

25 March 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 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:
 - (i) advocating legislative and public policy initiatives beneficial to the industry;
 - (ii) making submissions and commentary on existing legislative and public policy initiatives;
 - (iii) issuing regular press releases and other public commentary on matters of wider concern or interest to members; and
 - (iv) 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.

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Thank you for the opportunity to make this submission.

Yours sincerely

A handwritten signature in black ink, appearing to read "John Melville". The signature is fluid and cursive, with a large loop at the end.

John Melville
Chairman

ASFONZ

(The Association of Superannuation Funds of New Zealand)

Submission to the

Finance and Expenditure Select Committee

on the

**Financial Advisers Bill
("the Bill")**

March 2008

Summary of our submission

In general terms, ASFONZ is supportive of the current Review of Financial Product Providers ("RFPP") and of the aims of the review. We have welcomed the opportunity to contribute to the review process and commend officials for their willingness to discuss perceived problems and options that might be available to overcome these problems.

ASFONZ's interests do not generally cover financial advisers and the giving of financial advice. However, there is one aspect of the Bill that is of concern to ASFONZ and that is the position of:

- trustees of superannuation schemes; and
 - of employers who offer superannuation scheme (including KiwiSaver) membership to their employees, and their representatives,
- and whether or not they should ordinarily be considered to be part of the advice process.

ASFONZ believes that this group of people should not generally be regarded as performing a financial adviser service but as the providers of information relating to the scheme. However, we do not believe that the Bill as drafted is sufficiently clear that this is the case. It is accepted that there will be circumstances when these people will give financial advice and that the provisions set out in the Bill should apply at those times.

The ASFONZ submission puts forward suggestions for clarifying the position of trustees of superannuation schemes, and of employers who offer superannuation scheme membership to their employees, and their representatives.

The ASFONZ submission

1. Clause 5 (1) of the Bill, definition "financial adviser service".

- 1.1. Under sub-clause (a), this means "the giving of financial advice in the course of business;"
- 1.2. The use of the term "in the course of business" suggests that this is designed to cover the situation where the business of the 'giver' is giving financial advice.
- 1.3. ASFONZ believes, however, that it could be interpreted as including anything that takes place at an employee's place of business. This could include, for example, an isolated or innocent observation by an employee's supervisor regarding the employer's superannuation scheme
- 1.4. The recently introduced Financial Service Providers (Registration and Dispute Resolution) Bill, at clause 6, indicates that that Act applies to people who are in the business of providing a financial service or a financial adviser service. We believe that it logical for this Bill to be seen as being consistent.
- 1.5. ASFONZ submits that sub-clause (a) should be amended to read "the giving of financial advice in the course of business where the business is one of providing financial advice;"
- 1.6. Alternatively, or in addition, an express exclusion could be incorporated, in similar fashion to the express clarification of what activities do not constitute "investment advice", as appears at section 206 of the KiwiSaver Act 2006. In this context, our concern is that clause 6(2) of the Bill does not go far enough in simply saying that the provision of information is not financial

advice as that exclusion does not apply where it is accompanied by “a recommendation, an opinion, or guidance”. A human resource manager providing guidance to an employee about the terms of a particular workplace savings scheme, or what the related disclosure material may mean in practical terms, may therefore be in the position of providing financial advice unless that guidance is limited to advice about the procedure for taking or implementing the relevant financial decision. The uncertainty over where the boundary may sit in this area may lead to managers being reluctant to offer any practical guidance to employees in relation to workplace savings schemes, or else inadvertently committing an offence under the new legislation. The view of ASFONZ is that any areas of potential uncertainty such as this should be addressed in order to avoid these negative outcomes.

2. Clause 10 of the Bill ‘Prerequisites for performing financial adviser service for member of public.

2.1. This clause makes it an offence to perform a financial adviser service in certain circumstances:

- 2.1.1. they are not a member of an approved professional body;
- 2.1.2. they are not registered;
- 2.1.3. they are a disqualified person.

2.2. Trustees of superannuation schemes, and employers who offer superannuation scheme (including KiwiSaver) membership to their employees, and their representatives, do not generally consider themselves to be financial advisers and would not profess to be so. They generally restrict themselves to providing information only about the scheme in question.

2.3. ASFONZ is concerned that an innocent or isolated comment could be interpreted as performing a financial service and this group would not be registered to do so, thereby committing an offence. The potential penalties outlined are severe. Most are not relevant as these offenders would not have professed to be performing a financial service. Therefore it is only the financial penalties included under clause 107 that could be imposed with any effect.

2.4. We note that the recently introduced Financial Service Providers (Registration and Dispute Resolution) Bill, at clause 10 (3) which is the equivalent clause, restricts the committing of an offence to those who ‘knowingly’ breach the requirements.

2.5. ASFONZ submits that it would be preferable for clause 10 (3) of the Bill to be amended to begin “A person who knowingly contravenes”. For consistency and clarity it would also be desirable to introduce the same word “knowingly”, in clause 107 (1), to read “A person **(A)** who knowingly contravenes..”.
