

Code of Professional Conduct for Financial Advice Services

Summary of submissions

28 February 2019

Introduction

This document has been prepared by the Code Committee (currently the Code Working Group¹) in connection with the draft Code of Professional Conduct for Financial Advice Services produced by the Code Committee under proposed Schedule 5 of the Financial Markets Conduct Act 2013 (the FMC Act).

This document contains:

- a summary of submissions made to the Code Committee by persons affected by the Code
- a brief response to those submissions.

This document has been prepared in accordance with the obligations of the Code Committee under proposed clause 33(3)(b) and (c) of Schedule 5 of the FMC Act. The Code Committee also has prepared an impact analysis under clause 33(2)(b) of Schedule 5 of the FMC Act.

In this document “we”, “us” and “our” refer to the Code Committee.

Consultation

In preparing the draft Code we consulted with:

- the Financial Markets Authority
- persons that we considered to be representative of the financial advice industry
- persons that we considered to be representative of consumers of financial advice

and invited any person affected by the Code to make submissions to us.

We invited submissions in October and November 2018 in connection with a consultation draft of the Code.

¹ References in this document to the Code Committee include the Code Working Group established by the responsible Minister before the commencement of the new advice provisions proposed by the Financial Services Legislation Amendment Bill.

Our consultation included the following:

- Round 1 – Focus groups held in October and November 2017 to test high-level concepts
- Round 2 – Discussions and feedback in connection with a consultation paper during March and April 2018, including roadshows around the country
- Round 3 – Discussions and submissions in connection with a consultation draft of the Code in October and November 2018, including a live webcast
- MBIE, the Office of the Privacy Commissioner, the Financial Markets Authority and a number of other relevant organisations were also consulted.

Financial advice industry – advisers

During round 1 we tested high-level concepts with adviser associations. During round 2, we engaged with advisers directly on our roadshows. We also sent an email to all advisers on the Financial Service Providers Register to notify them of our consultation. We presented directly at adviser professional development days. During the round 3 we ran a dedicated webinar and also presented at an adviser professional association breakfast session.

We were careful to engage with all types of advisers from a variety of businesses. We engaged directly with adviser groups and dealer groups outside of our structured rounds of consultation, including presenting at the inaugural conference of Financial Advice New Zealand.

We sought feedback from a panel of practising advisers during all rounds of consultation. That group included RFAs and AFAs who give financial advice in connection with investments, mortgages and/or insurance.

Financial advice industry – other industry groups

In all three rounds of our consultation we sought feedback from industry groups whose members include financial advice providers, including the Securities Industry Association, the Financial Services Council, the Insurance Council of New Zealand, and the New Zealand Bankers Association.

Consumers of financial advice

We conducted a survey of consumers. The purpose of the survey was to help us directly capture views from consumers about their expectations of advisers.

We met with or sought feedback from consumer representatives, including groups that are directly connected to financial advice (e.g. Dispute Resolution Schemes, Consumer NZ, Citizen's Advice Bureau) and other consumer groups (e.g. New Zealand Union of Students Association, National Council of Women, Age Concern).

Themes from our consultation with consumers and consumer representatives included:

- Advisers should ask questions and to make sure the client understands the commitment
- Advisers should have a high level of integrity
- Advisers should disclose and manage conflicts of interest, and be honest about their dealings
- Advisers should communicate effectively (e.g. in plain language and to present options clearly)
- Advisers should have competence and expertise relevant to their work
- Advisers should provide consumers with a seamless advice experience.

Financial Markets Authority

We engaged regularly with the FMA throughout the preparation of the Code.

Ministry of Business, Innovation and Employment

We engaged regularly with MBIE throughout the preparation of the Code.

Overview of submissions (Oct/Nov 2018)

We received 115 submissions in connection with the consultation draft of the Code:

- 96 submissions used the standard submission form
- 19 submissions were emailed to the Code Working Group Secretariat (“Secretariat”).

They included:

- Forty-eight individual submissions and 67 organisational submissions
- Fifteen submissions from AFAs, 28 submissions from RFAs and 1 submission from a QFE Adviser. Thirty-two submitters indicated that they did not personally give financial advice.

Breakdown from the online submission form

Submitters who answered that they gave financial advice indicated that they gave the following types of financial advice (> 100 per cent because submitters could give multiple types of advice):

Life and/or health insurance	46.1 per cent
Fire and general insurance	20.2 per cent
Business insurance	23.6 per cent
Investments	25.9 per cent
Mortgages	20.2 per cent
Other personal lending	4.5 per cent
Financial planning	4.5 per cent
My organisation or I do not give financial advice	21.4 per cent

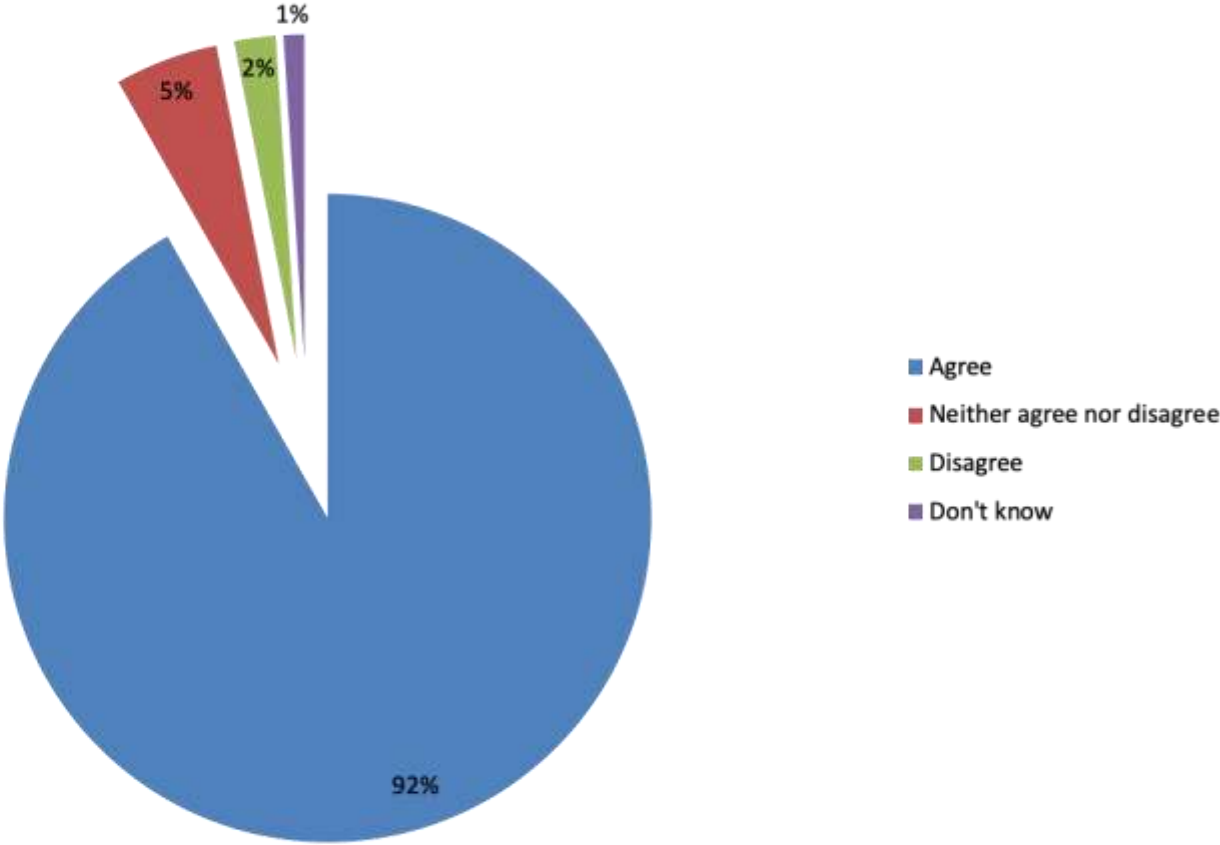
Submitters who answered that they gave financial advice indicated the size of their organisation as the following:

Small firm (1-10 staff)	51.1 per cent
Medium firm (10-50 staff)	21.6 per cent
Large firm (50+ staff)	27.3 per cent

The summary of submissions and brief response below are presented under each standard in the consultation draft of the Code. The pie charts indicate the overall levels of agreement and disagreement based on responses in the online submission form.

Standard 1

Treat clients fairly and act in their interests



Ref	Key suggestions and themes from submissions	Code Committee response
1.	There was strong support in submissions for the “treat clients fairly” element of the draft standard. Several submissions highlighted concerns about the scope of what is “fair”, including: • That fairness should be assessed in the context of and limited by the nature and scope of the advice engagement • The wording “Fairness is not one-sided” was unclear • Whether a “reasonableness” or “prudent person” test should be used	We agree that the reference to fairness not being one-sided was unclear. We have revised the commentary to be clear that fairness depends on the particular circumstances, including the nature and scope of the advice. We have added commentary that fairness does not mean that clients are not responsible for their own decisions or that they are not exposed to risk. We believe that fairness is an inherently objective concept but should be assessed in the circumstances of the particular client and the nature and scope of the advice.
2.	Several submissions said that there was a risk of confusion between the draft standard to act in the client’s interests and the duty in the legislation to give priority to the client’s interests (where there is a conflict of interests). Most of those submissions proposed that the reference in the standard to clients’ interests should be removed and that the standard should be limited to the requirement to treat clients fairly.	Agreed. We have decided against adopting terms such as “client first” or “best interests”. See additional considerations below.
3.	Conversely, several submissions said that the requirement in the draft standard to act in clients’ interests did not go far enough and the standard should require that advisers must act in best interests of clients or put clients’ interests first.	See point above

Ref	Key suggestions and themes from submissions	Code Committee response
4.	Some submissions suggested that the draft commentary went too far by suggesting that treating clients fairly usually included acting in accordance with the spirit and intent of a person's legal obligations.	Agreed. The Code should not limit how an adviser might interpret and apply legal obligations. We have revised the commentary accordingly. Reference to "spirit and intent" of the law has been removed.
5.	Some submissions said that the expression "not exploiting" in the draft commentary was too narrow and implied only intentional misconduct, whereas fair treatment usually should include ensuring that the adviser's practices identify and do not take advantage of a customer's vulnerabilities.	Agreed. We have revised the commentary to refer to "not take advantage of" clients' vulnerabilities.
6.	Some submissions questioned the utility of the draft standard on the basis that it would be difficult to police or enforce.	The standard is designed to promote a pervasive culture of fair treatment of clients. It may provide a way to sanction poor conduct that does not directly contravene one of the other standards. However, we recognise that it may be more difficult to enforce than a narrower standard. 'Treating clients fairly' is not a bright-line test and it is possible to argue different interpretations. We decided that, on balance, the benefit of having a high-level requirement to treat clients fairly outweighs the downside of the standard being more difficult to enforce. We have sought to increase the clarity and enforceability of the standard by providing commentary setting out what compliance should look like.

Additional considerations

The aim of the standard is to set an expectation for behaviour and client care requirement that is centred on the fair treatment of clients. It aligns with increasing regulatory emphasis on good conduct and customer outcomes, for example in:

- The Guide to the FMA’s View of Conduct published in February 2017
- The FMA and RBNZ Reviews of Bank Conduct and Culture published in November 2018 and Life Insurer Conduct and Culture published in January 2019
- The International Organisation of Securities Commissions Model Code of Ethics published in June 2006, which identifies fairness to the customer as a guiding principle.

The standard applies to all conduct that is connected to the giving of financial advice, hence the use in the standard of the word “always” and the reference to “clients” in the plural. It is placed as the first standard in the Code to emphasise the client focus of the entire Code. This approach is based on feedback from our consultation, and after considering other options:

- Having no such standard in the Code, relying only on the legislative duty to give priority to clients’ interests. We rejected this because consumer confidence requires more than just the management of conflicts of interests.
- Adopting various of terms (for example “client first” or “best interests”). We rejected these because they risked conflicting with, or overlapping, the legislative duty to give priority to clients’ interests and may have interfered with or contradicted the legislative intent. On the same grounds, we rejected replicating Financial Advisers Act (FAA) Code Standard 1 – “An [adviser] must place the interests of the client first”.
- Using the term “good advice outcomes”, which we had proposed in our March 2018 consultation paper. Based on feedback, we rejected this phrase because it risked confusion between the outcome of an advice process and the eventual outcome of an underlying financial product.
- Using terms such as “customer-centric” or “customer-focused”. We rejected these because we understand there are specific meanings attributed to those words in other contexts which might narrow their interpretation if used in the Code.

We selected the “treat clients fairly” option, noting that it is in line with requirements in place in compatible sectors (for example the banking code) and jurisdictions (for example the UK).

Tested against the various issues we considered important – including the dot points listed in the standard’s commentary – this option achieves the objective of providing an effective and pragmatic standard.

The standard is designed to provide a useful guide for behaviour that is likely to promote compliance with other code standards.

The commentary is structured to help people understand what compliance with the standard might look like. We have focused on communication (both in terms of listening to clients and communicating in a timely, clear and effective manner), because treating clients fairly should result in clients being able to have a meaningful interaction with the person giving the advice.

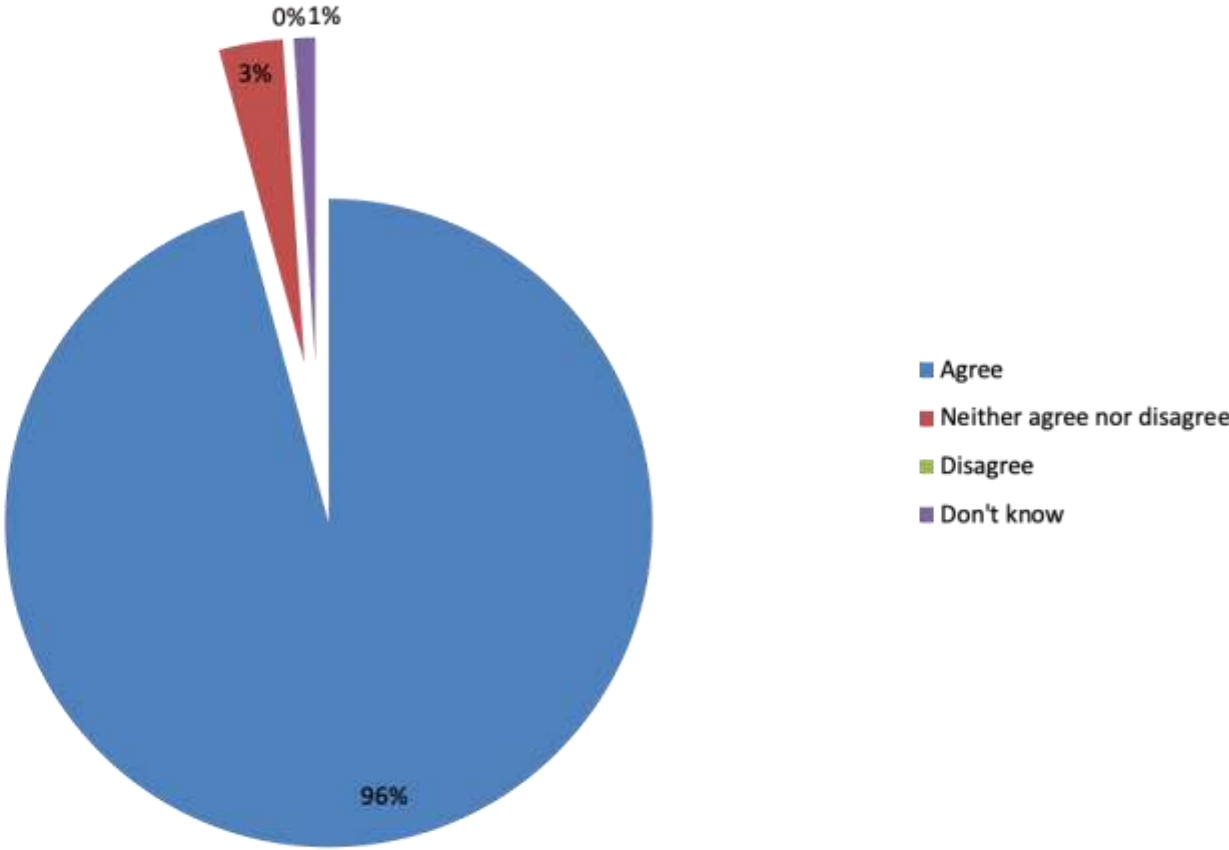
The commentary is consistent with the requirements in FAA Code Standard 6 to communicate clearly, concisely and effectively, and in a timely way. It is also consistent with the FMC Act requirement for product disclosure statements to be worded and presented in a clear, concise, and effective manner. We omitted “concisely” following feedback that a requirement for clarity is sufficient guidance for the purposes of the Code.

We rejected including commentary that fair treatment includes fair terms and conditions and fair fees and costs. We consider that depending on the circumstances those outcomes could be implied by the standard. We note that the Code’s emphasis is on ensuring the client understands the financial advice, including terms and fees, rather than imposing specific requirements to assess the reasonableness of fees. What is important is the overall fair treatment of clients.

We have drafted the standard with a view to empowering consumers to walk away from or complain about advice situations where they are not satisfied that they are being treated fairly.

Standard 2

Act with integrity



Ref	Key suggestions and themes from submissions	Code Committee response
7.	This standard was almost universally supported.	
8.	There were various comments about how integrity was defined, in particular that the description was too colloquial. Several submitters suggested to avoid trying to define it altogether.	We decided that a definition of acting with integrity was not required in the Code. However, we did add a comment that integrity encompasses conflicts of interest and bringing the profession into disrepute which enabled these topics to be dropped from being separate standards.
9.	The references to an adviser “doing the right thing” was widely questioned because of a lack of certainty.	We have agreed and removed this from the Code.
10.	Many asked for clarity on when an adviser can be called independent – in line with the current AFA Code.	We have not included an explicit reference to “independent”, and it is intended that this is captured by “integrity” including how an adviser describes their business. We note that this was a significant issue when the current FAA Code was originally drafted. We have opted for a more generic, principles-based approach.

Additional considerations

The aim of the standard is to provide an ethical behaviour requirement centred on integrity.

In selecting a focus on integrity, we noted that:

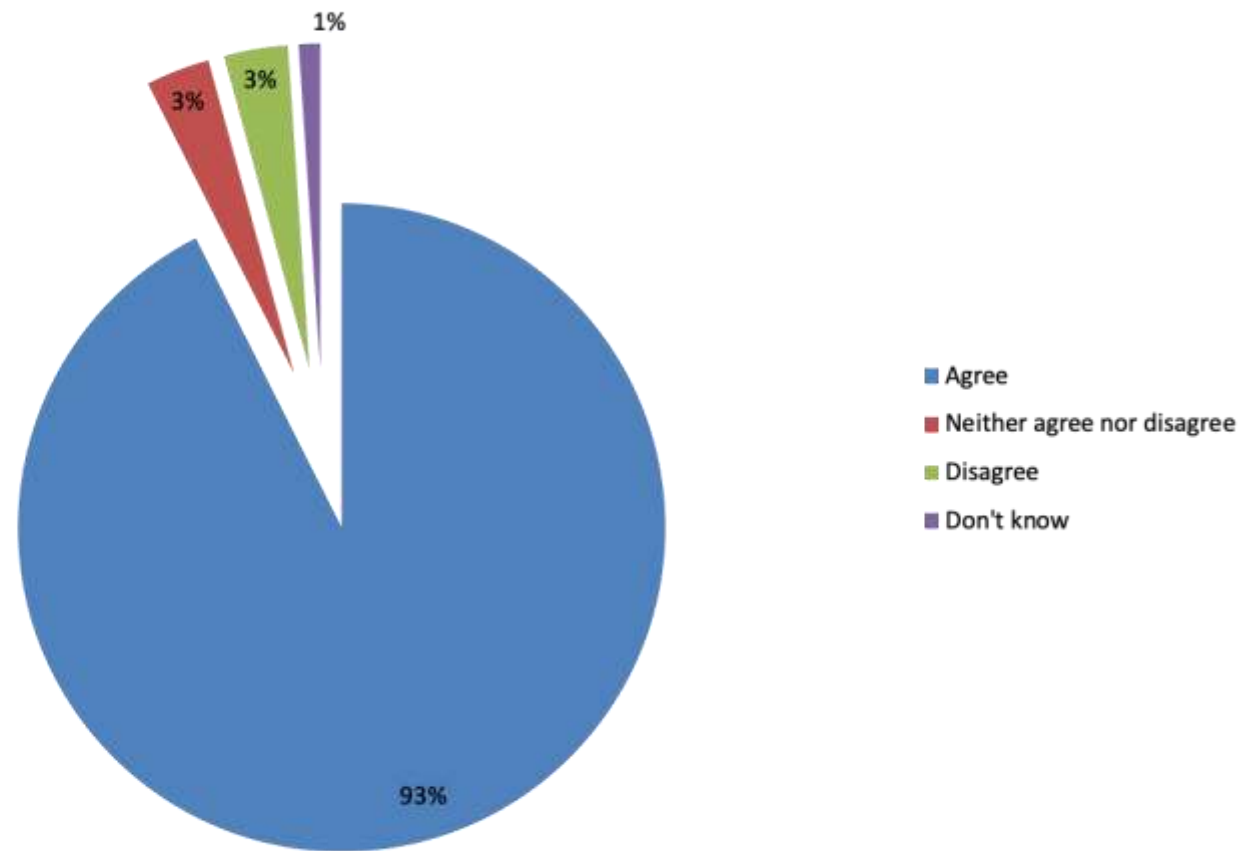
- Most codes of conduct have a requirement to act with integrity, or similar
- FAA Code Standard 1 requires that “[an adviser] must act with integrity”

- Integrity is a guiding ethical principle identified by the International Organisation of Securities Commissions in its June 2006 report on a model code of ethics.

We have decided not to provide a full or partial definition of “integrity” because it risks narrowing the meaning of the concept and confusing the intention of the standard. In our March 2018 consultation we had contemplated a requirement to act with honesty, fairness and integrity. In our October 2018 consultation, we had suggested commentary that “a person who acts with integrity is honest and consistently does the right thing.” Consultation feedback had also suggested that we also include words such as ethical, open, transparent, accountable and trustworthy.

Standard 3

Manage conflicts of interest (since consultation incorporated in Standard 2 “Act with integrity”)



Ref	Key suggestions and themes from submissions	Code Committee response
11.	Most submissions supported the draft standard. Despite their support, however, several submitters proposed amendments to the wording of the standard, including the order of the bullet points dealing with the avoidance, identification and control of conflicts of interests. The submissions also highlighted to us that there was not a uniform understanding of the difference between the “management” and “control” of conflicts of interests, as we had used those terms in the draft standard.	We have been mindful to avoid including process requirements, especially those that relate primarily to the financial advice provider (rather than all givers of advice), noting that such requirements are best dealt with through FMA licensing requirements. We have chosen therefore to not have a separate standard dealing with conflicts of interests and instead to highlight conflicts management as part of the integrity standard, to draw attention to conflicts management as being core to acting with integrity. This emphasises that it is more than a process requirement. In response to submissions we have endeavoured to make it clear that avoiding and appropriately managing any conflict of interests are alternatives (although it is conceivable that some conflicts are so material that they cannot be appropriately managed and therefore should be avoided).
12.	Some submissions said that the use by advisers of the word “independent” should be covered in the standard relating to conflicts of interests.	We have decided to not include restrictions or provide commentary on the use of the word “independent”. Instead, it is dealt with generically by standard 2 – the commentary for which states that acting with integrity includes how a person describes themselves and their business.

Additional considerations

The standard has been incorporated within the broader “act with integrity” standard. We have chosen this approach, as a result of submissions and comments we have received, to draw attention to conflicts management as being part of, and core to, acting with integrity: it is more than a process requirement.

We were cognisant of:

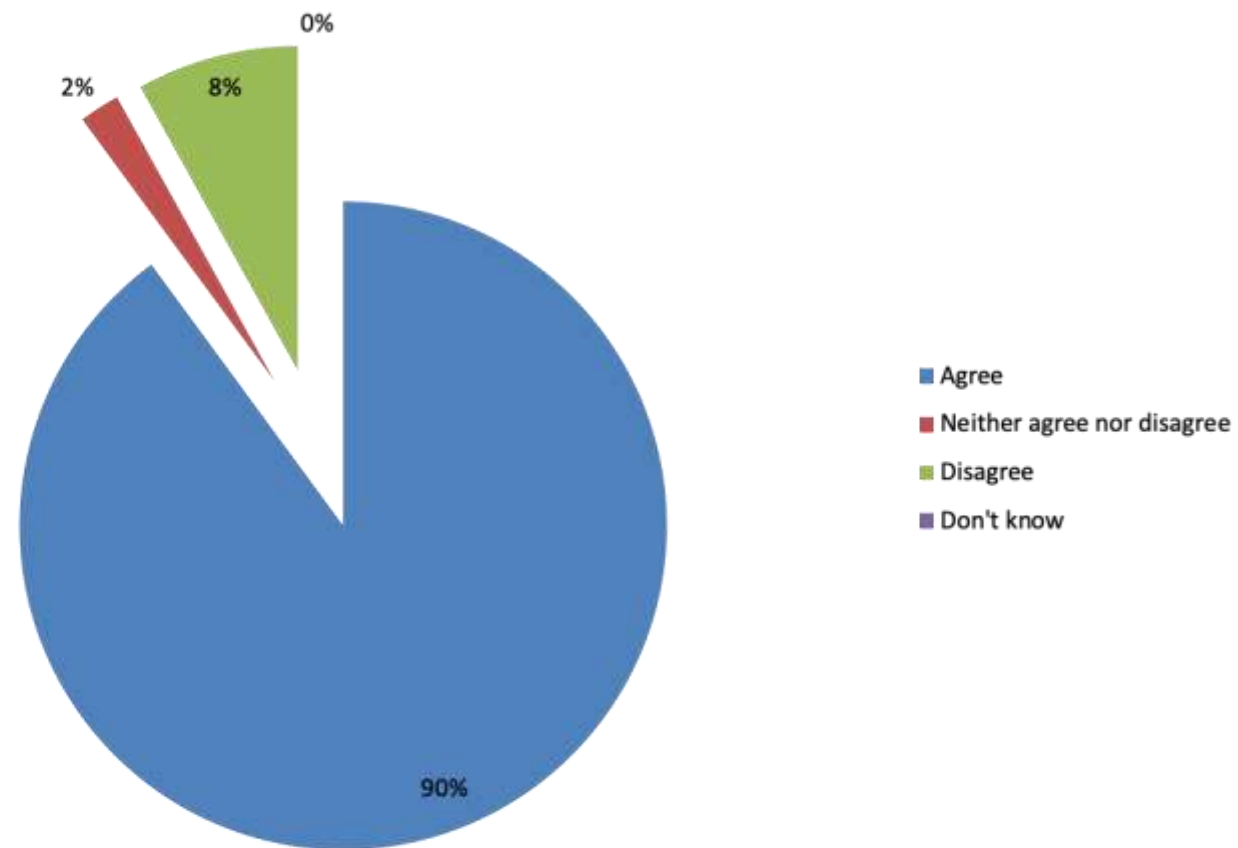
- the (new) legislative requirement to give priority to clients' interests (in conflict situations)
- the likely disclosure requirement to give clients information about any material conflicts of interests and about the arrangements in place to manage them.

Management of a conflict is intended to include interpreting other Code provisions in the context of that conflict. For example, what is fair for [Standard 1] and what is reasonable for [Standard 3] and [Standard 4] may require additional justification if a conflict situation exists.

The conflict management requirement is consistent with current FAA Code Standard 5.

Standard 4

Take reasonable steps to ensure that the client understands the financial advice



Ref	Key suggestions and themes from submissions	Code Committee response
13.	Most submissions supported this standard however many submissions raised issues with the example used because they believed it limited the flexibility of the standard, was not best practice, or contradicted with standard 5. Some submissions called for the example to be replaced with a more aspirational example of best practice.	Most submitters who disagreed, it was the example that they disagreed with. We have removed this example and other examples.
14.	Some submitters suggested adding an exception should be included in the standard for if a client proactively and expressly refuses advice.	There is a legislative requirement for clients understanding nature and scope.
15.	Some submitters questioned how financial advice providers should demonstrate that a client understands financial advice, some suggested a client could sign a statement to the effect that they understand the financial advice or that the client should receive evidence to support the advice they receive.	The standard is deliberately flexible to allow financial advice providers to apply it in way that suits their individual clients. The standard recognises that clients will have different levels of sophistication or familiarity with financial concepts, and there will not be one method or type of information that works for all clients.
16.	Some submitters questioned the phrase “reasonable steps” as being too unclear.	The commentary states that what is reasonable will depend on the circumstances, such as the nature and scope of the financial advice, and the skills, experience and vulnerabilities of the client.
17.	Some submitters suggested that “all material risks and consequences” is too high a threshold should be replaced with “key” or “significant” risks or consequences.	The commentary has been revised to state that understanding includes sufficient comprehension of (among other things) the risks and consequences of the advice to be able to make timely and informed decisions about the advice.

Ref	Key suggestions and themes from submissions	Code Committee response
18.	Some submitters raised the issue of replacement advice and suggested something should be included in the standard to deal with this issue, such as a requirement for a full comparison of policy wording and risks and benefits so clients are fully aware of changes when switching products.	The legislation deals with the nature and scope of an advice engagement. Standard 4 makes clear in the commentary that understanding the financial advice includes the client having sufficient comprehension of the content, risks and consequences of the financial advice.

Additional considerations

The aim of the standard is to provide a conduct and client care requirement to ensure the advice is understood by the client.

In structuring the standard, we have moved away from the requirement to “explain” (used in current FAA Code Standard 10) or “disclose” (to be used in the disclosure regulations), to one that focuses on “understanding” (which aligns with the nature and scope obligation in FMC Act section 431I). We have done this:

- To allow for the broad scope of advice situations covered by the FMC Act. In the case of some advice situations (for example some types of digital advice or situations previously categorised as “class advice”) an explanation to the client may not be practicable. While the fair treatment requirements in [Standard 1] apply – such as finding ways to listen to clients – we want to facilitate a wide range of ways to achieve client understanding that is not limited solely to an explanation of the advice.
- To set a principle that is centred on thinking about the client’s viewpoint. To comply, the giver of the advice must consider the client and what reasonable steps are needed to ensure that client understands the advice.
- To ensure that the Code complements, not duplicates, the disclosure requirements.

The commentary reinforces that “understanding” should be construed broadly to promote the purposes of the FMC Act, not narrowly so as to limit the effect of the standard.

We note our approach is broadly consistent the additional provision following current FAA Code Standard 6 that “communicating ‘effectively’ ... requires an [adviser] to take reasonable steps to ensure the client understands the communication.”

Based on submissions, we have simplified the standard from the version we consulted on in October 2018, which was detailed and multi-layered.

We have inserted a timeliness requirement, based on feedback, to emphasise that the timeliness aspect of fair treatment in [Standard 1] has special relevance here. This will also assist the enforceability of the standard.

Our intention is to encourage advisers to think about how the client is likely to process and understand information about the advice. We would also like to help motivate clients who read the Code to ask questions that will help their decision-making about advice they receive.

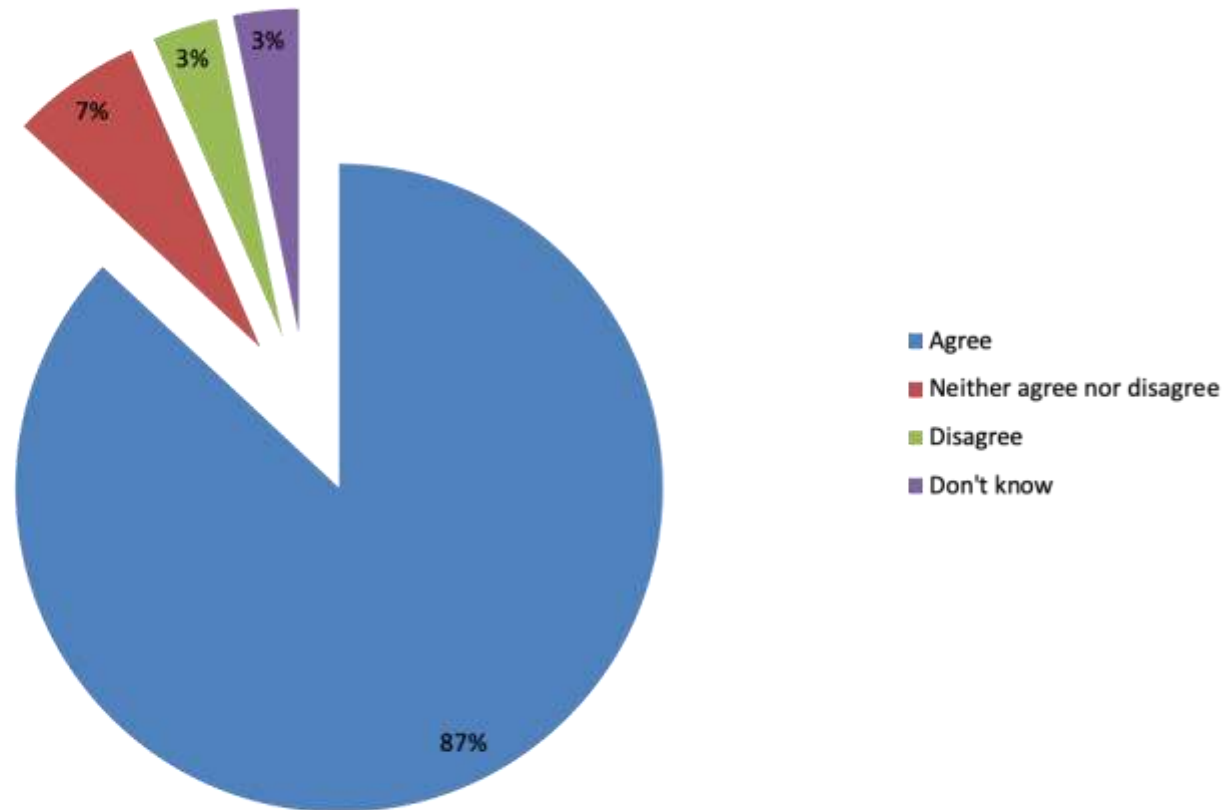
The standard is designed to work in all advice situations, including those where there is unlikely to be a two-way interaction between adviser and client. (The component of [Standard 1] dealing with “listening to clients” continues to apply.) The test for the giver of the advice is whether they have taken reasonable steps to ensure the client understands the advice. The commentary makes clear that what is reasonable depends on the circumstances: it is not defined, to ensure it is interpreted purposively.

It is outside the scope of the Code to require advice to be given in specified situations. However, the standard makes clear that clients should be informed enough to be able to decide when to seek additional financial advice.

The October 2018 consultation document sought to clarify that information that does not aid the client’s understanding of the financial advice may not need to be given to the client. This was because concerns had been raised with us that advisers tend to provide too much documentation to client out of an abundance of caution, serving to confuse and overload clients rather than help them. We have removed this wording because it risks contradicting the disclosure regulations. However, we have changed the commentary to make clear that the client requires only “sufficient comprehension” to be able to make timely and informed decisions about the financial advice.

Standard 5

Give financial advice that is suitable for the client (since consultation renumbered to be Standard 3)



Ref	Key suggestions and themes from submissions	Code Committee response
19.	There was good support for this standard. Many submitters focused on “reasonableness” requirements.	The commentary deals with reasonable grounds
20.	There were requests for a better understanding of how this would apply to general audiences like broker research papers and tip sheets.	This is a primarily a matter for the legislation (to determine whether particular situations are deemed to be financial advice and subject to the Code). However, within the commentary we have made it clear that it may be reasonable in some situations to make assumptions about the client’s circumstances, thus allowing for compliance flexibility.
21.	There was some questioning of how generic advice given to a group can be suitable where assumptions have been made around characteristics of the group.	We have amended the wording in the guidance on this and recognise that an in-depth analysis of the client’s circumstances is not always required, depending on the nature and scope of the advice.
22.	Some submitters suggested either adding more examples, or removing the example to allow more flexibility in how financial advice providers may apply the standard.	We removed the example in response to the feedback that it was distracting.
23.	Some submissions suggested that the Code would read better if Standard 4 came after Standard 5.	Agree. The order of the standards has been changed so that the Code follows a more logical order as a whole.
24.	Some submissions highlighted the phrase “the strategy underpinning the financial advice” as unclear.	The wording in the commentary now reads “any strategy supporting the financial advice” in response to this feedback.

Additional considerations

The aim of the standard is to provide a conduct and client care requirement to ensure the suitability of financial advice.

Suitability is the essence of good advice. It means givers of advice need to know enough about their client and enough about any product that they recommend to appropriately match them to each other.

The standard brings together two requirements in the current FAA Code:

- the requirement in FAA Code Standard 6(c) for [advisers] to recommend only financial products for which they have a reasonable basis
- FAA Code Standard 9, which requires the adviser to take reasonable steps to ensure the [advice] is suitable for the client (noting that the detail of that standard has been subject to several redrafts over the last decade).

Feedback noted that for the advice situations covered by the current Code, the current suitability requirement works well.

Our principle considerations in structuring the standard were:

- Ensure that the standard is flexible enough to apply in a wide range of situations, including those that previously were “class advice” and therefore excluded from the reach of the FAA Code
- Consistent with the rest of the Code, frame the standard on a principles-basis that avoids imposing process requirements.
- Use straightforward language that can be clearly understood and enforced
- Provide flexibility (“having regard to the nature and scope” and “reasonable grounds for the financial advice”) without undermining an objective requirement that the advice must be suitable
- Recognise the close connection between giving suitable advice and the legislative requirement for exercising care, diligence, and skill (we have chosen wording that aligns with the legislative “prudent person” test)
- Address submission concerns about potential for mis-selling in replacement business situations.

In designing the standard, we were mindful that the role of the Code is to provide for minimum standards of conduct. It cannot prohibit types of advice, for example “class advice” or certain types of replacement advice. Similarly, the Code cannot mandate matters that must be

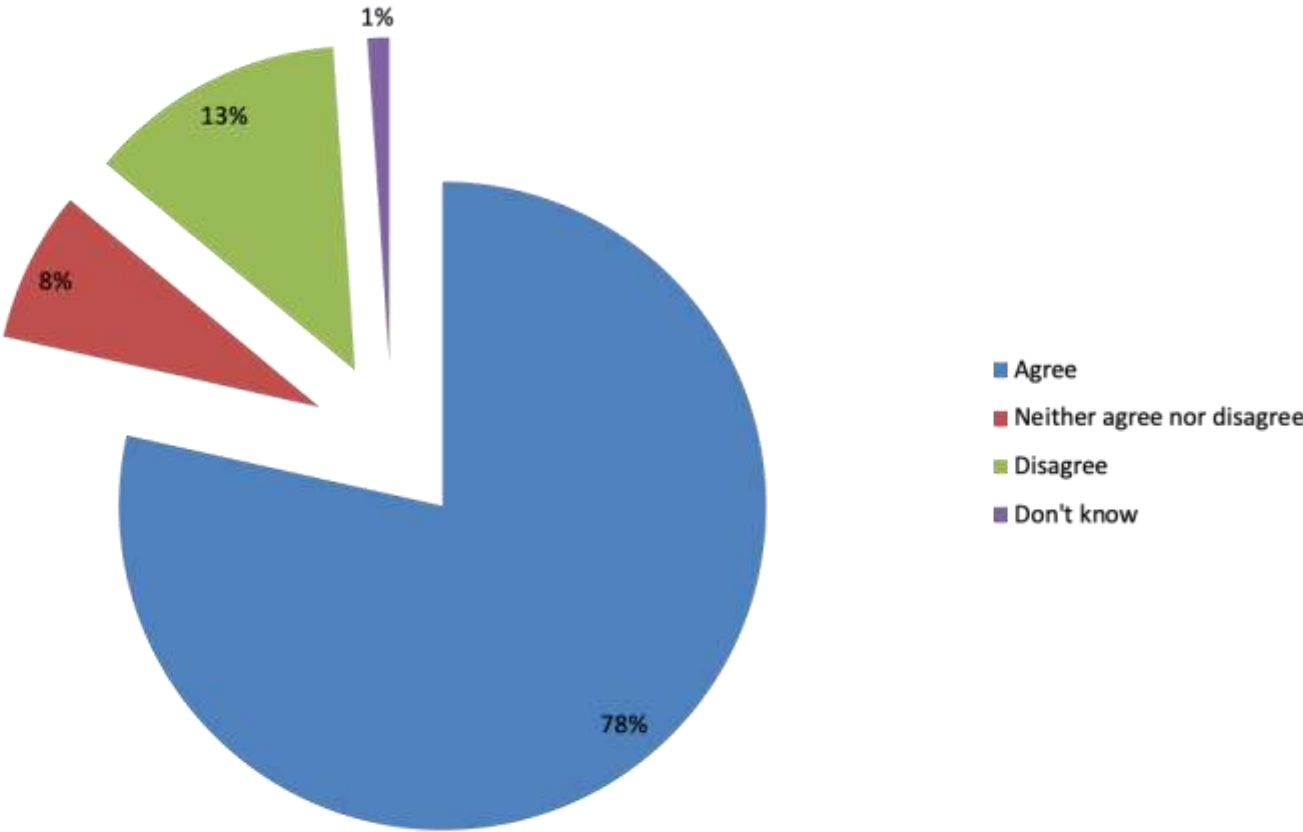
included or excluded from the scope of advice, although we note that the [Standard 1] requirement for fair treatment might require that in some circumstances.

There are variable ways to demonstrate reasonable grounds in relation to client circumstances, depending on the nature and scope of the advice. This is intended to give flexibility in what previously would have been a “class advice” situation to permit useful advice to a client based on reasonable assumptions about their circumstances.

The commentary sets out that reasonable grounds for financial advice that includes a product comparison should include an assessment of all products being compared.

Standard 6

Protect client information (since consultation renumbered to be Standard 5)



Ref	Key suggestions and themes from submissions	Code Committee response
25.	A significant theme in submissions was a concern to ensure that this standard did not cut across privacy legislation.	The Office of the Privacy Commissioner supported including a standard regarding protection of private information, and made a number of drafting suggestions, which we have incorporated into the final Standard.
26.	Some submitters suggested not having a standard on this topic at all, and leaving it to privacy legislation.	We have retained this standard as its scope is wider than the privacy of individuals. However, we have made it clear in the commentary that, where it relates to individuals, it should be applied consistently with the obligations under the Privacy Act.

Additional considerations

The aim of the standard is to provide a conduct and client care requirement to protect client information.

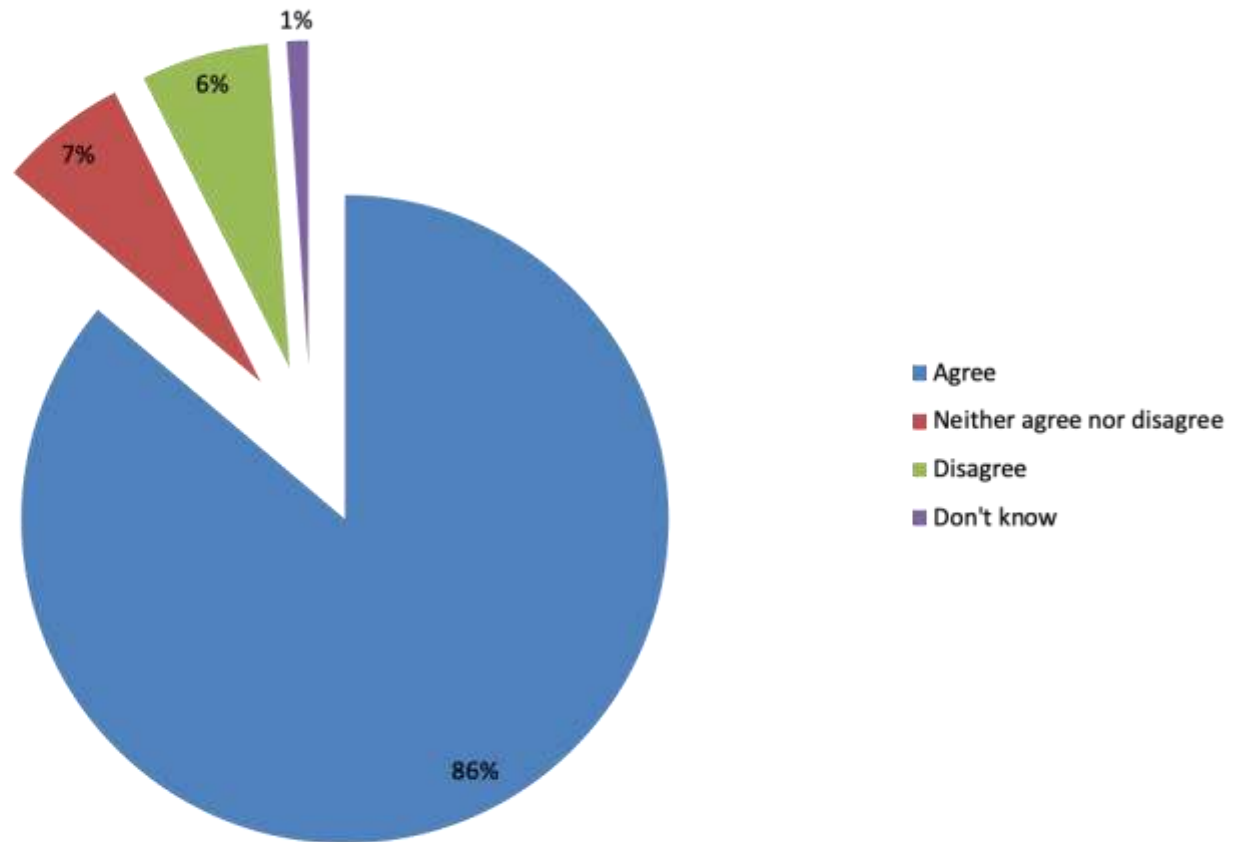
Given the growing importance of protecting people’s information, particularly electronic data, we consider this to be a key aspect of promoting consumer confidence. Clients should have a high degree of autonomy and control over their own information and how it is used.

The commentary notes that “client information” is broader than personal information under the Privacy Act, but we intend the standard to apply consistently with that Act. We considered drawing attention to specific types of information protection, for example confidentiality requirements generally, use of anonymised data, and specific legislative requirements for client information such as under Anti Money Laundering legislation. Consistent with the Code’s focus on articulating principles, we have now omitted that detail. We will, however, monitor practice in this area to assess whether future versions of the Code require more specific requirements, for example in respect of anonymised data use, unauthorised disposal of information, and transfer of data when switching advisers.

We have not prescribed record retention requirements. These are process requirements that financial advice providers will generally need to have in place to demonstrate compliance with the standard. If specific obligations for record retention are to be articulated, our view is that they are better addressed as a licence requirement rather than as a principle in the Code. By contrast, the current FAA Code Standard 13 does require records be kept for 7 years, but that regime does not operate with the entity licensing requirements available in the new regime.

Standard 7

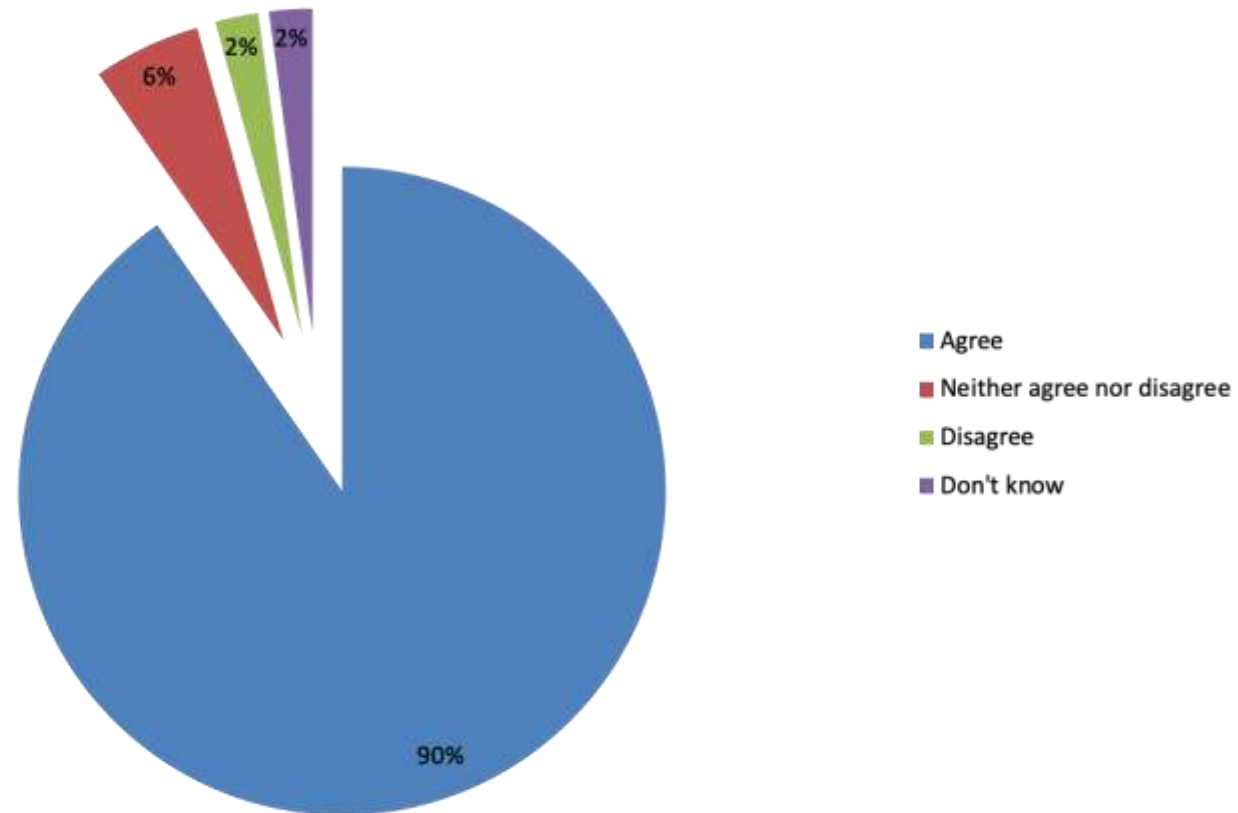
Resolve complaints (since consultation removed from the draft Code)



Ref	Key suggestions and themes from submissions	Code Committee response
27.	In the main, submitters supported the essence of this standard. Some submissions recommend that this standard be removed as complaints resolution is appropriately regulated and governed with existing and proposed regulations, legislation and processes.	Agree that standard be removed. This standard largely reflected process requirements that are best covered by licensing requirements. In addition, we were satisfied from feedback that its inclusion in the Code – in addition to the (likely) relevant FMA licensing, FSPR Act and disclosure regulations requirements – would not contribute significantly to any purpose of the legislation. We have made clear in the preamble to the Code that it is part of a wider regulatory regime. It is not the Code's function to cover all aspects of good advice. The obligation to treat clients fairly, including listening to them, is intended to extend to all aspects of advice giving, including the handling of complaints about or related to the advice.

Standard 8

Not bring the financial advice industry into disrepute (since consultation incorporated in Standard 2 “Act with integrity”)



Ref	Key suggestions and themes from submissions	Code Committee response
28.	The principle of this standard was generally seen as well-meaning, and noted that it was drawn from the AFA Code. However, there was concern as to how it would actually apply in practice, and whether having this as a separate standard would make any difference to behaviour and enforcement.	We decided not to include this as a separate standard, and instead to note that this is an element of acting with integrity.
29.	Some questioned whether it is appropriate for a standard on not bringing the industry into disrepute to include a positive obligation to promote confident and informed participation.	We agree and have removed this wording.

Additional considerations

FAA Code Standard 2 requires that “[an adviser] must not do anything or make an omission that would or would be likely to bring the financial advisory industry into disrepute. The consultation draft included an equivalent standard and recommended commentary highlighting a person’s whistleblowing rights.

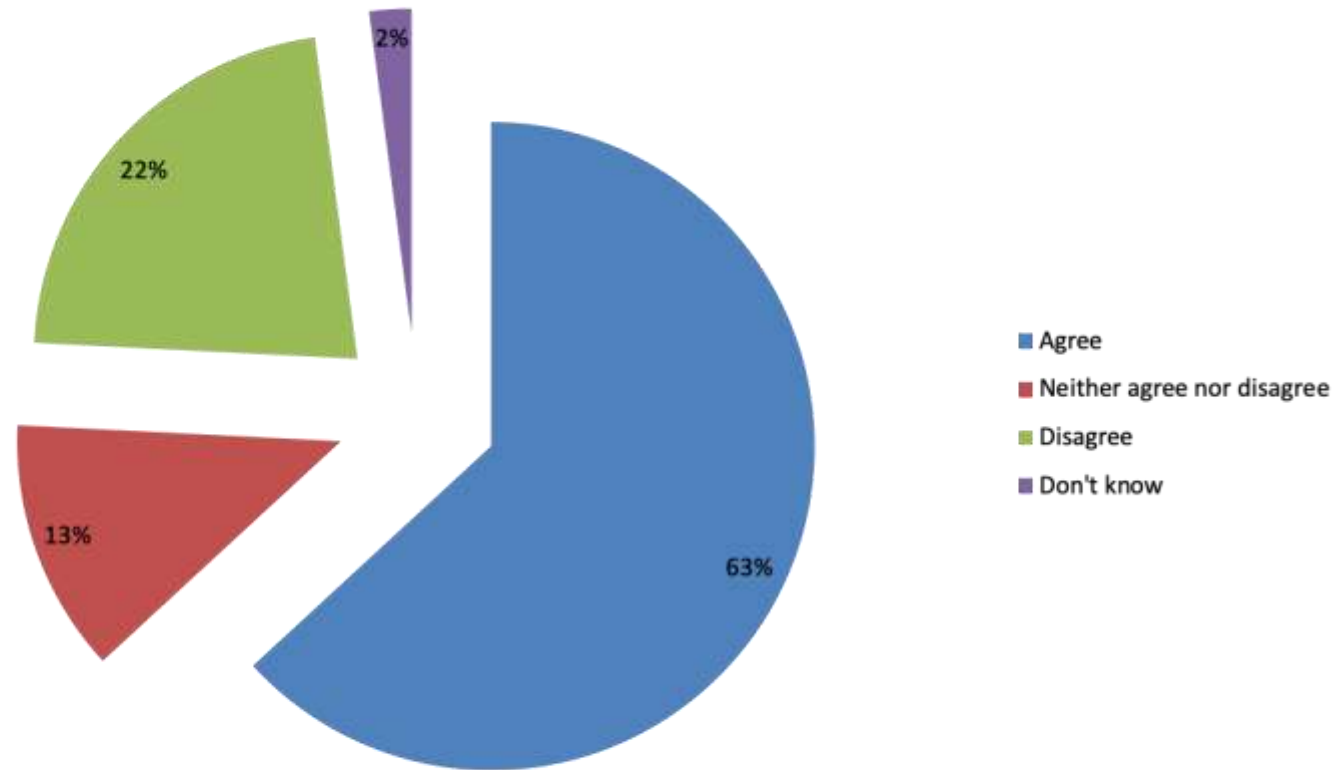
We received mixed feedback on the precise structuring of the proposed requirement, with comments querying the mischief we were trying to prevent, and whether the standard would be particularly useful or enforceable. Several drafting concerns were raised.

We received supportive feedback from consumer representatives for such a standard, especially the whistleblowing perspective which they felt should be given more prominence.

We have decided, on balance, to incorporate the disrepute concept in the integrity standard’s commentary. We have not included any commentary about whistleblowing, noting that this is a legislative provision in its own right (FMC Act section 431R).

Standard 9

Have general competence, knowledge, and skill (since consultation renumbered to be Standard 6)



Ref	Key suggestions and themes from submissions	Code Committee response
30.	Individual and entity submitters sought clarity on the wording of this standard and whether the requirement is to have L5, to be an AFA or to have both L5 and AFA authorisation.	We have clarified the standard so that it sets out how the general competence requirement may be met by either of these ways, provided an individual was an AFA immediately before the commencement of the Code.
31.	We noted comments by submitters about RPL [Recognition of Prior Learning] and APL [Assessment of Prior Learning] and the end result of these processes.	The draft Code does not stipulate how to meet the standard, but for certainty does list some (but not all) ways that may demonstrate the standard. So there is a role for both RPL and APL, as well as ways that do not involve the award of a qualification. RPL [Recognition of Prior Learning] is taking a previous/other qualification and assessing its learning outcomes. APL [Assessment of Prior Learning] is assessing skills, knowledge and competence where a person has no or limited formal qualifications. It may for example take into account experience, files, portfolios and sometimes a challenge interview/ presentation. With each of these processes a successful assessment will result in an individual being awarded a qualification.
32.	Some submitters noted they were unable to determine what they had to do, or what qualification to hold, in order to meet the standard.	We have clarified the standard.
33.	Some submitters appeared to be unaware that only registered tertiary education organisations (qualification providers) can assess for RPL or APL and the approval to do this is part of the accreditation and approval process which is done/approved by NZQA.	The draft Code allows for flexibility, including for example these tertiary education organisations awarding the qualification to successful candidates for RPL or APL.

Ref	Key suggestions and themes from submissions	Code Committee response
34.	There were suggestions that there could be a level of acceptable equivalent competence where the advice provider does not receive a qualification but is deemed to be competent. It has been suggested that this could be delegated and the organisation will charge for the process. This would then be seen as “independently verifiable to the NZQA standard.”	Such a system may be possible. However, previous New Zealand experience has shown that it may end up being more time consuming and more expensive than completing the study programme for the Level 5 qualification. The draft Code’s role is to set the standard (and some clear ways to demonstrate it) not to specify all mechanisms for meeting the standard.
35.	There was some uncertainty as to what all of the ways are that a person may demonstrate the standard.	The commentary on the standard outlines there can be other (non-specified) ways to demonstrate that the competence level is met.
36.	The requirements for nominated representatives were queried.	The nominated representative framework is established by the legislation rather than by the draft Code. The standard’s commentary notes that a person may demonstrate competence, knowledge, and skill, for example, by reference to the financial advice provider’s procedures, systems and expertise.
37.	Clarity was sought about the need for AFAs to hold the investment strand in their particular version of the L5 Certificate.	We have clarified the wording.

Ref	Key suggestions and themes from submissions	Code Committee response
38.	A number of submissions sought clarity as to whether individuals who held a qualification at a higher level than Level 5 (eg a Level 6 or a bachelor's degree or graduate diploma) would be viewed as meeting the standard.	The standard would be met if the person can demonstrate that the higher qualification covered all the prescribed outcomes of the Level 5 qualification. However, many degree qualifications do not cover all the Level 5 qualification outcomes. The commentary makes clear that if a person seeks to demonstrate competence, knowledge, and skill by reference to an alternative qualification or experience, they should do so in an objective, measurable and independently verifiable manner.
39.	Some submitters noted that the description 'have the NZCFS (Level 5)' is not a clear – the holder needs to have completed/passed the qualification.	We have simplified and clarified the language.
40.	Some submitters noted that there needs to be a different minimum standard (other than L5) for financial planners, particularly with Australia moving towards a degree qualification.	We have noted that the investment planning standard is an interim standard. We will review it in the future and take into account the evolving requirements in Australia and internationally.
41.	There were queries as to whether different versions of previous NZ certificates or the new version of the certificate will be acceptable.	If a person has passed the current or earlier versions of the Level 5 Financial Services Certificate they will be deemed to have met the standard.
42.	Some submissions queried whether an individual who chose to become a FAP would be required to comply with Standard 9.	The standard intentionally does not differentiate between the type of person.

Additional considerations

The aim of the standard is to set the minimum competence, knowledge, and skill required by persons that give financial advice.

The standard is based on the qualification outcomes specified in the New Zealand Certificate in Financial Services (Level 5). We use Level 5 because:

- Level 5 is a qualification on the New Zealand Qualifications Framework, which provides a quality assurance infrastructure recognised in NZ and overseas. The qualification is developed with input and support from the industry training organisation, their industry working group, representatives of the particular tertiary education organisations and the NZ Qualifications Authority. It is open to all registered tertiary education organisations to deliver.
- The qualification provides compliance certainty at a reasonable cost. While a qualification does not guarantee all aspects of competence, knowledge, and skill, it provides a practical mechanism for objectively measuring a person's capabilities.
- Level 5 qualifications are designed for people requiring skills to select and apply a range of solutions to familiar and sometimes unfamiliar problems. This is an appropriate minimum level, recognising that financial advisers may often practice by themselves. (By contrast, Level 4 is intended for people working under supervision, with clear guidelines, in generally familiar situations with limited possible solutions. Level 6 is intended for more specialised activities.)
- Level 5 is consistent with the requirements in the current FAA Code. Feedback from the consultation process indicates that Level 5 has worked well over the last decade and has widespread industry support.

The standard consists of the standard itself together with some specific ways of demonstrating the standard (that are designed to provide some – but not all – options for how to comply with the standard). The standard itself:

- is based on the current version of the Level 5 qualification
- requires only the core qualification outcomes.

In general, to attain the complete Level 5 qualification, a person must attain the core qualification outcomes – required by this standard – and at least one product strand of the qualification.

The standard applies to all givers of advice – individuals and entities. It is designed to be met in a range of ways, including:

- A person who has attained the complete Level 5 qualification, or a previous version of the qualification, is deemed to meet the standard.
- A person who was an AFA, just prior to the implementation of the Code, even if they do not have the Level 5 qualification is deemed to meet the standard.
- A financial advice provider is deemed to meet the standard by giving advice only through individuals who have attained the complete Level 5 qualification, or who were formerly AFAs, just prior to the implementation of the Code.

The standard can be met in other ways, provided it is demonstrated that the person (individual or entity) giving the advice has capabilities equivalent to the core qualification outcomes of Level 5. For example:

- A financial advice provider may seek to demonstrate that it meets the core qualification outcomes of Level 5 by reference to its procedures, systems, and expertise (at the time advice is given).
- A financial advice provider and their nominated representative(s) may seek to demonstrate that they meet the core qualification outcomes of Level 5 by reference to its procedures, systems, and expertise (at the time advice is given).

The deeming provisions recognise previous versions of the qualification because it is unreasonably burdensome to expect individual advisers to requalify when the standard changes. Similarly, the deeming provisions ignore content differences between the various versions of Level 5, including whether an adviser completed specific components of the qualification (such as the financial advice strand). If a person attained the complete qualification at any stage, that is deemed sufficient because they put in appropriate effort at the time. The obligation to keep up-to-date (and competent to give the advice they give) is dealt with on an ongoing basis by their continuing professional development commitments set out in [Standard 9].

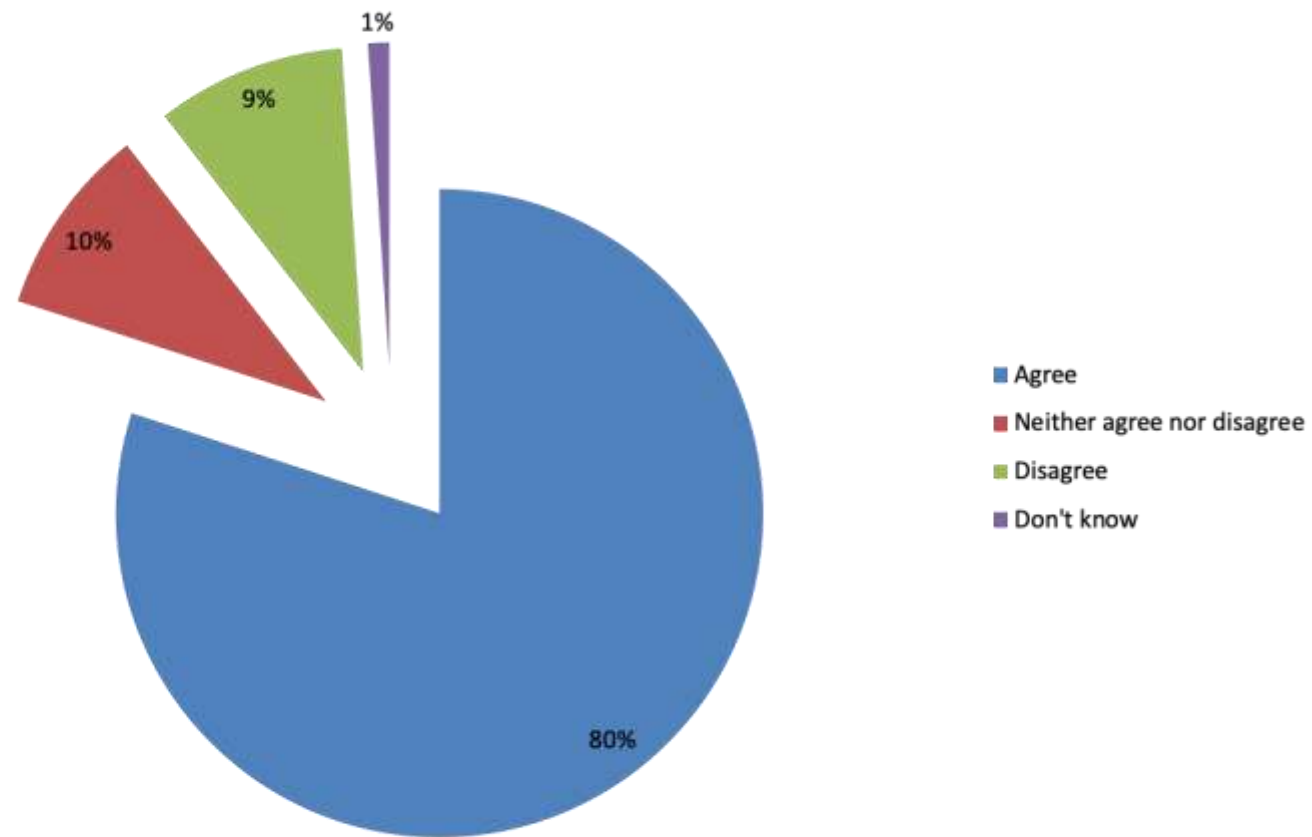
We consider the effort involved in attaining the Level 5 qualification to be reasonable. The full certificate is around 65 credits, which equates to studying a semester full-time or a year part-time.

We note that there is uncertainty as to how many individuals are likely to enter the regime, and how many of those have all or part of the Level 5 qualification. However:

- We are not imposing any further qualification requirement on existing authorised financial advisers – approximately 1,800 people. They will need to comply with continuing professional development requirements for an up-to-date understanding of the new regulatory framework.
- Many people already have at least part of the Level 5 qualification. Skills Organisation figures indicate that over 2,000 individuals have completed the certificate, almost 3,000 have completed the capstone practice standard units and over 4,000 have attained the unit dealing with knowledge of the FAA legislation and Code.
- Everyone currently in and entering the regime has until mid-2022 to comply with the competence requirements.

Standard 10

Keep competence, knowledge, and skill up-to-date (since consultation renumbered to be Standard 9)



Ref	Key suggestions and themes from submissions	Code Committee response
43.	A number of submissions raised the distinction between structured and unstructured CPD.	We are not making any distinctions between these.
44.	A number of submissions called for an annual minimum number of hours to be met as a Code requirement, arguing that this was auditable.	We have resisted specifying minimum hours. The principles based approach requires advisers to decide which learning will be appropriate for them, and it will vary from adviser to adviser. The new Code's audience is significantly wider than the AFA Code and must have flexibility for the range of advisers and their work.
45.	There was the suggestion that shifting this standard to the end would assist in linking the other competence standards together. It also brings the 'required to meet the qualification level' for entry to the sector bits together and the ongoing 'maintain competence' is then a natural follow on.	The standards order and focus have been revised since the consultation.

Additional considerations

The aim of the standard is to:

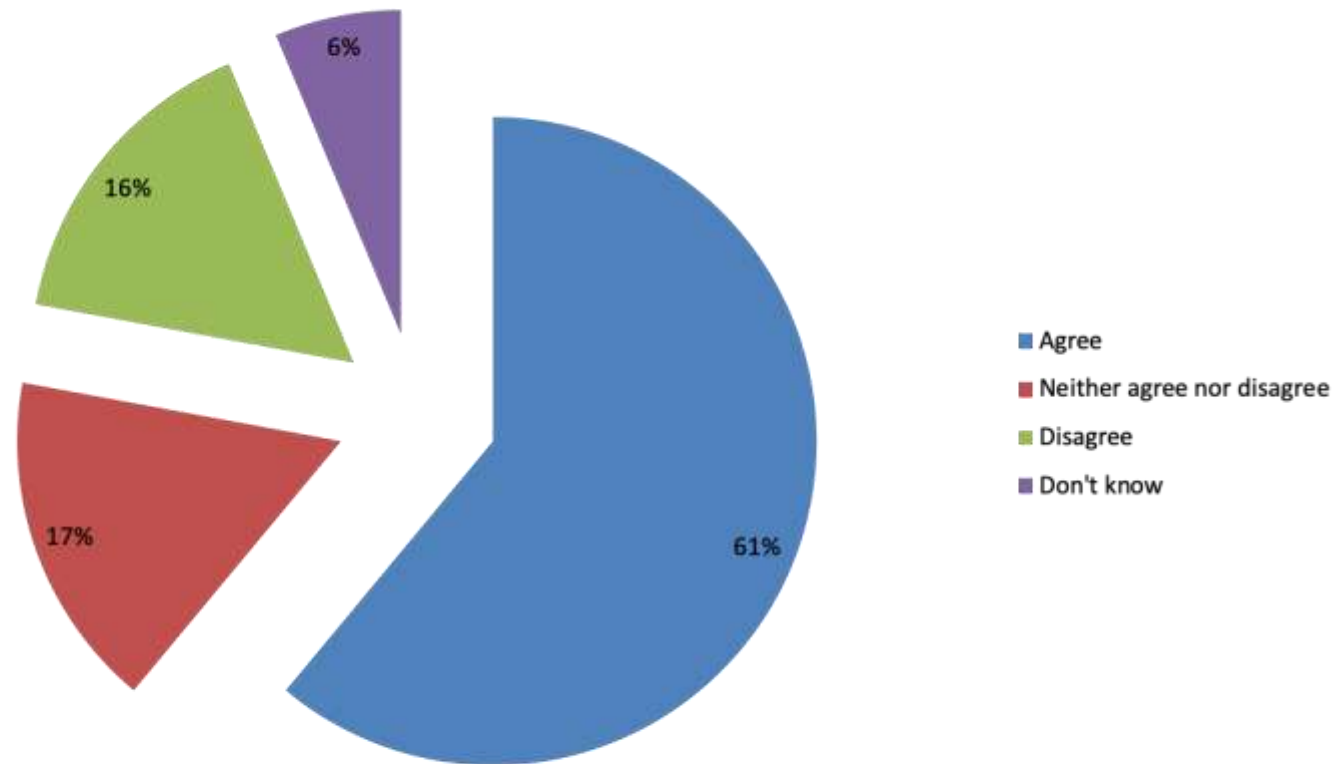
- provide for continuing professional development (CPD)
- specify minimum CPD requirements.

We note that the standards of competence, knowledge and skill operate in tandem with the CPD requirements. CPD acts to keep competence up-to-date, and to ensure that it is not only at the minimum standard level but also commensurate with what is required to give the financial advice being given by a person.

We have chosen to specify minimum CPD requirements in terms of what planning and learning activity must be undertaken annually. We have not imposed minimum hours of CPD because, having considered feedback, we consider it is more important that a person properly assesses their learning gaps than focuses on an arbitrary number of hours.

Standard 11

Have particular competence, knowledge, and skill for designing an investment plan (since consultation renumbered to be Standard 7)



Ref	Key suggestions and themes from submissions	Code Committee response
46.	There were various suggestions about the wording of the standard and the ways of demonstrating.	The wording has been clarified.
47.	Some submitters asked if it was an issue if AFAs did not have the investment strand in their qualification.	We have clarified this point.
48.	Some submitters believed that Level 5 is not a high enough standard.	We have decided to defer imposing higher qualification requirements for planning activities – see below.

Additional considerations

The aim of the standard is to set the minimum competence, knowledge, and skill required by persons whose advice includes designing an investment plan.

The standard operates in addition to the standard for general competence, knowledge and skill.

In our March 2018 consultation we explored whether there is support for higher planning qualifications. Based on feedback from that consultation, we concluded:

- Planning is progressively becoming more sophisticated and accordingly there are reasonable grounds for exploring higher qualification options.
- There is uncertainty as to which financial planning activities should be subject to higher qualifications. For now, we have used the legislation’s terminology of “designing an investment plan.” We note that Select Committee has inserted a regulation making power into the legislation to allow other financial planning activities to be regulated as advice, but this power has not yet been used.
- There is debate about which level of higher qualification is appropriate for planning. There is a growing set of qualifications relevant to planning, including a Level 6 qualification, graduate diplomas, CFP and CLU qualifications, and degree options. International trends are

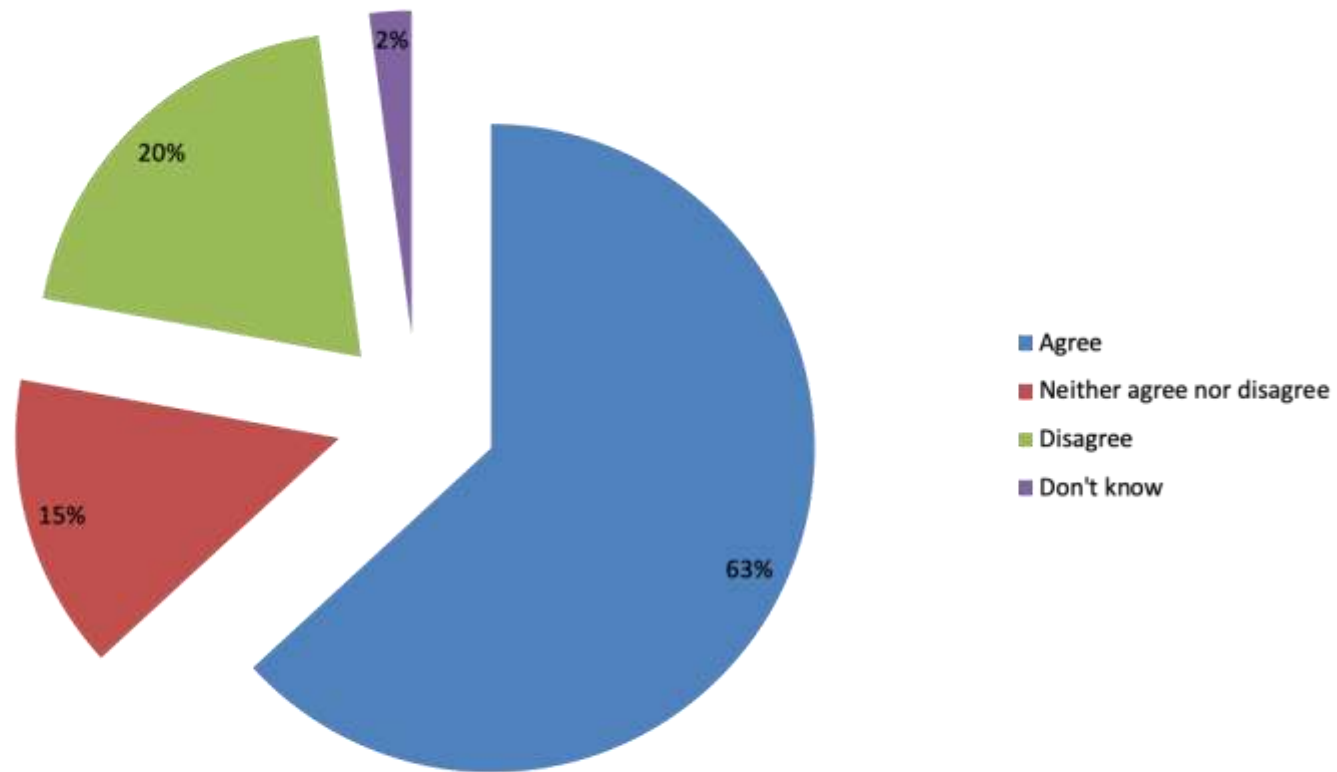
also a relevant aspect of the debate, for example in Australia where planning qualification requirements are currently being consulted on.

- People currently providing investment planning services are AFAs and there is no indication of a systemic failure in their competence levels.

We have decided to defer imposing higher qualification requirements for planning activities. We have signalled that we intend to consult in the future on possible higher qualification requirements.

Standard 12

Have particular competence, knowledge, and skill for other types of financial advice (since consultation renumbered to be Standard 8)



Ref	Key suggestions and themes from submissions	Code Committee response
49.	It was suggested that we include the wording about alternative pathways to meeting the competence requirement in this standard.	We have clarified wording and cross-referenced it to the commentary to the general competence standard.
50.	Some submissions noted that we need to be clear about when we are referring to qualifications or to experience to contribute to an assessment of competency.	We have clarified wording.
51.	Some submissions provided us with alternative wording for the standard.	These have been considered in detail, and have assisted us develop the final drafting.
52.	It was pointed out that not all AFAs have the have been authorised to provide investment advice. These submitters considered it a risk for the sector.	We recognise that advisers have attained their competence through many different routes. In setting a minimum standard, we have settled for the Level 5 qualification with the relevant specialist strand as being an appropriate threshold.
53.	There was a recurrent comment about not granting RPL for qualifications over 10 years old.	The age of a qualification is not usually relevant when considering competency, for someone who has been employed and worked in the particular field for most of the time since it was awarded. The older an initial qualification, the greater the need will be to show through CPD records how the adviser is keeping current.
54.	Some suggested that a Level 5 requirement will inhibit the availability of KiwiSaver advice, which would be contrary to the interests of many consumers.	We acknowledge the compliance costs of the Level 5 requirements. However, we considered on balance that the quality considerations outweigh those cost considerations.

Additional considerations

The aim of the standard is to set the minimum competence, knowledge, and skill required by persons whose advice includes recommendations about a product.

The standard operates as an extension to new [Standard 6], which related to core competence. The Level 5 qualification comprises core plus specialist (product) strand.

The 2014 version of the qualification required completion of a financial advice strand, which has now been subsumed into other elements of the qualification. It is possible for someone to have attained that version of the qualification, and therefore benefit from the Code's deeming provisions, without having passed the financial advice strand. We recognise this inconsistency but have concluded that attaining any full version of the Level 5 qualification (with the relevant product strand) is sufficient basis for meeting the minimum requirements of the regime.

Other general comments

Anything missing from the Code

Ref	Key suggestions and themes from submissions	Code Committee response
55.	Concern that many adviser businesses will not use “Nominated Representative” as the job title for staff, and could potentially confuse consumers by using titles that sound very close to an adviser role. This could include a Mortgage Coach, Investment Consultant or KiwiSaver Specialist.	Not a matter for the Code
56.	There was a suggestion that the Code should include requirements and expectations around servicing of clients.	We regard the client having sufficient comprehension of the nature and scope of any ongoing services to be able to make timely and informed decisions about the financial advice as part of the client understanding the financial advice, and that is reflected in the commentary for [standard 4].
57.	Current FAA Code – Defining a “spirit” of the Code	The requirement to treat clients fairly, is designed in part to achieve a similar outcome.
58.	Current FAA Code – Place client interests first	Replaced by a statutory duty to give priority to clients’ interests in the event of a conflict
59.	Current FAA Code – Restrictions on the term “independent”	Dealt with generically in the integrity standard
60.	Current FAA Code – Restrictions on borrowing from or lending to a client	Dealt with generically in the integrity standard

Ref	Key suggestions and themes from submissions	Code Committee response
61.	Current FAA Code – Behave professionally	Implied throughout the ethical behaviour and conduct and client care standards
62.	Current FAA Code – Steps to take with wholesale clients	Outside the scope of the Code (because the legislation limits the Code to retail client advice)
63.	Current FAA Code – Requirements about sufficiency of information	To be dealt with by disclosure regulations and is supplemented by [Code Standard 4]
64.	Current FAA Code – Agree nature and scope	Replaced by statutory duty that focuses on understanding
65.	Current FAA Code – Provide explanations and information in writing and record-keeping generally	It is a matter for the advice giver to decide how to evidence that they have complied with the Code. This might be supplemented by licensing requirements.
66.	Current FAA Code – Resolving client complaints	We consulted on a possible complaints standard in the Code and were satisfied from feedback that its inclusion (in addition to FMA licensing, FSPR Act and disclosure regulations requirements) did not contribute significantly to any purpose of the legislation.

Ref	Key suggestions and themes from submissions	Code Committee response
67.	IOSCO requirements covered by CWG Mar 2018 consultation – Keep the commitments you make to your client	We formed the view that the extent to which entities make and keep commitments beyond their legal obligations depends to a large extent on the culture, corporate values, specific risk appetite, and the approach to customer service by the entity. Stating, as a minimum standard, that a Financial Advice Provider must comply with its legal obligations is not meaningful since the entity is already legally obliged to comply. However, the “treat client fairly” and “act with integrity” standards are designed to have broad application to all regulated advice-giving activities.
68.	IOSCO requirements covered by CWG Mar 2018 consultation – Do no harm to the client	We formed the view that the minimum requirements for meeting this requirement would be satisfied by compliance with the legislation and the rest of the Code, so no specific minimum standard is necessary.
69.	IOSCO requirements covered by CWG Mar 2018 consultation – Ethical processes in financial advice providers	The possible process requirements we consulted on relate to how a financial advice provider would be expected to organise itself to meet the ethical behaviour standards, rather than being standards of ethical behaviour in their own right. They therefore have not been specified in terms of minimum standards of ethical behaviour.

Feedback on the examples

Ref	Key suggestions and themes from submissions	Code Committee response
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Ref	Key suggestions and themes from submissions	Code Committee response
70.	Many submitters had issues with the examples provided as distracting, taking away from the flexibility of the standards, or not being best practice.	We have removed the examples from the Code to promote innovation and flexibility in how the standards are applied and allow financial advice providers to apply the Code in a way that suits their individual clients

Other comments

Ref	Key suggestions and themes from submissions	Code Committee response
71.	There is a recurrent comment about not granting RPL for qualifications over 10 years old.	The competence requirements are not time-limited. However, the CPD requirements have the effect of getting the adviser to ensure that they are keeping up-to-date. The older an initial qualification, the greater the need will be to show through CPD records how the adviser is keeping current.
72.	Submitters queried who would provide RPL and APL for qualifications, and at what cost	The Code sets the competence standards, and for certainty provides some clear (but not all) pathways (eg hold Level 5) to comply. It is up to each FAP to satisfy themselves (and through FMA licensing and monitoring, the regulator) that they comply. RPL and APL through an accredited training organisation will result in the formal award of a qualification, which will give compliance certainty.