

22 August 2008

Clerk of the Committee
Finance & Expenditure Committee
Select Committee Office
Room 10.04, Bowen House
Parliament Buildings
WELLINGTON

To the Chair of the Select Committee,

ASFONZ Submission on the proposed changes to the Financial Advisers Bill

We wish to submit the attached in respect of the Financial Adviser Bill released on 19 February 2008.

ASFONZ is an independent, national, not-for-profit membership organisation founded in 1969. Its current membership comprises around 100 major workplace superannuation schemes and around 50 organisations and individuals representing the various product and service providers for workplace superannuation.

The mission of ASFONZ is to promote workplace superannuation in New Zealand.

ASFONZ seeks to achieve that mission through:

- 1 **Advocacy** – being the recognised voice for all employers and trustees involved in workplace superannuation, through:
 - (a) advocating legislative and public policy initiatives beneficial to the industry;
 - (b) making submissions and commentary on existing legislative and public policy initiatives;
 - (c) issuing regular press releases and other public commentary on matters of wider concern or interest to members; and
 - (d) staying in regular contact with responsible Ministers, regulatory and industry bodies, the Retirement Commissioner and Government Departments to project, promote and advance members' interests.
- 2 **Education** – promoting trustee, employer and member education through dedicated training programmes, newsletters and special interest seminars.
- 3 **Networking** – providing trustees, employers and service providers involved in workplace superannuation with a regular forum for sharing ideas and information on industry matters.

Contact: Bruce Kerr, Executive Director, ASFONZ

Thank you for the opportunity to make this submission.

Yours sincerely



John Melville
Chairman

ASFONZ
(The Association of Superannuation Funds of New Zealand)

Submission to the

Finance and Expenditure Select Committee

on the

Proposed Changes To The
Financial Advisers Bill
("the Bill")

August 2008

Background

ASFONZ made a submission on the Bill in March 2008 and a further submission in May on the proposed changes to the Bill.

As we have stated in our earlier submissions, ASFONZ's interests do not generally cover financial advisers and the giving of financial advice. However, there is one aspect of the Bill that has been of concern to ASFONZ and that is the position of:

- employers who offer superannuation scheme membership – including KiwiSaver – to their employees; which includes that employer's employees/representatives who may discuss the superannuation offer/membership with staff members; and
- trustees of employer-sponsored superannuation schemes who discuss the terms of their scheme with staff members;

and whether or not they should ordinarily be considered to be providing 'financial advice' in respect of such duties.

ASFONZ has previously submitted that we believe that this group of people should not generally be included in the definition of a financial adviser (unless they, or the firm they work for, are in the business of giving financial advice).

In May we agreed with the occupational approach introduced in the proposed changes. We submitted that the clarity and certainty that we believe are essential to employers and their representatives could be achieved by the addition a further clarifying paragraph.

It is noted that the Committee is now considering the adoption of a tiered approach to the regulation of financial advisers.

The ASFONZ submission

In our submission on the Committee's Second Interim Report on the Bill, ASFONZ wishes to reiterate the view expressed in the earlier submissions, summarised above, that the group of people identified above should not be considered to be financial advisers. If they are to be considered financial advisers under the new options under consideration by the Committee, ASFONZ is strongly of the view that they should only be considered Category Two advisers in relation to workplace savings guidance that falls short of expressing a recommendation or opinion. We also wish to repeat particular points made in our May submission.

Our submissions are as follows:

1. We believe that clarity and certainty are essential as an employer, or the employers' representatives, could frequently be in a position of commenting or providing guidance to employees in some way or other on KiwiSaver or superannuation scheme arrangements or other financial products such as share schemes offered to employees through the workplace.
 - 1.1. Falling within the definition of a financial adviser at any level would place an additional compliance burden on employers potentially resulting in them withdrawing the product in question from the workplace, noting, of course, that they cannot withdraw from making KiwiSaver available for employees.

The risk of falling within the definition may result in a reluctance on the part of employers to provide adequate assistance to employees in relation to workplace savings arrangements, potentially resulting in a lower take-up rate by employees. Such an outcome would be contrary to one of the key objectives of KiwiSaver, being promotion of the use of the workplace to increase employee savings levels.

- 1.2. ASFONZ submits that the required clarity and certainty would be achieved by, for example, adding:

“For the avoidance of doubt, guidance provided by an employer, or by an employee of that employer (including any such employee who is a trustee of any superannuation scheme in which that employer participates), to any employee of the employer in relation to any financial products made available to the employee through the workplace, does not amount to the provision of financial advice for the purposes of this definition unless that guidance includes or is accompanied by a financial recommendation or expression of an opinion from the person providing the guidance.”

2. Under the proposed two-tiered approach being suggested, unless an employer is in the business (of providing financial advice), it would be our understanding that most employers would fall into Category Two if no exclusion were to be granted. However, Appendix B states that ‘savings planning’ - which must include ‘retirement savings planning’ - is a Category One level of advice.

Further, Category Two is limited to “advice on credit, general insurance or simple securities, such as bank term deposits or call accounts...” Retirement savings are not included, nor are they ‘simple’ to describe or evaluate. With the very low level of financial awareness amongst New Zealanders, we believe it is highly desirable that new and existing members of schemes are given help to make informed decisions on their risk profile, and the very significant options of provider and/or investment choice in KiwiSaver and most other schemes. Investing in the ‘wrong’ option may have very dramatic long-term consequences. In many cases the reality is that the employer is the logical, and sometimes only, place to get such information to employees. ASFONZ has a very strong view that such advice should not be construed as providing financial advice, to ensure employers are not discouraged or prevented from assisting employees in this area.

However, if the two-tiered approach currently under consideration proceeds, and our preferred position of employer guidance on workplace financial products being excluded for the concept of ‘financial advice’ is not accepted, as an alternative ASFONZ submits that such guidance should be expressly stated as falling within Category Two advice. If this alternative is accepted, employers (including employees disseminating workplace savings guidance) would only be placed in the position of having to provide base level disclosure, without concern over needing to obtain Category One authorisation in order to discuss workplace savings options with employees, with employees still receiving a minimum level of disclosure relevant to the advice and the employer as an adviser. That base level disclosure could include a suitable ‘health warning’ where the person providing the financial advice is not a Category One adviser, to ensure employees are aware of possible limitations in the quality of the financial advice they are receiving.

3. We also believe that it would be appropriate to define the specific disclosure requirements applying to different categories of people in conjunction with the legislation, rather than deferring such provision to regulations. Otherwise, employers (and others affected by the reforms) face considerable uncertainty as to the extent of their obligations.

The End