

CHiLD POVERTY ACTION GROUP

Child Poverty Action Group

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To: Charles Chauvel

Chair, Finance and Expenditure Select Committee

Parliament Buildings

WELLINGTON

Financial Advisors Bill: Further Submission

Child Poverty Action Group thanks you for the opportunity to participate in this consultation on a proposal to amend the application of the Financial Advisors Bill, introduce a tiered approach to regulating financial advisors, and modify the proposed institutional arrangements for supervision of the industry sector.

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.

- Ending child poverty in Aotearoa New Zealand by 2020

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Introduction

[1] As we have stated in our previous submissions on the Financial Advisors Bill, Child Poverty Action Group (CPAG) urges the Committee to consider the impact of this Bill and the associated policies on low-income families and their children. In New Zealand, 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 Children are disproportionately among our poorest citizens.² CPAG argues that a deterioration in the economic position of children from low-income families, and the consequent social costs, can be partially attributed the lack of adequate consumer protection in the financial sector.³

[2] CPAG commends the New Zealand Government for attaching urgency to the process of this legislation. CPAG's submission urges the Government to ensure the proposed legislation has a positive impact on low-income and vulnerable families and their children, and protects against unnecessary and avoidable consumer hardship and risk. Financial products and services and financial providers and advisors impact on children indirectly because their parents and caregivers are the investors and consumers referred to in financial sector legislation. Currently, protection is inadequate and all consumers are vulnerable. There is a critical need for improved and extended protection of consumers in the financial sector.

[3] In particular, CPAG submits that all financial advisors must be competent, skilled, and accountable for the financial advice provided to consumers. When making amendments to the proposed legislation, it must be acknowledged that, for example, bank workers and insurance agents are not "independent". It must also be acknowledged that budget advisors, whether or not they are trained or paid, are not merely providing advice for consumers to make trivial or minor decisions. Budget advisors regularly hold the futures of families in their hands.

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

CPAG submits the following responses to the Finance and Expenditure Committee's proposals:

[4] CPAG does not agree with the proposal of amendments to narrow the application of the bill; nor to define "financial advice" with reference to "financial products"; nor with a 2-level approach to the authorisation of financial advisors.⁴

[5] CPAG submits that all financial advisors, whatever their product or service, and whether or not a fee is attached to their services, must be regulated and authorised to ensure that they are accountable for financial advice provided to consumers.

[6] CPAG supports the proposal that, to gain authorisation from the Securities Commission, a financial adviser should be required to meet relevant skill and competency levels, and fit and proper person requirements, and be registered under the Financial Service Providers (Registration and Dispute Resolution) Bill. Anyone who is authorised would be required to comply with any ongoing disclosure and conduct requirements specified in regulations, and the terms and conditions of their authorisation.

[7] CPAG also recommends that the Securities Commission 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 conduct and ethics; and
- Disciplinary procedures.

The regulatory regime must be capable of rapid and appropriate responses to a changing environment.

[8] This proposed inclusive regulatory approach recognises that it is seldom possible for a financial advisor to make a distinction between advice that carries significant risks for consumers and advice that carries minimal risks. It also recognises that financial advisors are rarely independent. Bank employees, for example, are subject to "performance pay", and are thus incentivised to sell "debt" to customers, and are thus subject to a conflict between their own interest and that of the consumer.

⁴ It is interesting to note that Tony Vidler, spokesman for the Financial Advisers Associations, was reported in the Herald as saying that having two tiers defined by products created the potential for loopholes allowing complex products to be dressed up as simple products. It was also difficult to define which products should fit into each category. For example, Vidler said KiwiSaver was being treated as a complex product while lending and credit was being labelled as a simple product. "But far more damage can be done to someone who gets the wrong advice for credit or lending." Tamsyn Parker, "Two-tier plan for financial advisers", *New Zealand Herald*, August 12, 2008, available at http://www.nzherald.co.nz/section/3/story.cfm?c_id=3&objectid=10526516

[9] CPAG supports the proposal to amend the bill to clarify that a “financial product” could include debt, equity, credit, and risk products, as well as investment in real property.

[10] CPAG supports the proposal that the Securities Commission should be empowered to certify institutions who meet the standards under the bill; and that such Certified Financial Institutions would be held responsible and accountable for financial advice offered by their employees and agents. This Certified Financial Institutions model may be used by a range of institutions, including banks, insurance companies, credit unions and other financial institutions.

[11] Under this Certified Financial Institutions model, any institution would be able to apply to the commission to become a certified financial institution. In order to become certified, an institution would need to demonstrate to the commission that it has the appropriate processes in place to ensure that any employees or agents covered by its certification are suitable for the roles they are undertaking, and behave in a manner that is consistent with the principles of the Act. The institution would also need to be registered under the Financial Service Providers (Registration and Dispute Resolution) Bill. The certification of an institution would enable an institution to meet the obligations of all financial advisers affiliated with that institution, and would allow an institution to standardise compliance for advisers affiliated with that institution. Authorised financial advisers would still need to meet their individual obligations and accountabilities.

[12] CPAG supports the inclusion of disclosure obligations for the financial institutions and financial advisers. We support inclusion of an amendment to ensure that the bill includes a general obligation to make disclosure, as well as obligations relating to the form and accuracy of disclosure, and specific disclosure obligations applying to different categories of people.

[13] CPAG also submits that this Certified Financial Institutions model could be used by institutions providing financial and budget advice to consumers, whether or not they charge a fee for the service.

[14] CPAG supports the proposal that regulatory oversight be provided by the Securities Commission rather than through industry-led approved professional bodies.

[15] CPAG supports the proposal to create a Commissioner of Financial Advisers who would be a member of the Securities Commission. The commissioner would have a statutory responsibility to engage with industry to develop a code of conduct and to establish a disciplinary body, and would be responsible for ongoing monitoring and disciplinary proceedings for the professional conduct of financial advisers. Except for investigations and the enforcement of breaches of statutory obligations (criminal breaches), all functions of the Securities Commission under the bill would be exercised by the Commissioner. This approach is intended to help ensure that the Securities Commission can act as both the statutory enforcer and the professional regulator. To assist with the Commissioner’s decision-making, the Commissioner would be required to establish and act with a Rule-Making Committee and a

Disciplinary Committee. These committees would be comprised of equal numbers of industry and consumer representatives. This would ensure that the Commissioner receives advice from the industry and from consumers when exercising his or her judgement.

[16] CPAG also strongly recommends the establishment of or alliance with an industry-funded disputes resolution scheme, independent from the Securities Commission, that would function as an appeal body for both industry and consumers. The scheme would need to be independent and free to consumers. The existing Banking, and Insurance and Savings Ombudsman Schemes could be encouraged to fill this role.

In Summary:

[17] CPAG submits that all financial advisors will be authorised, regulated, competent, skilled, responsible and accountable for the financial advice they provide to consumers.

[18] CPAG submits that, to gain authorisation from the Securities Commission, a financial adviser will meet relevant skill and competency levels, and fit and proper person requirements, and be registered under the Financial Service Providers (Registration and Dispute Resolution) Bill. An authorised financial advisor is required to comply with any ongoing ethical, disclosure, and conduct requirements specified in the regulations or in the terms and conditions of their authorisation.

[19] CPAG supports the proposal to amend the bill so that “financial product” includes debt, equity, credit, and risk products, as well as investment in real property.

[20] CPAG supports the proposal that regulatory oversight be provided by the Securities Commission rather than through industry-led approved professional bodies.

[21] CPAG supports the proposal that any institution would be able to apply to the commission to become a certified financial institution, registered under the Financial Service Providers (Registration and Dispute Resolution) Bill; and that the Securities Commission be empowered to certify institutions who meet the standards under the bill, including banks, insurance companies, credit unions and other financial institutions, as well as voluntary and non-government organisations; and that such Institutions will be held responsible and accountable for financial advice offered by their employees and agents.

[22] CPAG supports the inclusion of disclosure obligations for the financial institutions and financial advisers.

[23] CPAG supports the proposal to create a Commissioner of Financial Advisers who would be a member of the Securities Commission. Except for investigations and the enforcement of breaches of statutory obligations (criminal breaches), all functions of the Securities Commission under the bill would be exercised by the commissioner. To assist with the commissioner’s decision-making, the Commissioner would be

required to establish and act with a Rule-Making Committee and a Disciplinary Committee. These committees would be comprised of equal numbers of industry and consumer representatives to ensure that the commissioner receives advice from the industry and from consumers when exercising his or her judgement.

[24] CPAG also recommends the establishment of or alliance with an industry-funded disputes resolution scheme, independent from the Securities Commission and the industry, and free to consumers, that would function as an appeal body for consumers.