

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

12th May 2008

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

SUBMISSION ON POLICY PROPOSALS FOR 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 policy proposals in the latest consultation document for 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:

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Social Policy Manager
New Zealand Association of Citizens Advice Bureaux
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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 from our 91 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 provision for exemption of our organisation is a positive step

- 9 Regulation of the CAB under this proposed legislation has significant and negative implications for our organisation and for the general public (our clients). Therefore we are very pleased to note that the proposed changes in the consultation document provide for the exemption of our paid and unpaid bureau workers (through the proposal to exempt people who work, in either a paid or voluntary capacity, for voluntary, community based or welfare organisations).
- 10 As we outlined in our previous submission on the Bill, regulation of our 2,600 volunteers would impose a significant compliance burden for our organisation. The cost of registration would be prohibitive (even with subsidies) for the NZACAB). Also, the risks we would have to ask our volunteers to take on, in terms of potentially being subject to the penalties and sanctions under the legislation, are unacceptable.
- 11 The Association could not carry the risks and costs involved in the proposed regulatory regime and would therefore have to stop the provision of any activity or services by the CAB which would cause our organisation to come under the auspices of the legislation. This would result in the loss of a significant public good.

Exemption is the best solution: the CAB service still fits within the changed definitions in the latest policy proposals

- 12 As we stated in our previous submission, we believe that exemption is the best way of ensuring that our organisation does not come under the proposed regulatory regime. We cannot see how further adjustment of the definition of 'financial advice' or 'financial decision' can ensure our exclusion from the regulation without also creating loopholes for those individuals and organisations this legislation was always intended to cover. This is highlighted by the fact that our CAB service would *still* be captured under the changed definition of *financial decision* (and *financial adviser*) in the consultation paper containing the latest policy proposals.

To illustrate;

Financial decision

- 13 The new suggested definition of a *financial decision* is “a decision relating to the buying, selling, or holding of financial products” – financial products are defined as securities, insurance, and consumer credit contracts.
- 14 In providing the core CAB service to members of the public, our bureau interviewers *do* provide assistance to people in relation to their decisions about the buying, selling or holding of such financial products. Below are two examples of relevant client scenarios our bureaux deal with:

Scenario one

- 15 *Whether to sign up to the terms in a consumer credit contract:* A client may come in with an unsigned contract and ask for our help to work through it and see what, if any, problems there might be with the contract and whether it meets the minimum standards laid down in consumer legislation. Our bureau interviewers can help to identify, for instance, if there are important information gaps in the contract or other significant problems.
- 16 On the basis of what the checking of the contract reveals, the bureau interviewer can then help to identify the options the client has. For example, if there are problems with the contract, whether the client would be advised to hold off on signing and to seek additions/changes to the contract, or whether it would be advisable to consider the option of not entering into a contract with the trader in question.

Scenario two

- 17 *How to react when an insurer rejects an insurance claim:* A client may seek the bureau’s advice when they believe their insurance claim has been erroneously or unfairly declined. Sometimes in these situations the client is so frustrated with the product provider by the time they approach our bureau that all they want to do is to ditch that provider and get our help to find a better one. Our CAB service expressly does not include promoting one business or product over another. Rather, the bureau interviewer would work through the situation with the client to find out what actually happened, the relevant information pertaining to the situation, what rights and responsibilities the client has in this situation, and what options they have.
- 18 It may be that as a result of the bureau’s assistance:
- the provider realises that it did indeed make an error in relation to the client’s claim and acts to correct this error, causing the client to decide to stay with the provider after all; or
 - that, armed with better information including in relation to the provider’s decision and policy in relation to their claim, the client either ends up accepting the decision to reject the claim and, again, decides to stay with the provider *or* they become clearer as to why they no longer wish to stay with that provider and pursue their original intention of changing provider.

Financial adviser

- 19 The new suggested definition of ‘financial adviser’ is “those whose primary business is the provision of such advice, or who regularly provide such advice in the course of their business”. The Citizens Advice Bureau *does* fit this definition of a financial adviser because we do provide such advice and we do so regularly in the course of providing

our service to the public. We field thousands of enquiries every year from people in relation to the financial products specified in the latest suggested definition of a 'financial decision'; for instance, we receive approximately 3,000 enquiries every year about insurance alone.

The exemption of our service must sit within the main body of the legislation

20 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.

There is already a precedent in law for such an exemption of our organisation

21 As we outlined in our previous submission, 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 5th May) by the Minister for Immigration, Hon Clayton Cosgrove.

22 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,

Ken Spencer
Acting Chief Executive