

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

7th April 2008

Clerk of the Committee
Finance and Expenditure Committee
Select Committee Office
Parliament Buildings
WELLINGTON

SUBMISSION ON THE FINANCIAL ADVISERS BILL

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 Financial Advisers Bill.

2 We would value the opportunity to appear before the committee to speak to this submission and can be contacted through:

Kerry Dalton
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:

Support the principle of partnership reflected in the Treaty of Waitangi – E tautoko ana Ngā Pokapū Whakahoki Pātai mai i te Iwi Whānui, i te mātāpono nohotahi (hononga), e whakaatahia ana i roto i te Tiriti o Waitangi.

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 91 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. Last year the Citizens Advice Bureaux dealt with over six hundred thousand enquiries from the public. In the past ten years our organisation has dealt with approximately six million enquiries.

Introduction

- 7 The New Zealand Association of Citizens Advice Bureau cannot support this Bill in its current form because we see that our organisation would also come under the auspices of the licensing regime. This has far-reaching, significant and negative implications for our organisation and for our clients, the general public. In this submission we expand on those implications and make some recommendations for an alternative approach to regulation of our organisation.
- 8 We welcome the opportunity to appear before Select Committee to further discuss our position and the recommendations we make in this submission.

The Citizens Advice Bureau service fits within the definition of financial advice

Advice

- 9 The Bill defines advice to be “a recommendation, opinion, or guidance that is given in the course of business...” [Business being inclusive of not-for-profit activity].
- 10 We note that the Bill states that “For the avoidance of doubt, the provision of information, whether orally or in writing, is not advice unless it is accompanied by a recommendation, an opinion, or guidance.”
- 11 Does the Citizens Advice Bureau provide “advice” as it is defined in the legislation? Do we just provide “information” only? Based on our understanding of the definitions, we believe that the Citizens Advice service would come under the definition of financial advice and therefore the auspices of the proposed legislation and licensing regime.

To illustrate;
- 12 The Citizens Advice service is not just about providing information. Our service involves more than handing out or quoting from verified sources of information or referring people directly on to a specialist service when they approach us for assistance.
- 13 Our service is about empowering people in our communities through the promotion of knowledge and understanding. In our complex modern society, such empowerment cannot be achieved by merely being a provider of information. Information can be useless and meaningless unless it is accompanied by someone to guide the recipient and help them use the information to good effect.

14 This is reflected in the membership standards of our organisation which require our bureau workers to make every effort to assist our clients within their own and their bureau's capability before arranging any specialist assistance for clients. The quality and consistency of the assistance given is supported by our organisation's quality assurance systems.

15 Our bureau workers:

- Help clients to identify what are the problems they require assistance with
- Make a judgement call about what information will be of most use to the client and locate this information for the client
- Work through the information to help the client make sense of it; ensuring the client is aware of their legal rights and responsibilities in respect of their situation
- Help the client to identify what outcome they are looking for
- Help the client understand the options they have for achieving the desired outcome
- Help the client understand the implications of any options available and to choose the option that will produce the best outcome for them
- Depending on the client's needs, and with their permission, act on the client's behalf to help achieve the outcome¹

Financial advice

16 The Bill defines *financial* advice to be:

"...any advice relating to the financial implications of a financial decision; and includes information as to the financial advantage or disadvantage of a financial product or a financial decision..."

17 Does the Citizens Advice Bureau provide advice which can be defined as financial advice according to the Bill's definition? We see that we do. The CAB provides assistance to thousands of clients every year² in relation to financial issues including in regards to issues such as:

- Debt, including debt recovery and repossession
- Loans
- Mortgages
- Purchases on credit
- Credit contracts
- Credit cards
- Motor vehicle finance
- Being a guarantor
- Bank accounts
- Insurance
- Tax

18 This assistance can involve advice about the financial implications of a financial decision or information as to the financial advantage or disadvantage of a financial

¹ Client empowerment underpins the approach of the Citizens Advice service. Where clients do need and want a greater level of assistance, such as letter writing on their behalf, negotiating with a third party, or accompaniment to another agency/ies, we will do this. However, our aim is not to take over the management of a client's situation, but instead to work alongside the client helping them to see the way forward to helping themselves and providing them with pathways for resolving their issues. This way, the client has an opportunity to grow in confidence and to learn.

² In the year to June 2007, the Citizens Advice Bureau provided assistance in relation over 50,000 client enquiries regarding personal financial issues, such as those listed above.

product or decision e.g. whether to approach a fringe lender for much-needed finance and whether there are better alternatives, whether to become a guarantor for a friend or family member, or whether to sign up to the terms in a credit contract.

Regulation of the Citizens Advice Bureau service is not appropriate

The burden of compliance: a threat to the Citizens Advice Bureau service

19 The costs and risks involved in registration would be prohibitive for the Citizens Advice Bureau, even if, for instance, the registration fees for our organisation were to be heavily subsidised. The following paragraphs give a sense of some of the financial and practical implications for the Association with regards to the regulation of our service.

20 The CAB service is provided by 2,600 bureau workers - trained volunteers - around New Zealand (volunteerism is one of the values of our organisation and a cornerstone of the Citizens Advice Bureau service). The Association would not expect or ask our unpaid bureau workers to have to pay a fee out of their own pockets in order to provide our free service to the public. The Association itself would have to absorb any such costs.

21 Below are some very conservative estimates of the potential costs involved in registration for the Citizens Advice Bureau with the potential range for registration costs based on a minimum part fee payment of \$250 per bureau worker and a maximum of \$1,000 per bureau worker (\$1,000 being the minimum estimated amount of registration fees for individual financial advisers as outlined in the Bill).

\$250/bureau worker x 2,600 = \$650,000

\$500/bureau worker x 2,600 = \$1,250,000

\$750/bureau worker x 2,600 = \$1,950,000

\$1000/bureau worker x 2,600 = \$2,600,000

22 These costs need to be viewed within the context of the Association's situation. As a not-for-profit organisation providing a free service to the public, the Association is not able to recover such costs through customer fees which for-profit operators would be able to do.

23 The Association has not yet examined in any depth all of the other compliance costs likely to be involved for the Association. However, even just looking at a rough, conservative estimate of the time that may be involved in completing registration forms alone gives a sense of the significant burden registration would represent for the organisation in terms of personnel time. Based on just one hour of time for completion of each initial application would mean a minimum of 2,600 hours or 65 working weeks of additional time the organisation would need to spend simply for this one aspect of registration.

24 We note that sanctions and penalties under the proposed legislation include payments of up to \$100,000 for individuals (and \$300,000 for a body corporate) and imprisonment for up to 3 years. The Association could not ask its bureau workers to face such risks.

25 The Association simply could not carry the costs and risks involved in this proposed regulatory regime. Therefore, the Association would have to cease to undertake any activity or provide any services which would cause our organisation to come under the

auspices of the legislation – which would mean turning away at least 50,000 client enquiries each year in relation financial issues.

Loss of a significant public good

26 In terms of the immediate loss if the Citizens Advice Bureau was to cease providing assistance in relation to financial matters, we estimate that this would result in a minimum of around 50,000 enquiries from the public which we would have to turn away every year. This involves the number of enquiries we get where the main thrust of the initial enquiry relates to financial issues such as those involving debt recovery and repossession, loans, mortgages, purchases on credit, credit contracts, credit cards, motor vehicle finance, being a guarantor, bank accounts, insurance and tax.³ This would constitute a significant loss of a public good.

27 We can assist people from wherever they are around New Zealand through our free phone 0800 number, via email, or from one of our 91 locations around New Zealand. This level of coverage contributes to our high degree of accessibility to the public, including those in rural and outlying areas where the CAB may be the only free, independent community service available to help them with their financial issues. People in these areas would be particularly disadvantaged if we were no longer able to assist them with such matters.

28 The Citizens Advice service exists to help any member of the public regardless of their:

- Question, issue, or problem
- Demographic profile (age, gender, ethnicity, nationality, immigration status etc)
- Geographic location
- Mobility
- Language
- Literacy
- Income

29 Our service is accessible by being:

- Able to assist any member of the public and across a range of issues
- An independent community organisation providing confidential, impartial and non-judgemental assistance
- Physically located in 91 locations around New Zealand
- Accessible through a nationwide free phone number
- Able to provide our service face-to-face, over the phone, or by email (and in the future via the Internet in real time)
- Able to provide our service in 26 different languages
- A free service

30 The effectiveness of our service and the value of our service to the New Zealand public can be demonstrated in a number of ways including: the growth we have experienced over the past almost 30 years in which we have kept records of client enquiry numbers⁴; and the level of client satisfaction with our service – a Colmar Brunton survey found that

³ We state that this figure is a minimum because of the way we currently categorise each client enquiry; we categorise enquiries according to the main thrust of the initial presenting question, issue, or problem. In the course of an interview with a client, other issues may come to light which the bureau will also assist the client with, but these issues will not necessarily be captured in our client enquiry statistics. Therefore the actual number of situations where we would no longer be able to assist clients would be higher than 48,000.

⁴ In the year to June 1980 the Citizens Advice Bureau handled 140,856 enquiries from the public nationwide. The number of enquiries has continued to grow each year and at the year to June 2007 had risen to 643,878.

the overall client satisfaction rate with the CAB service was 95 % and one of the highest rates they had ever seen. In fact, the rate is so high that our organisation was advised it would not be worth surveying satisfaction rates again for quite some time unless some significant changes were made to the service. The removal of CAB assistance in relation to financial issues would result in the loss of an accessible and valued service to the public of New Zealand.

The Citizens Advice Bureau must be exempted from the proposed regulatory regime

Adjusting the definition of financial advice is not the answer

31 We cannot see how the definition of financial advice in the Bill can be adjusted in a way that both prevents the Citizens Advice Bureau service from coming under the auspices of the regulatory regime while at the same time preventing the creation of loopholes which for-profit operators, for whom this proposed regulatory regime was originally intended, can slip through. We therefore suggest that the solution does not lie in attempting to further wordsmith the definition.

A durable solution: naming the Citizens Advice Bureau within the legislation as exempt

32 We request that our organisation be named within the legislation as exempt from the regulatory regime. This would provide our organisation with the required level of security and assurance in terms of the robustness of the exemption.

33 Other forms of exemption that do not involve being named as exempt in the main body of the legislation would not provide a sufficient level of assurance for our organisation.

34 There is in fact already a precedent in law for this course of action. The Citizens Advice Bureau is named within the Immigration Advisers Licensing Act as exempt from that legislation (which came into effect just last year).

35 The issues between the Immigration Advisers Licensing Bill and the Financial Advisers Bill in terms of the question of regulation of the Citizens Advice Bureau service are very similar, the main difference being that they have regard to two slightly different (but somewhat related) subject areas.

36 The CAB service also came under the definition of (immigration) advice in the Immigration Advisers Licensing Bill and the implications of regulation for the CAB were essentially the same as they are for the Financial Advisers Bill. The value of the CAB in being able to continue to provide its service in this area, and the implications of regulation for the CAB, were acknowledged as were the difficulties of changing the definition of immigration advice to both avoid coverage of the CAB service as well as prevent loopholes for for-profit operators opening up.

37 The Select Committee recommended in its report back to the House that the Citizens Advice Bureau be granted a full exemption from the Immigration Advisers Licensing regime and the exemption was subsequently written into the legislation.

Conclusion

If you have any questions relating to this submission, please do not hesitate to contact me 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