

CHiLD POVERTY ACTION GROUP

Child Poverty Action Group

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To: Charles Chauvel

Chair, Finance and Expenditure Select Committee

Parliament Buildings

WELLINGTON

Submission

Financial Advisors Bill:

Consultation On Policy Proposals

We thank you for the opportunity to participate in this consultation on policy proposals in the Financial Advisors Bill. Child Poverty Action Group comprises a group of academics and workers in the field dedicated to achieving better policies for children. Our reports *Our Children: The priority for policy* 2001, and 2003 can be found with other background material at our web site. The aims of our organisation are:

The development and promotion of better policies for children and young people.

Sharing information and connecting with other groups with similar concerns.

Elimination of child poverty in Aotearoa New Zealand by 2015

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Introduction

Child Poverty Action Group (CPAG) encourages the committee to consider the impact of this Bill and the associated policies on low income and vulnerable families and their children. Our most recent investigations into poverty levels suggest that one child in five under the age of 15 is being raised in a family that does not have sufficient disposable income to ensure their full development.¹ In addition, the Ministry of Social Development,² numerous NGOs, and the media, have regularly gathered evidence and reported that children are disproportionately among our poorest citizens. A deterioration in the economic position of children from low income families and the consequent social costs can be partially attributed to changes in demography and the labour market, and significantly attributed to a tax regime that over time has led to the unfair shifting of the tax burden to the poor.³ CPAG also argues⁴ that in recent years the lack of adequate consumer protection in the financial sector must carry a share of the blame for the worsening economic position of children.

Financial products, providers and advisors impact on children indirectly because their parents and caregivers are the investors and consumers referred to in financial sector legislation. This Submission urges the New Zealand Government to ensure the proposed legislation does not have a negative impact on low income or vulnerable families and their children. There is an urgent need for improved and extended protection of consumers in the financial sector. Currently, protection is inadequate and all consumers are vulnerable. We also strongly encourage the Government to regulate the sector before the proposed date of 2012. A delay of four years unnecessarily perpetuates consumer hardship and risk.

CPAG submits the following responses to the Consultation questions:

[1] We do not agree with an occupational approach to regulation of Financial Advisers.

[2] The definition of a financial adviser as “a person whose primary business is the provision of financial advice, or who regularly provides such advice in the course of their business” is not suitable because it **excludes** too many persons who provide financial advice as a secondary aspect of their employed or voluntary role.

[3] The definition of financial advice: “any advice relating to the financial implications of a financial decision”, is sufficiently clear and broad to ensure people functioning as financial advisors are likely to be caught within the definition of a financial adviser and

¹ St John, S., & Wynd, D. (eds) (2007). *Left Behind: How social and income inequalities damage New Zealand Children*. Auckland, Child Poverty Action Group.

² Ministry of Social Development (2006). *The Social Report*. Wellington, Ministry of Social Development, Government of New Zealand.

³ Child Poverty Action Group (2003). *Our Children: The Priority for Policy* (2nd edition). Auckland, Child Poverty Action Group.

⁴ GPAG (2007) Submission on the Review of Financial Products and Providers; and CPAG (2008) Submission on the Financial Service Providers (Registration and Dispute Resolution) Bill.

thus held accountable for the advice they are giving. Those providing financial advice, whether or not in a paid capacity, should be dealt with as financial advisors.

[4] The list of financial products provided in the consultation document is not sufficient, and the range and breadth provided in the Financial Advisors Bill is more suitable. In order for the legislation to achieve its purpose of protecting consumers and restoring their confidence, the definitions must be broad. We support the proposal that the Bill include a regulation-making power to a) enable any other product or class of products to be prescribed as a financial product; and b) ensure that the legislation has appropriate coverage as products develop which are not covered by the definition but are clearly financial products that should be included.

[5] Under the Bill, advice on investments linked to real property should be covered by use of a regulation making process that would define these investment products as financial products to bring them within the application of the regulatory framework.

[6] Advisers who provide advice that is not related to products can be brought into the regime through regulation on the training and registration requirements for Financial Advisors.

[7] Such regulation as is required can be made by the Securities Commission in consultation with industry and consumers. In time, Approved Professional Bodies, representing industry and consumers equally, may emerge and contribute to this and other roles in the sector.

[8] Whether paid or unpaid, all occupations that provide financial advice need to be specified in such regulations. There must be no doubt in the mind of the person receiving the advice that the person providing the advice is trained, registered, and accountable. Additional requirements may be made on specified occupations.

[9] Criteria must be specified in the legislation in relation to the exercise of such regulation making power. These criteria need to include that any regulations promulgated be consistent with the purposes of the Bill and that the Minister undertake appropriate consultation prior to recommending the promulgation of any regulations.

[10] Any person providing financial advice is a Financial Advisor, whether or not they are paid for that advice. Financial Advisors can and should be distinguished from others by others who do not give financial advice. Thus: insurance agents, real estate agents, lawyers, budget advisors, car salesmen and bank tellers, if they are providing financial advice, whether or not they call themselves Financial Advisors, must be trained and registered. The role or function is not dependent on the title, but on the substance of what they do. Avoiding use of the title must not be a means of avoiding accountability.

[11] An accreditation approach for institutions is appropriate provided the institution remains accountable for its agents and monitors the advice they provide. "Institutions will need to demonstrate that they have the appropriate processes in place to ensure that the relevant staff have appropriate product and client knowledge and that the organisation is accountable for advice tendered by the organisation (for example, by ensuring that consumers have access to a complaints resolution mechanism) and the appropriate improvement cycles are in place." The risks with such an approach include reluctance on the part of the institution to provide the training required, and to be

accountable for the advice provided, as they have traditionally avoided accountability and responsibility. Institutions would also need to insure that their agents were only providing advice on that institution's products.

[12] The types of criteria that would be relevant to such Institutional Accreditation also include that the institution is responsible for ensuring that advice being tendered by employees of that institution is appropriate to the needs that the advice is serving. We agree that any employee of an accredited corporation who provides financial advice should have the option of becoming individually accredited.

[13] It is critically important that Budget Advisers should not be exempted from the Financial Advisers regime. Whether paid or unpaid, Budget Advisors are providing a vital service to consumers, and must be trained and accountable. For consumers' protection, they must also be registered. The only exemptions would be if the Budget Advisor was operating under an Institutional Accreditation, and then the institution would be liable and accountable.

[14] We agree with the principles of a good regulator: "accountability; support for economic progress; innovation; competition; confidence and credibility; effective and efficient enforcement and discipline; clarity; transparency; integrity; proportionality and positive impact on members". We suggest that in time, an Approved Professional Body or Bodies could emerge, but in the first instance, the Securities Commission should have the role of "good regulator", as the sector is currently suffering from a "wild west" exploitative element. The Securities Commission should oversee the new regime and be responsible for oversight, ongoing monitoring, discipline and enforcement, licensing, registration, education and acting as an interface between consumers and Financial Advisers. We believe the Securities Commission is the optimal organisation to undertake this function, and the Commission already has the appropriate infrastructure and expertise in this area. As stated: "this model would place the rule making and enforcement powers with the Commission, with checks and balances, and a degree of public oversight and public accountability through industry consultation requirements". We would also urge that there be public or consumer consultation requirements.

We are pleased to read para 33: "it is probable with this change we would be able to fast-track the implementation for the regime. Under the current Bill, it is envisaged that the regime would be implemented by 2012. If the proposals were accepted, this regime could be fully implemented by 2010."

[15] The way the Commission discharges its new functions should be specified in the legislation. Amendments should be made to the Securities and the Financial Advisers legislation to enable the Securities Commission to undertake these functions. We agree that "it is important that the Securities Commission is able to undertake its enforcement functions separately from its supervision and compliance functions". The Commission could establish a division, as per section 148 of the Securities Act 1978, to a) establish rules for financial advisers; and b) to undertake all compliance and supervisory related functions, including retaining information received from advisers in confidence. The enforcement and investigatory functions could then be undertaken by other parts of the Commission.

We agree that “the membership of the Commission be extended to include at least one person suitably experienced and qualified in the Financial Adviser industry. This Member will be appointed under sections 28-31 of the Crown Entities Act 2004. The appointment must also be published in the Gazette. All other relevant provisions in the Crown Entities Act relating to the members of a Board of a statutory Entity will also apply to this Member”.

We also propose that two suitably experienced and qualified Consumer Representatives be appointed to the Commission, to ensure the public interest is considered and protected in the re-design of the sector, and in future decision-making.

[16] We agree that the Securities Commission may recommend the development of rules to the Ministers of Commerce and Consumer Affairs for approval in relation to minimum standards for financial advisers, and that the Minister will ensure that such rules are consistent with the objectives and purposes of the Financial Advisor legislation and regulations.

[17] We agree that the Securities Commission should use the rules and terms of reference of existing industry-funded Ombudsman schemes as a guide, and establish rules for financial advisers or classes of financial advisers, as set out in the list in paragraph 39, relating to:

- Minimum standards of competency;
- Requirements for ongoing professional development;
- Minimum standards of conducts and ethics; and
- Disciplinary procedures.

Rules are preferred to regulation, as rules are easier to change, and the financial sector environment and its products are constantly changing. The regulatory regime must be capable of rapid and appropriate response to a changing environment.

[18] We agree with the enforcement and disciplinary mechanisms proposed here for financial advisers. However, we suggest there would need to be an industry-funded disputes resolution scheme, independent from the Securities Commission, that would function as an appeal body for both industry and consumers. The existing Banking, and Insurance and Savings Ombudsman Schemes could be encouraged to fill this role.

[19] However, there should be an administrative appeal right for financial advisers on determinations by the Securities Commission, prior to appealing to Court. Again, the industry-funded disputes resolution scheme could fulfil this role of appeal body.

[20] With the inclusion of the disputes resolution scheme, the checks and balances provided on the exercise of disciplinary action are sufficient.