.
What we were describing as ‘product’-type advice and ‘planning’ sometimes overlap (e.g. in advice on insurance products), and setting a higher competence standard for any planning-type advice could prevent some advisers having more comprehensive, more personalised discussions with clients.	We have refrained from setting a higher competence standard for any kind of planning advice at this stage. This is something we will look at in future.
Combined/aggregate expertise	We have simplified our approach to competence.
The Code needs to make it easy for people to transition into the new regime	We have set competence in a way that recognises some existing qualifications (eg those held by AFAs) and also at a level that should be attainable for those who will need undertake further study.

15. We would like to thank everyone who has contributed to our consultation, and those who have suggested ideas to us since. In particular, we acknowledge the input of the panel of advisers that we convened to help with practical input to our thinking.

Next steps

16. The timeline for the implementation of the Code is subject to progress with the legislation and overall financial advice regime. The expected timeline is as follows:

Date	Activity
11 Oct–9 Nov 2018	Consultation on the draft Code
late 2018–early 2019 (TBC)	Reworking the draft Code based on feedback; this may involve further consultation on specific parts of the Code
Early 2019	Submission of the draft Code to the Minister of Commerce and Consumer Affairs for approval
Within three months of the Minister receiving the Code	Code of Professional Conduct for Financial Advice Services approved and published
Approximately three months after the Code is approved and published	Financial Markets Authority opens applications for transitional licenses for Financial Advice Providers
At least nine months after the Code is approved and published	New regime takes effect. New licensing requirements, duties and Code of Conduct for financial advice are in force. Competency safe harbour for previous industry participants applies.

See www.mbie.govt.nz/faareview for full detail on expected timeframes.

What we want to hear about

17. For each standard we ask two questions:
 - Overall, do you agree or disagree with this standard and proposed commentary? (Agree/Neither agree nor disagree/Disagree/Don't know)
 - Please provide any comments on this standard and the proposed commentary.
18. We also ask:
 - Is there anything missing from the draft Code?
 - If you answered yes, what is missing?
 - Do you have any feedback on the examples, or suggestions on other examples that should be included in the draft Code?
 - Is there anything else you want to say?
19. At the end of the submission form we ask for some information about yourself and your business to help us contextualise and analyse your submission.
20. The numbered questions are included on pages 7–9 for use by anyone not able to use the online submission form at <https://www.mbie.govt.nz/cwg-consult>.

Annex 1: Further background

What activities are captured?

The Code will cover all regulated financial advice given to a retail client. This includes:

- making a recommendation or giving an opinion about acquiring or disposing of (or not acquiring or disposing of) a financial advice product (e.g. mortgage, insurance, investments, term deposit);
- making a recommendation or giving an opinion about switching funds within a managed investment scheme; or
- designing an investment plan for a person that is based on an analysis of their current and future overall financial situation (including investment needs) and the identification of their investment goals; and includes recommendations or opinions on how to realise those goals.

What is the role of the Code Working Group?

Our role is to prepare the draft Code in anticipation of the new regime being put in place. This involves consulting widely, including with the financial advice industry and with consumers of financial advice.

We are required to have regard to the purposes of the financial advice regime, which include:

- ensuring the **availability** of financial advice for people seeking advice; and
- ensuring the **quality** of financial advice and financial advice services.

What must the Code do?

The Code is required to provide for minimum standards of professional conduct that must be demonstrated by persons who give regulated financial advice. It will apply to financial advice given to retail clients, so it must be able to accommodate a wide range of advice situations, ranging from comprehensive financial planning services to quick conversations where a recommendation is made about a particular product.

The Code *must* identify different types of financial advice, financial advice products, or other circumstances for the purpose of setting minimum standards of particular competence, knowledge, and skill, and *may* also distinguish between those types in setting minimum standards of general competence, knowledge, and skill, ethical behaviour, and conduct and client care.

Annex 2: Further information on making a submission

Please use our online form at <https://www.mbie.govt.nz/cwg-consult> to make your submission.

If you have questions about making a submission you can email code.secretariat@mbie.govt.nz.

If you are unable to use the online form please send your submission as a **word document** to code.secretariat@mbie.govt.nz. Please number your responses consistently with the numbering below.

Numbering of questions

For use by anyone not able to use the online form

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

1. Overall, do you agree or disagree with this standard and proposed commentary?
(Agree/Neither agree nor disagree/Disagree/Don't know)
2. Please provide any comments on this standard and the proposed commentary.

[Standard 2] Act with integrity

3. Overall, do you agree or disagree with this standard and proposed commentary?
(Agree/Neither agree nor disagree/Disagree/Don't know)
4. Please provide any comments on this standard and the proposed commentary.

[Standard 3] Manage conflicts of interests

5. Overall, do you agree or disagree with this standard and proposed commentary?
(Agree/Neither agree nor disagree/Disagree/Don't know)
6. Please provide any comments on this standard and the proposed commentary.

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

7. Overall, do you agree or disagree with this standard and proposed commentary?
(Agree/Neither agree nor disagree/Disagree/Don't know)
8. Please provide any comments on this standard and the proposed commentary.

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

9. Overall, do you agree or disagree with this standard and proposed commentary?
(Agree/Neither agree nor disagree/Disagree/Don't know)
10. Please provide any comments on this standard and the proposed commentary.

[Standard 6] Protect client information

11. Overall, do you agree or disagree with this standard and proposed commentary?
(Agree/Neither agree nor disagree/Disagree/Don't know)
12. Please provide any comments on this standard and the proposed commentary.

[Standard 7] Resolve complaints

13. Overall, do you agree or disagree with this standard and proposed commentary?
(Agree/Neither agree nor disagree/Disagree/Don't know)
14. Please provide any comments on this standard and the proposed commentary.

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

15. Overall, do you agree or disagree with this standard and proposed commentary?
(Agree/Neither agree nor disagree/Disagree/Don't know)
16. Please provide any comments on this standard and the proposed commentary.

[Standard 9] Have general competence, knowledge, and skill

17. Overall, do you agree or disagree with this standard and proposed commentary?
(Agree/Neither agree nor disagree/Disagree/Don't know)
18. Please provide any comments on this standard and the proposed commentary.

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

19. Overall, do you agree or disagree with this standard and proposed commentary?
(Agree/Neither agree nor disagree/Disagree/Don't know)
20. Please provide any comments on this standard and the proposed commentary.

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

21. Overall, do you agree or disagree with this standard and proposed commentary?
(Agree/Neither agree nor disagree/Disagree/Don't know)
22. Please provide any comments on this standard and the proposed commentary.

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

23. Overall, do you agree or disagree with this standard and proposed commentary?
(Agree/Neither agree nor disagree/Disagree/Don't know)
24. Please provide any comments on this standard and the proposed commentary.

General questions

25. Is there anything missing from the draft Code?
26. If you answered yes, what is missing?
27. Do you have any feedback on the examples, or suggestions on other examples that should be included in the draft Code?
28. Is there anything else you want to say?

Final questions – tell us about yourself *(Please note this information will be published with your submission unless there is a withholding ground under the Official Information Act. Responses are optional.)*

29. What is your name?
30. Your role or professional title

31. Is this an individual submission or on behalf of an organisation?
32. If you give financial advice, are you an AFA, RFA, QFE adviser or other?
33. What types of financial advice do you or your organisation give?
34. What your organisation's name?
35. What type of organisation is it? (e.g. bank, dealer group, independent adviser, education provider . . .)
36. Is your organisation's size small (1–10 staff), medium (10–50 staff) or large (50+ staff)?
37. If there are other things we should know about you or your business that would provide context to your answers, please provide details below.
38. Please indicate whether your submission contains any information that is confidential or whether you do not wish your name or any other personal information to be included in a summary of submissions.
39. Please provide your contact details (email and/or phone number)
Your contact details would not be released publicly. We may get in touch with you in order to help us understand particular points from your submission.

Use and release of information

We will use the information provided in submissions to help refine the draft Code.

We intend to publish submissions on www.mbie.govt.nz/cwg. We will assume you to have consented to publication of your submission, unless you clearly specify otherwise.

If your submission contains any information that is confidential or you otherwise wish us not to publish, please clearly flag this information so it can be redacted.

Submissions remain subject to request under the Official Information Act 1982. Please state clearly 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. We 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 Code Working Group in the course of making a submission will only be used for the purpose of assisting in the development of the new Code of Conduct for financial advice. 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 Code Working Group may publish.

Important notice

The opinions contained in this document are those of the Code Working Group appointed by the Minister of Commerce and Consumer Affairs and do not reflect official Government policy. Readers are advised to seek specific legal advice from a qualified professional person before undertaking any action in reliance on the contents of this publication. The contents of this consultation paper must not be construed as legal advice. The Code Working Group does not accept any responsibility or liability whatsoever whether in contract, tort, equity or otherwise for any action taken as a result of reading, or reliance placed on the Code Working Group because of having read, any part, or all, of the information in this consultation paper or for any error, inadequacy, deficiency, flaw in or omission from the consultation paper.

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