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ICNZ submission on Code of Professional Conduct for Financial Advice Services - Consultation Paper

ICNZ welcomes the opportunity to submit on the *Code of Professional Conduct for Financial Advice Services - Consultation Paper* ("Consultation Paper"), which was released by the Code Working Group on 12 March 2018. We look forward to commenting on a full draft version of the new Code later in the year.

ICNZ represents general insurers that insure about 95 percent of the New Zealand general insurance market, including over half a trillion dollars' worth of New Zealand property and liabilities.

Please contact Andrew Saunders (andrew@icnz.org.nz or 04 914 2224) if you have any questions on our submission or require further information.

This submission is in two parts:

- Overarching comments
- Comments on the Consultation Paper

Overarching comments

ICNZ supports enhanced standards for financial advice in New Zealand. In doing this however it is important to minimise compliance costs generally and ensure these requirements are not excessively onerous, particularly for smaller entities, as the adverse impacts of this could ultimately be borne by consumers. We support the *Code of Professional Conduct for Financial Advice Services* ("the Code") taking a principles-based approach, rather than making the Code highly detailed and prescriptive.

It is also important the Code avoids overlapping with other elements of the regulatory regime for financial services (e.g. disclosure regulations, Financial Markets Authority (“FMA”) licensing requirements) or other regulatory frameworks (e.g. Privacy Act regime). We have identified in the submission below some specific examples where what it is proposed for the Code extends to matters covered elsewhere.

Whilst noting the title of the Code is provided in the *Financial Services Legislation Amendment Bill* (“the Bill”) itself, in considering the Consultation Document we have had cause to wonder whether the use of “Professional” in *Code of Professional Conduct for Financial Advice Services* is logical for an instrument with a different scope to the current *Code of Professional Conduct for Authorised Financial Advisers* (“AFA Code”) and which applies largely to business entities, for many of which providing “financial advice” is only an aspect of their business (e.g. general insurers). We also note that many people seem to simply refer to it as the Code of Conduct in conversation.

Comments on the Consultation Paper

This Part of the submission comments on specific issues and proposals raised under the various identified headings of the Consultation Paper.

Principles for drafting the Code

Good advice outcomes

ICNZ supports the focus on providing good advice but does not support the use of the term “good advice outcome”. We, like a number of other stakeholders, are concerned that including the word “outcome” will create confusion between the outcome of the advice process itself and the subsequent financial outcome of any financial product/s taken up.

In terms of alternatives, we consider using “good advice conduct” would have merit. Using “conduct” focusses on the process and gets away from emphasising the end result of the advice (i.e. did the customer have a good financial outcome from following the advice) and for this reason we consider “good advice conduct” to be superior to the simpler phrase “good advice”. Using “good advice conduct” would also align with the FMA’s focus on conduct.

Principles

ICNZ is generally comfortable with the five principles outlined on pages 18-21 of the Consultation Paper, subject to other matters commented on elsewhere in this submission being addressed (e.g. use of the term “good advice outcomes”).

Ethical behaviour

Act with honesty, fairness and integrity

We support the intent behind the requirement to act with “honesty, fairness and integrity”. We note the *Fair Insurance Code (2016)*, a code of practice for general insurers issued by ICNZ, provides that insurers “will act honestly, fairly, transparently and with utmost good faith” towards policyholders.

Keep the commitments you make to your client

Adherence to appropriate ethical standards is important but care has to be taken in extending the Code beyond legislative obligations. We note existing legislative frameworks already address matters such as fair dealing and misleading and deceptive conduct, which could apply to less formal understandings, impressions or expectations. Putting in place minimum standards for ethical behaviour that go beyond legal obligations creates a risk of confusion in application of the law.

We agree with the commentary in paragraphs 88 and 89 of the Consultation Paper and the perspective that different businesses may legitimately adopt different approaches. Requiring Financial Advice Providers to have their own code of ethics also risks implying the legislative framework and the Code are lacking in some aspect. We also comment on this issue under the heading “Ethical processes in Financial Advice Provider entities” below.

Manage and fully disclose conflicts of interest

ICNZ supports disclosure of conflicts of interest generally. The Consultation Paper asks whether the Code should include a minimum standard on conflicts of interest (*Question F*). In the interests of simplicity, it would be more useful if the Code focussed on addressing the practical application of the legislative requirement to give priority to clients’ interests rather than introducing further minimum standards on managing conflicts.

We are also mindful that dedicated regulations are already being developed related to disclosure requirements, including disclosure of conflicts of interest in some situations, and any provisions in the Code should not duplicate or overlap what will be required under those regulations.¹

Do no harm to the client or the industry

In relation to *Question H*, we agree that an additional minimum standard on doing no harm to the client is not necessary and support the logic for this outlined in paragraph 95 of the Consultation Paper (i.e. compliance with legislation and the Code will have the same effect).

With regard to a Financial Advice Provider/individual who gives financial advice doing something or making an omission that would, or would be likely to, bring the financial advice profession into disrepute (*Question G*). We note industry associations and professional bodies often impose such standards on their members and some Financial Advice Providers will be subject to these (e.g. any ICNZ members). If a standard related to bringing the financial advice profession into disrepute was to be included in the Code it would need to be clearly and tightly defined and careful consideration given to when and how it might be used in practice.

Keep your client’s data confidential

With regard to anonymised bulk customer data, we agree with paragraph 99 of the Consultation Paper that provided such data is anonymised the Code should not impose any standards on its use.

ICNZ fully supports appropriate regulatory provisions to protect personal information. It is important however that rules are clear and that overlapping regulatory frameworks are avoided where possible. It would be problematic to put in place different pieces of legislation, or mandatory Codes, that exist separately from and/or have different standards to the Privacy Act framework. Given a comprehensive Bill to update and replace the current *Privacy Act 1993* was recently

¹ Submissions are due by 25 May 2018 on the MBIE Discussion paper “Disclosure requirements in the new financial advice regime”.

introduced to Parliament, it is both possible and more appropriate for any issues associated with data and confidentiality to be addressed through revisions to that legal regime. We accordingly do not at this stage see there is also a role for the Code in specifically covering the various aspects of maintaining confidentiality discussed in the Consultation Paper.

Ethical processes in Financial Advice Provider entities

ICNZ is supportive in general terms of the sorts of expectations and processes related to ethics outlined in the Consultation Paper. We question however whether these would in many cases be better addressed through the licencing process for Financial Advice Providers than in the Code.

In relation to *Question M*, as noted above in relation to “Keep the commitments you make to your client”, we don’t consider a case has been made in the Consultation Paper for the Code to require Financial Advice Providers to have a corporate code of ethics, and if so for it to be made public. Whilst many entities, including a number of our members, have these in place, careful consideration is required in regard to whether this should be mandated in addition to the Code’s provisions, whether this would be practical for smaller entities, provide benefits to consumers and, whilst noting section 431L, how such a requirement would always be relevant to entities where the provision of “financial advice” is only a part of those businesses.

Compliance functions

With regard to *Question T*, it is not entirely apparent what is envisaged here or the linkage to ethics. What is suggested (i.e. “soundness”) appears more a matter of quality than ethics.

With regard to *Questions U & V*, we note that whilst these activities/processes would be common practice for many larger organisations, such requirements could be impractical and/or disproportionality costly for small entities.

Conduct and client care

Advice giving standards

There are some points we would like to raise in relation to moving the standards in the current AFA Code to the new Code:

- CS – 8: The concept of “must agree with the client” may need refinement given the drafting of section 431I (e.g. use of “understands”) and the fact that in some cases the scope of advice is implicit to the business model.
- CS – 12: Whilst noting “in writing” includes “in electronic form”, this could nonetheless be altered to more explicitly recognised that information can be recorded in various ways (over telephone etc.) and to future-proof the Code.

We also note the standards in the current AFA Code would not be suited to the specific situation of the renewal of insurance contracts, which is generally an annual process. ICNZ has submitted on the Bill that whilst we do not consider insurance renewals to be financial advice, because renewal is best described as an “offer” or the provision of “factual information” about price and terms, insurance “renewals” should nonetheless be exempted from the definition of “financial advice” for certainty. If that change is not made through the Bill and renewals were to be considered to be financial advice then we note the standards in the AFA Code would require careful re-consideration as some would not be appropriate for that context.

Personalised suitability

ICNZ considers it is important that requirements related to suitability analysis are proportionate and workable to the situation at hand. We agree with the commentary in paragraph of 140 of the Consultation Paper related to the risks of over-compliance and the impact of this on the affordability of advice. We support a “personalised” suitability analysis not being required in situations where a client’s broader financial situation is not material to the advice and it is reasonable to conclude the client understood the advice scope did not include comparison with an existing or competing product.

For this to be applied simply and practically it is necessary for a Financial Advice Provider to be able to demonstrate this simply and clearly. There needs to be guidance on how you can achieve flexibility – otherwise the risk of conservatism leading to over-compliance remains. Whilst the approach outlined in and below paragraph 141 has some merit we are concerned it has a circular aspect to it that could make it problematic to apply, at least in the absence of further guidance.

Organisational standards

As outlined above we consider further consideration needs to be given as to whether some of the proposed organisational requirements are better addressed through licensing requirements than in the Code.

General competence, knowledge and skill

Ways to demonstrate meeting the standards

ICNZ supports at a general level the approach being taken so that general competence, knowledge and skill can be achieved at either or both of an organisational or individual level.

Particular competence, knowledge and skill

With reference to *Question T*, we consider there may be merit in identifying at least two types of financial advice (“product advice” and “investment planning” as currently in the Bill or “financial planning” as recommended by the Code Working Group in its submission on the Bill) to recognise the very different types of “financial advice” that are provided and amongst other things the different skills/knowledge/experience required to deliver them. However, for this to be practical the demarcation between the two or more categories has to be workably clear in practice and we don’t believe the line between “product advice” and “financial planning” as articulated in the Consultation Document necessarily is, particularly in the context of insurance.

To be workable and to maintain the affordability of advice it is important that in terms of competence/knowledge/skill expectations, relatively simple advice situations are not considered to fall within the scope of “financial planning” should this term be adopted (e.g. advice around how two conventional insurance policies/products offered by a single provider interact with each other).

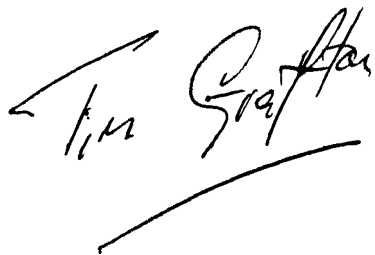
Given the uncertainty about what is likely to be ultimately provided in the legislation and the Code in terms of the definition of “financial advice”, and the material implications of this, we find it is premature to comment on the specific proposals in the Consultation Paper related to particular competence, knowledge and skill. We do consider the focus of any requirements should always be on ensuring that competence, knowledge and skill aligns with the nature and scope of advice being provided in a given situation. There is a risk that, given the diversity of advice situations, pursuing a simple approach (i.e. two level) may not achieve this.

Independent of what is ultimately provided in the Code. we support Financial Advice Providers being able to determine what training is appropriate for their employees and to use internal training and e-learning modules for example. Internal training can be important as external providers may not be as familiar with contexts in which individual advisers or nominated representatives provide advice in the course of undertaking their roles.

Conclusion

Thank you again for the opportunity to submit on the Consultation Paper. If you have any questions, please contact our Regulatory Affairs Manager on (04) 914 2224 or by emailing andrew@icnz.org.nz.

Yours sincerely,

Handwritten signature of Tim Grafton in black ink, written in a cursive style.

Tim Grafton
Chief Executive

Handwritten signature of Andrew Saunders in black ink, written in a cursive style.

Andrew Saunders
Regulatory Affairs Manager