SUBMISSION ON THE FINANCIAL SERVICE PROVIDERS (REGISTRATION AND DISPUTE RESOLUTION) BILL

To the Finance and Expenditure Select committee

Introduction

This submission is from the Institute of Financial Advisers.

We wish to appear before the committee to speak to our submission.

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Background information on the Institute of Financial Advisers
The Institute of Financial Advisers (IFA) is the professional body for some 1,400 members, representing financial advisers in New Zealand. All members are individual members, not corporate members. We estimate that our members provide advice to over 200,000 New Zealanders each year, many of whom would be couples rather than individuals, with an overall client base of around 600,000.

Our members provide advice to their clients in the areas of insurance, investments, financial planning, work-based savings and insurance, retirement planning, estate planning and financial services generally. Their professional practices reflect the broad spectrum of New Zealand businesses – they operate as local SME's, are part of large regional or national dealer groups, are associated with strong financial organisations, services companies in banking, funds management, or insurance, work in employee benefits organisations, or sometimes practice as lawyers, accountants and other professional advisers.

The Institute reinforces compliance with a code of ethics and practice standards, runs Dispute Resolution and Disciplinary Committees that are independently chaired, offers education pathways that can lead to tertiary qualifications and the attainment of internationally recognised adviser marks, maintains and ensures compliance with a continuing professional development programme, and provides networking, education, development, and business practice forums at a national and regional level for members.

Summary

We support the intention of this Bill to improve regulation of financial service providers, especially financial advisers, but have comment on some aspects of detail and practical implementation.

This Bill covers registration of both product providers as well as financial advisers. It also covers the requirements for belonging to a dispute resolution service. The comments concentrate on the aspects impacting registration of financial advisers and their obligation to be a member of an approved dispute resolution scheme.

IFA will also be making a submission on the companion Bill, the Financial Advisers Bill.

Clause 6 Application of Act
Lawyers and Accountants
The clause states that the Act is to apply to people who provide a financial adviser service. It then moves on to exclude lawyers and accountants provided they are acting "in the course of that person's professional practice" as a lawyer/chartered accountant.

Issue: Chartered accountants and lawyers who provide a financial adviser service should be registered

The blanket exclusion of these two professions from the requirement for registration is an issue as in practice many of them do give personal financial advice. IFA's view is that consumers should have access to a single register of all those qualified to give a "financial adviser service". We consider that chartered accountants and lawyers who do provide a financial adviser service should be required to demonstrate competency and be registered in the same manner as other financial advisers.

There are many chartered accountants and lawyers who are competent to provide personal financial advice. Some are also members of IFA and hold a second professional status such as the Certified Financial Planner^{CM} professional status. These advisers will easily meet the competency test required under the companion Financial Advisers Bill and become members of an Approved Professional Body (APB).

Our concern is that the blanket exclusion also applies to chartered accountants and lawyers who do not have relevant qualifications in personal financial advice. The academic requirements for becoming a chartered accountant or lawyer do not include personal financial advice which is quite different from the accounting and legal issues relating to general business.

We submit that consumers deserve to know which chartered accountants and lawyers ***are*** *properly qualified to provide a financial adviser service through having them required to be registered and members of an Approved Professional Body.*

Clause 13(2) Disqualified person
An individual is disqualified from being registered as a financial adviser service provider if they are: an undischarged bankrupt, a prohibited director, subject to a banning order under securities legislation, have been convicted of an offence relating to fraud or dishonestly within the past 5 years, convicted of money laundering or financing terrorism or subject to a confiscation order under the Proceeds of Crime Act. [Note that the requirement is actually under s.10 of the Financial Advisers Bill which refers to this provision.]

***Issue:* A full "fit and proper person" test should be in legislation**
This requirement seems to be less than what had been in discussion documents as a "fit and proper person test" for financial advisers since it really only lists the extreme situations and does not cover issues such as character references or credit checks, which are IFA requirements for new members.

Perhaps it is intended that this be a requirement under APB rules or set in regulation. The question is whether it would be better to have them in the Act.

IFA submits that it would be preferable to have a "fit and proper person" test defined more clearly in an Act and that this should include a requirement to be of good character and to have a sound credit record.

Part 3 Dispute Resolution Service
The regulatory impact statement (dispute resolution) on pages 20-32 of the Explanatory Notes discusses options for dispute resolution, but concludes that the preferred option is for multiple dispute resolution service providers, rather than a single finance industry service.

Information on the potential cost to individual financial advisers of belonging to a dispute resolution service suggests that this will be quite high. The Explanatory Notes to the Bill acknowledge that the single industry-based scheme would have cost advantages, but is rejected as "it would require a greater degree of government intervention than the other options".

The cost of handling an individual dispute by the current ISI and Banking Ombudsman is around $3,000 which means that it would be cheaper for an adviser to settle a dispute rather than allow it to proceed to the dispute resolution service if it was under this sum. Since the majority of IFA members operate as self employed advisers or as part of small adviser practices, the cost of supporting a dispute resolution service would potentially be much higher than for the large corporate adviser firms or product companies.

Information from Australia on dispute resolution for financial advisers is that the annual fee for a self employed adviser is over $800 and this only covers the base cost of membership of the scheme and does not include the charges for considering a case, which are time based and may be several thousand dollars.

In addition, with multiple schemes, an adviser may belong to one scheme while product companies belong to another. When a dispute arises, it often involves both the adviser – who is the one dealing with the consumer – and a product company as what may be in question is a feature or performance of the product. With multiple schemes, a consumer may need to deal with two or more dispute schemes as may the adviser who would inevitably be caught in the middle.

Issue 1: Single Industry Dispute Resolution Service supported
IFA's preferred option is for a single industry dispute resolution service as this is likely to have the lowest costs and will also avoid problems of multiple agencies involved in what is essentially the same dispute.

Issue 2: Disputes should not include historical cases
Another issue is the date from which disputes would be able to be considered by a dispute resolution service. If all historical cases were able to be considered as soon as the new legislation takes effect, it is likely that there would be a flood of historical claims. IFA experience is that many claims are based upon breach of practice standards and/or a code of ethics. The majority of advisers do not currently operate under any such codes so historical cases would not have a

proper basis for evaluation and consumers could try to have claims considered in terms of current (higher) standards than applied at the time of the transaction/advice. It is suggested that disputes should only be able to be made relating to activities that took place after the regulation of advisers takes effect.