

READY
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GO



PRACTICAL KNOWLEDGE FOR THE NEW REGIME

Webinar 2- Workbook 2



Competence, knowledge and skill

Disclaimer

The information provided in today's webinar is for general information only and is not legal advice.

Please refer to the regulations and seek legal advice in relation to how the regulations apply to you and your Financial Advice Provider.

The source of the information referred to in this webinar:

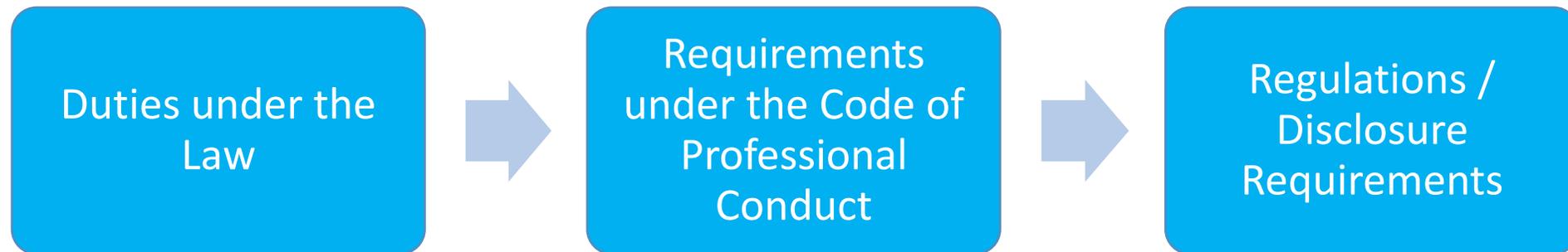
- Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2020.
- The Financial Service Legislation Amendment Act (FSLAA) has significantly revised the current Financial Markets Conduct Act (FMC Act).
- The Code of Professional Conduct for Financial Advice Services.
- New disclosure requirements – members guide Financial Advice New Zealand.

Agenda

- Duties under the legislation
- Applicable code standards
- Regulations – Disclosure
- Framework of adviser competence
- Actions: policies, procedures and controls
- Questions on chat to Katrina to manage!



3 Levels of obligations



Level 1 – 8 new Duties under the law

The Financial Service Legislation Amendment Act (FSLAA) has significantly revised the current Financial Markets Conduct Act (FMC Act).

The duties of persons who give regulated financial advice, as per new subpart 5a, are in summary:

- **431I Duty to meet standards of competence, knowledge, and skill**
- **431J** Duty to ensure client understands nature and scope of advice
- **431K** Duty to give priority to client's interests
- **431L** Duty to exercise care, diligence, and skill
- **431M** Duty to comply with code of conduct
- **431N** Duty relating to offer that contravenes Act or regulations
- **431O** Duty to make prescribed information available
- **431P** False or misleading statements and omissions



431I - Duty to meet standards of competence, knowledge & skill.

A person must not give regulated financial advice to a retail client unless the person meets—

- (a) the standards of competence, knowledge, and skill (including any continuing professional development requirements) provided in the code of conduct for giving the advice; and
- (b) any prescribed eligibility criteria in relation to the giving of the advice.

The **Duty 431I** refers directly to **the Code**.

The law and the code reference each other.

There is a link between your **competence, knowledge and skill (Duty 431I)** and providing your advice in a manner that demonstrates **care, diligence and skill (Duty 431L)**.

If your advice is ever challenged or is the subject of a complaint, the litigants will look to whether you exercised due care, diligence and skill. Therefore the documentation of your 'learning and education' and continuing professional development (CPD) will be a key factor in demonstrating you were competent and exercised care, diligence and skill.

Level 2 – The Code Part 2 – our focus today

Part 2 – Competence, knowledge and skill

Standard 6 – Have general competence, knowledge and skill



Standard 7 – Have particular competence, knowledge and skill for designing an investment plan

Standard 8 – Have particular competence, knowledge and skill for product advice

Standard 9 – Keep competence, knowledge and skill up-to-date

*Note that there are 5 other Code standards in Part 1 - Ethical behaviour, conduct & client care that we are not covering in this webinar.

Code Standard 6 – Have general competence, knowledge and skill.

A person must not give financial advice unless the person meets the standard of general competence, knowledge, and skill.

A person may demonstrate their general competence, knowledge, and skill by any of the following ways:

- › hold version 1 or 2 of the New Zealand Certificate in Financial Services (Level 5)
- › hold the National Certificate in Financial Services (Financial Advice) (Level 5)
- › was an authorised financial adviser immediately before 15 March 2021.
- › give financial advice only through an individual who satisfies any of the ways stated above.

There is a 2 year safe harbour rule for existing financial advisers who have been giving advice prior to 15 March 2021.

Code Standard 7 – Have particular competence, knowledge and skill for designing an investment plan

A person may demonstrate their particular competence, knowledge, and skill for designing an investment plan by any of the following ways:

- › has achieved the qualification outcomes of the **investment strand** of version 1 or 2 of the NZ Certificate in Financial Services (Level 5) or of the National Certificate in Financial Services (Financial Advice) (Level 5)
- › was an authorised financial adviser, permitted to provide investment planning services, immediately before 15 March 2021.
- › give financial advice only through an individual who satisfies either of the ways stated above.

Code Standard 8 – Have particular competence, knowledge and skill for product advice

A person must not give financial advice that includes a recommendation or opinion about either:

- › acquiring or disposing of (or not acquiring or disposing of) a financial advice product
- › switching funds within a managed investment scheme

unless the person meets the standard of particular competence, knowledge, and skill for product advice.

The standard of particular competence, knowledge, and skill for product advice is that the person has the capabilities equivalent to the qualification outcomes of **the relevant strand** of the New Zealand Certificate in Financial Services (Level 5) version 2.

The relevant strand means the specialist strand such as Residential Property Lending, Life Disability & Health Insurance, or Investment.

Code Standard 9 - Competence, knowledge and skill up to date

A person who gives financial advice must undertake continuing professional development as follows:

Individuals must, at least annually, plan for and progressively complete learning activities designed to ensure that they maintain:

- › the competence, knowledge, and skill for the financial advice they give
- › to the extent relevant to the financial advice they give, an up-to-date understanding of the regulatory framework for financial advice in New Zealand.

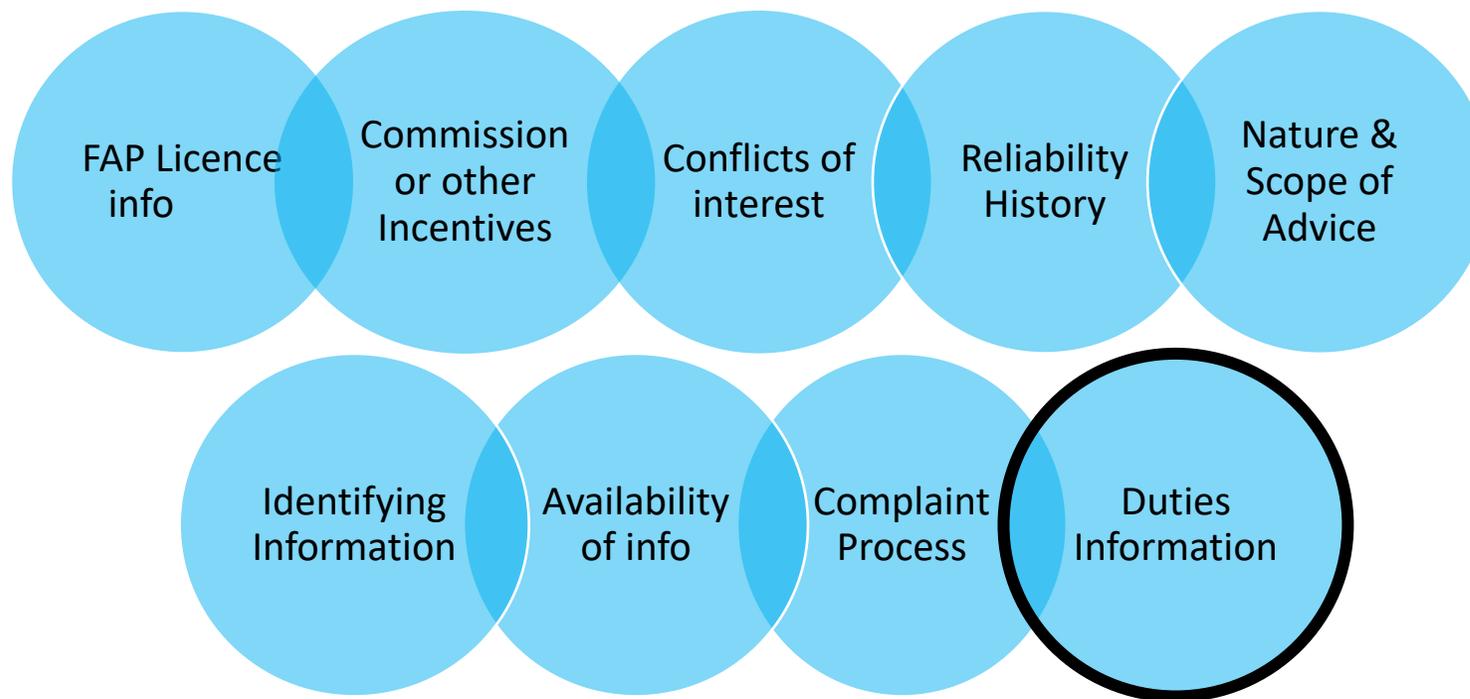
Entities must, at least annually, review their procedures, systems and expertise to ensure that they maintain the capabilities for the financial advice they give.

Level 3 – Regulations under the Act

- The Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2020.
- Stages of disclosure from 15 March 2021.



What information needs to be disclosed



Refer to New Disclosure Requirements Member Guide from Financial Advice NZ

Disclosure - Duties information

When to disclosure this - Publicly available information and when advice is given.

The most relevant areas of disclosure is a statement from the adviser to the client regarding their duties information as set out below. (Reg 229E)

I, Leigh Hodgetts, am bound by the duties of the Financial Markets Conduct Act to:

1. Meet the standards of competence, knowledge and skill set out in the Code of Conduct.
2. Give priority to the clients' interest,
3. Exercise care, diligence and skill and
4. Meet the standards of ethical behaviour, conduct, client care set out in the Code of Conduct.

Ever Changing Rules and Regulations

It takes a planned approach to stay up-to-date with new regulatory developments and to avoid feeling swamped!

It also means you are likely to succeed, and it provides a document to evidence how you are staying up to date with the regulatory framework.

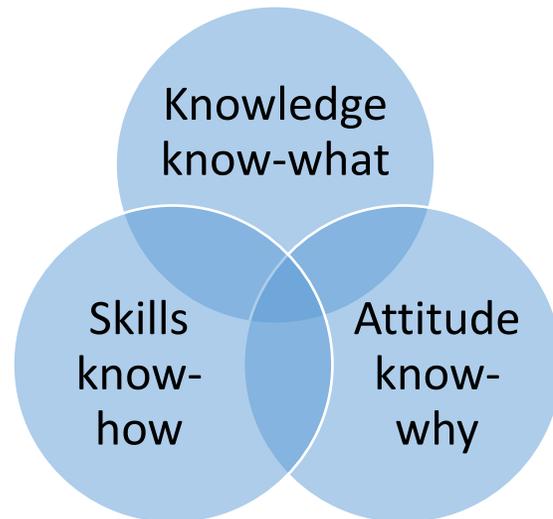
The following are excellent sources of learning in the regulatory framework:

- Courses -NZ Certificate In Financial Services Level 5 – Core plus appropriate strands
- Relevant government websites, e.g Privacy Commissioner (Privacy Act 2020)
- FMA website - online guidelines and great content regarding licensing.
- Financial Advice NZ member toolbox plus regional events & national conference.

Framework of adviser competence

The diagram below shows that competence, your ability to perform effectively and efficiently over time, happens when three things overlap – your professional skills, your knowledge and your attitude or ethics.

This is the meeting area of your ‘know-how’ your ‘know-what’ and ‘know-why’.



Competence is
the synergy
between
knowledge, skills
and attitude.

Refer to **Section B** in your workbook.

Framework of adviser competence

Adviser Industry Knowledge Areas

The **know-what** of financial advice:

- Ethics
- Compliance
- Regulation and legislation
- The advice process
- Product knowledge
- Lending
- Investment planning
- Insurance planning
- Retirement planning
- Asset Protection and estate planning
- Taxation



Adviser Core Abilities are know-how of financial advice

Professional Skills are the know-why of financial advice.

Refer to Section B of your workbook to explore this more.

Framework of adviser competence

Adviser Core Abilities.

The **know-how** of financial advice:

Collection

Client data
Clients goals & aspirations

Analysis

Balance Sheet - debts and assets
Taxation issues
Risk management
Investments
Retirement - long term funding
Estate planning issues

Synthesis

Recommendations, rationale, risks and benefits
Implementation and periodic review



Refer to Section B of your workbook to explore this more.

Framework of adviser competence

Adviser - Professional Skills

Professional Responsibility

- Acts in the best interest of the client and demonstrates this
- Establishes trust in all professional relationships
- Demonstrates ethical judgement, integrity and fairness

Practice

- Treats vulnerable clients with professional care & respect
- Complies with law, regulations and codes
- Conducts appropriate research
- Exercises responsibility for self and/or firm's delivery of services

The **know-why** of financial advice.

Communication

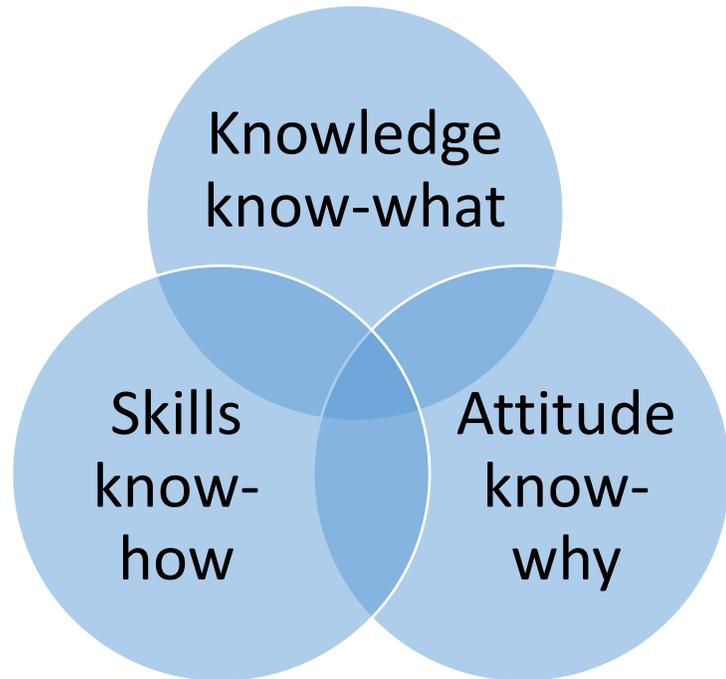
- Listens to the client and establishes rapport
- Protects client-confidentiality and provides effective disclosure
- Communicates appropriately for the client to gain full understanding
- Provides rationales in a logical and easy to follow way
- Deals with objections and complaints effectively
- Gains agreement from the client and others

Cognitive

- Applies mathematical method or formulas as appropriate
- Analyses and integrates information from all sources
- Uses logic and reasoning to consider strengths and weakness of proposals
- Arrives at informed decisions when using inconsistent information
- Demonstrates capacity to adapt thinking and behaviours

Framework of adviser competence

This is the meeting area of your 'know-how' your 'know-what' and 'know-why'.



Competence is the synergy between knowledge, skills and attitude.

Evidence that you are meeting your obligations



If the FMA came to do a monitoring visit, or if you had a compliance review from your Financial Advice Provider (FAP), or if you had a complaint.....

1. Could you demonstrate through your CPD register and PD Plan, that you have an up-to date understanding of the regulatory framework for financial advice in NZ?
2. Could you also demonstrate that you have the competence, knowledge and skill relevant to your advice area(s)?

Policy Process Controls (PPC) example 1

Action 1 –

Identify learning opportunities for Continuing Professional Development (CPD) that will keep me up to date with developments in areas of my financial advice.

1. Develop Policy statement - Promise to yourself.



“I will undertake an annual gap-analysis of my competence, knowledge and skills across all areas in which I give advice”

PPC Example 1 cont.



2. Develop Processes and Procedures (tasks)

- In January review my previous year's professional development plan for areas that need further CPD this calendar year.
- Set my particular learning objectives for the year in my advice areas by February each year.
- Identify sources and types of CPD to meet my learning objectives.
- Plan out my education with courses, conferences and other material available throughout the year.
- Set a budget for ongoing training and education for myself and my team.

PPC Example 1 cont.



3. Develop Controls (check it is working)

- Every quarter-end review learning objectives and achievements and adjust plan accordingly.
- At year-end do a final review of my actual competence level to targeted level.

It's also a requirement of Financial Advice NZ for members.

If you have been completing 15 – 20 hours of CPD keep this up.

Best Practice!

PPC Example 2

Action 2 - Assess my knowledge of the current regulatory framework

1. Develop Policy statement - Promise to yourself

"I will know my obligations under the current regulatory framework from 15th March 2021!"



PPC Example 2 cont.



2. Develop Processes and Procedures (tasks)

- Identify areas of regulation and legislation that need further formal learning
- Identify refresher courses or CPD to meet those gaps (Financial Advice NZ webinars for example)
- Enter into my annual professional development plan any expected CPD or training

PPC Example 3 cont.

3. Develop Controls (check it is working)

- Every quarter-end review learning objectives and achievement and adjust plan accordingly.
- At year-end do a final review of my actual competence level to my targeted level.



PPC Example 3

Action 3 – Review the content of your relevant strand (RPLS, LD & H Insurance or Investment) of the NZ Certificate in Financial Services Level 5 & check I meet the standards.

1. Develop Policy statement - Promise to yourself

“I will attain the qualification NZ Cert Level 5 – for either risk advice/residential property lending/KiwiSaver advice/Investment.”

PPC Example 3 cont.



2. Develop Processes and Procedures (tasks)

- Set aside time to review and read the current minimum qualification in the code.
- Map any gap between the code requirement and my qualifications.
- Identify the formal qualifications or bridging modules to these qualifications from older versions.
- Review the NZQA provider and University providers for enrolment options.
- Enter into my annual professional development the expected training and completion date.
- Enrol in formal training course.

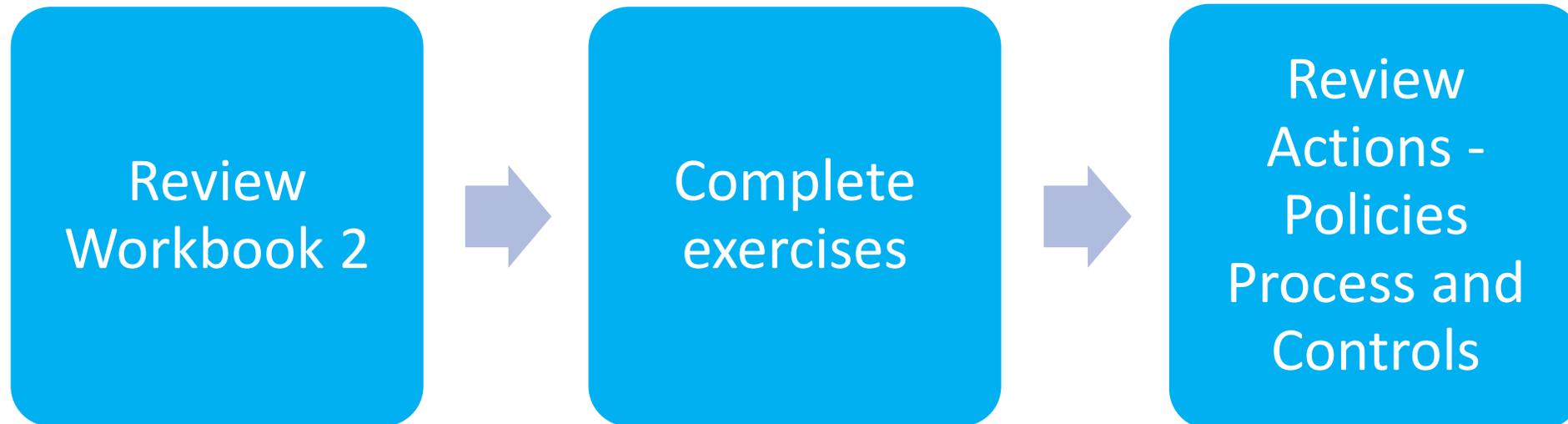
PPC Example 3 cont.

3. Develop Controls (check it is working)

- Every quarter-end review learning qualifications progress
- At year-end do a final review of achievements towards the goal.



Next steps



Questions?



Webinar 3 – Wednesday 10th February

Workbook 3

Understanding the Nature and Scope of Advice