

New Zealand Association of  
**Citizens Advice Bureaux Inc**  
Ngā Pokapū Whakahoki Pātai mai i te Iwi Whānui

Friday 22<sup>nd</sup> August 2008

Meipara Poata  
Clerk of the Committee  
Finance and Expenditure Committee  
Select Committee Office  
Bowen House  
Parliament Buildings  
WELLINGTON

**SUBMISSION ON THE FINANCIAL ADVISERS BILL:  
SECOND INTERIM REPORT OF THE  
FINANCE & EXPENDITURE COMMITTEE**

***Background***

- 1 The New Zealand Association of Citizens Advice Bureaux (the Association) – Ngā Pokapū Whakahoki Pātai mai i te Iwi Whānui welcomes the opportunity to comment on the second interim report of the Finance and Expenditure Committee on the Financial Advisers Bill.
- 2 We would value the opportunity to appear before the committee to speak to our submission and can be contacted through:

Louise May  
Social Policy Manager  
New Zealand Association of Citizens Advice Bureaux  
PO Box 9777  
Wellington 6141  
Phone (04) 382 8759

- 3 The purpose of our organisation is to promote knowledge and understanding in our society. To achieve this purpose our organisation aims to:  
  
Ensure that individuals do not suffer through ignorance of their rights and responsibilities or of the services available; or through an inability to express their needs effectively — Me noho matāra kia kua te tangata e mate i tōna kore mōhio ki ngā āhuatanga e āhei atu ana ia, ki ngā mahi rānei e tika ana kia mahia e ia, ki ngā ratonga rānei e āhei atu ana ia; i te kore rānei ōna e āhei ki te whakaputu i ōna hiahia kia mārama mai ai te tangata.  
  
Exert a responsible influence on the development of social policies and services, both locally and nationally — Kia tino whawāhi atu ki te auahatanga o ngā kaupapa-ā-iwi me ngā ratonga-ā-rohe, puta noa hoki i te motu.

- 4 From our 90 locations around New Zealand the Citizens Advice Bureaux (CAB) provides a free, impartial and confidential service of information, advice, advocacy and referral to individuals, and we use our experience with clients to seek socially just policies and services in Aotearoa New Zealand.
- 5 We work to empower individuals to resolve their problems and to strengthen communities by identifying and raising local and national issues. The person to person service provided by over 2,600 CAB volunteers is unique in New Zealand, as is our ability to provide a national snapshot of community issues and concerns.
- 6 In making our comments we draw on the knowledge and experience from bureaux in delivering the Citizens Advice service to clients from our 90 locations around New Zealand.

### **Introduction**

- 7 The Association welcomes the opportunity to comment on the latest policy proposals for the Financial Advisers Bill.
- 8 We also welcome the opportunity to appear before Select Committee to further discuss our position and the recommendations we make in this submission.

### ***The CAB service is still captured under the latest proposed definition of financial advice***

- 9 The latest proposed redefinition of “financial advice”, with removal of the reference to the “implications of a financial decision”, and instead having reference to “financial products”, would still capture the Citizens Advice Bureau service provided by our volunteer bureau interviewers. As we understand it, according to the latest proposals in the second interim report of the Finance and Expenditure Committee on the Financial Advisers Bill, the definition of “financial advice” would now be: *Any advice (i.e. any recommendation, opinion, or guidance) relating to securities, insurance, or consumer credit contracts.*
- 10 To illustrate the capture of our service under the latest definition:

#### Advice

- 11 Our bureau interviewers will also work through information with a client to help them make sense of it; they will help the client to identify what options they have and the implications of those options so the client can choose the best path for them.
- 12 Sometimes, if the client needs and requests it, the bureau interviewer will also act on the client’s behalf e.g. letter writing, or making phone calls on the client’s behalf. So without actually directing a client to undertake a course of action or making any decisions for them, the assistance we provide often involves a more active level of engagement with the client, guiding them through a process. Our service operates at the level of providing advice as well as information and active assistance to people.

#### *Financial advice*

- 13 The next question is then: do we provide *financial* advice according to the latest proposed definition of the term? As stated, we see that we clearly do. This is because

as part of our service to the public, bureau interviewers provide advice, as it is defined in the draft legislation, to people in relation to their decisions about the buying, selling, or holding of financial products, particularly consumer credit contracts, but also insurance, and sometimes we receive enquiries to do with securities (although these enquiries would tend to be referred on for specialist assistance at an earlier stage).

14 Here is a case study to give you an example:

15 *A bureau may be approached by a client with an unsigned credit contract which is for finance for a major household appliance they wish to purchase, and they have approached the bureau wanting an independent view on whether the contract is all above board, what the total cost of the purchase will actually be, and therefore whether it is okay for them to sign.*

16 *The bureau interviewer will walk through the contract with the client, referring back to the guidelines in the CAB consumer manual on how to check a contract and what the contract should include. If necessary the bureau will seek further assistance from the Ministry of Consumer Affairs' legal staff via the telephone hotline the CAB has with the Ministry.*

17 *This process will help the bureau interviewer to identify whether the contract aligns with the requirements of the Credit Contracts and Consumer Finance Act (CCCFA) and whether it contains all of the key information required under the law. The interviewer will also identify all of the costs set out in the contract including the sale price of the item, the interest, any other fees, and what the minimum regular payment instalments will be. They will check back to see whether this tallies with the information disclosed to the client by the retailer.*

18 *At this point there will be options to explore with the client, which will depend on what the interview has revealed. These may include:*

- *Going forward with the purchase; or*
- *Seeking changes to the contract; or*
- *Walking away from the deal and doing some more 'shopping around'; and*
- *If there has clearly been a breach of the law by the retailer in their dealings with the client, considering whether to act upon this e.g. taking the breach of the CCCFA to the Commerce Commission*

***It is not appropriate for the CAB service to be captured under the proposed solution of a two tiered system of regulation***

19 We note the proposal for a two tiered system of regulation which “enables a distinction to be made between advice that carries significant risks for consumers and advice that carries minimal risks...” We also note that, unlike the previous policy consultation document from Select Committee on this Bill, there is no mention in this latest paper of exemption from the regulatory regime for paid and unpaid employees of voluntary, community based or welfare organisations. We therefore conclude that at this point our CAB service would be captured under the regulation as a Category 2 Advisory Service, with a requirement that our CAB volunteers comply with the disclosure and conduct requirements of the Bill.

20 It is not appropriate for the CAB service to be captured under the proposed regulatory regime, *whether or not* it would entail a registration (or “authorisation”) process for our volunteers and the attendant costs that go with such a process. In our view, regulation is simply not an appropriate approach to ensuring a quality service from our CAB volunteers. This is particularly the case because of the universal and non-targeted

nature of our service. To regulate one part of the service would change the service considerably and will have a detrimental effect on our role as a key consumer protection organisation in New Zealand and on our clients, the general public.

- 21 The CAB service is a universal service because we are here to assist any member of the public regardless of their question, issue or problem, demographic profile, geographic location, mobility, language, literacy, and income. If clients come to us needing assistance with multiple issues (whether they are interrelated or not) we will help them with those issues because we do not limit the focus of our assistance. If we cannot help a client directly with their enquiry because they need specialised advice which we cannot provide, then we will find someone who can help them.
- 22 Having any part of our service defined in law, as it would if we were not exempted from this legislation, would require us to separate out just one aspect of our universal service and treat it differently to all of the others. This has negative implications for our volunteers and our clients. The volunteer would have to be able to recognise in the first place when the enquiry is actually going into the territory covered by the Bill and at what point the assistance they are providing becomes “financial advice”. During the course of a client interview any number of different issues may come to light and be discussed and worked through with the client. Under this legislation, if an issue arose in the conversation in relation to a “financial product”, as defined in the Bill, then the volunteer would have to switch into a different mode with the client according to the disclosure requirements in the Bill.
- 23 Here is a *case study* to provide an idea of the context in which financial issues, such as those covered by the Bill, can arise during the course of an interview:
- 24 *A client comes to the bureau for assistance in relation to their recent break up with their partner. Their initial enquiry is in relation to ‘custody issues’. However once that issue is traversed and options discussed, the client reveals that they can now no longer reside in the family home and they need to find somewhere to live. The problem is that they currently have no income as they had been relying on their partner’s wages and they do not have a job (yet) to cover the rent. The bureau helps the client to find some interim, emergency accommodation as well as income support.*
- 25 *The client also reveals that they are worried about losing the family car, which they have and which they need to transport their children and for job seeking. There is still money owing on a vehicle finance contract for the car and the client doesn’t think they will be able to meet the repayment levels even with the income they will be getting from Work and Income. The bureau interviewer identifies as one option, the possibility of renegotiating the repayment amounts with the finance company and offers the client assistance to do so.*
- 26 To have the CAB service come under the Financial Advisors Bill, even as a Category 2 Advisory service would place a burden on our volunteers, having to know at what point to disclose and perform the other obligations created by the legislation.
- 27 It would affect our service adversely and uniquely because of the universal nature of our service. It would mean that our volunteers would have to recognise when they are crossing into ‘financial advice’ in an interview with a client that will often not be focused primarily on this aspect.
- 28 This means that “financial advice” becomes a problematic area of service for our volunteers because it is an area (unlike any other) where their voluntary service to a client is covered by legislation and regulation.

- 29 We believe this will affect our service uniquely because of the universal nature of our service, whereby someone may seek assistance from us on a range of issues. A service that operates primarily or wholly in the area of financial advice is not presented with the same difficulties, as it would be appropriate for this service to carry out disclosure and other requirements at the outset.
- 30 It would not be appropriate for a CAB interviewer to carry out the requirements of disclosure etc at the outset of an interview with a client when that client is presenting with a housing issue, an employment issue, an education issue etc but any of these issues may lead into a related financial issue.
- 31 Even with the significant training and support that would be necessary, it is likely that our volunteers will want to avoid assisting clients with issues that would bring them under this regulatory regime and the challenge of distinguishing when an issue is moving into being a financial issue. Given the risks that regulation poses for individual “advisers” the Association does not feel it could require its volunteers to continue providing “financial advice”. The regulation may also act as a disincentive to volunteering with the Citizens Advice Bureau.
- 32 This would undermine the CAB’s ability to continue offering our universal, wrap around service to the public thereby changing the fundamental nature of our service. It would constitute the loss of a public good as the public would no longer always have access to free, independent, and impartial assistance from trained volunteers in relation to certain financial issues. In this way, the legislation would actually have the effect of undermining a very important aspect of consumer protection for the New Zealand public.

***The CAB reiterates its call for exemption within the legislation of the CAB service from the proposed regulatory regime***

- 33 Again, we reiterate our call for the named exemption of our CAB service from the Financial Advisers Bill. Further adjustment and focusing of the definition of “financial advice” has not excluded our service from coverage of the Bill and the capture of our service under the Category 2 Advisory Service tier of regulation would have a negative impact on our service and our clients, the general public of New Zealand.
- 34 We reiterate our request that our exemption is stated within the legislation itself as it is for other exempted parties such as teachers, journalists, state services employees, MPs, accountants, and lawyers. Other forms of exemption that do not sit within the main body of the legislation (such as exemption by regulation) would not provide a sufficient level of security and assurance in terms of the robustness of the exemption as they are more vulnerable to political change. An exemption in the main body of the legislation would be more robust because a proposed change to the exemption would have to be subject to the rigours of the full parliamentary process.

***We point to the precedent in law for such an exemption for our organisation***

- 35 As we have outlined in previous submissions there is already a precedent in law for this course of action. The Citizens Advice service fits under the definition of immigration advice in the Immigration Advisers Licensing Act. However, the Citizens Advice Bureau is named within the Act as exempt from that legislation. The Act came into effect last year and the Immigration Advisers Licensing Authority was launched at Parliament last week (Monday 5<sup>th</sup> May) by the Minister for Immigration, Hon Clayton Cosgrove.

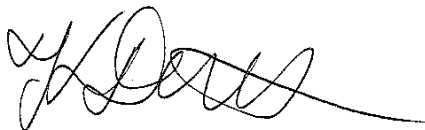
36 In its report back to the House on the Immigration Advisers Licensing Bill, the Select Committee (Transport and Industrial Relations), stated that:

- It would not be in the consumer's best interests for our organisation (and Community Law Centres) to cease to provide assistance in relation to immigration issues, which would be the outcome if not exempted;
- NZACAB has sufficient safeguards in place to ensure the ethical and competent conduct of our people; and
- Exemption rather than definition change is the solution as there are difficulties with changing the definition of immigration advice to both avoid coverage of the CAB *and* prevent loopholes opening up for immigration consultants.

**Conclusion**

If you have any questions relating to this submission, please do not hesitate to contact Louise May at the Association office as per the contact details on the front page of this submission.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Kerry Dalton', with a long horizontal flourish extending to the right.

Kerry Dalton  
Chief Executive