

# House of Representatives

# Supplementary Order Paper

Tuesday, 23 September 2008

## Financial Advisers Bill

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### *Proposed amendments*

Hon Lianne Dalziel, in Committee, to move the following amendments:

#### *Clause 5*

*Paragraph (b)* of the definition of **category 1 product**: to omit this paragraph (lines 31 to 33 on page 71) and substitute the following paragraph:

(b) any estate or interest in land; or

*Paragraph (c)* of the definition of **category 2 product**: to omit this paragraph (line 2 on page 72) and substitute the following paragraph:

(c) an insurance product excluding a life insurance policy issued after 31 December 2008; or

To insert the following definition after the definition of **investment transaction** (after line 32 on page 73):

**issuer** has the same meaning as in section 2(1) of the Securities Act 1978

To insert the following definition after the definition of **licensed service** (after line 2 on page 74):

**life insurance policy** has the same meaning as in section 2(1) of the Securities Act 1978

To insert the following definitions after the definition of **registered bank** (after line 4 on page 75):

**registered exchange** has the same meaning as in section 2(1) of the Securities Markets Act 1988

**registered valuer** has the same meaning as in section 2 of the Valuers Act 1948

Definition of **trust account**: to insert after “New Zealand” (line 37 on page 75) “or any other prescribed entity”.

*Clause 8*

To omit “for the purposes of this Act” (line 31 on page 76).

*Clause 12*

To insert the following paragraphs after *paragraph (g)* (after line 11 on page 78):

- (ga) a registered valuer giving advice in the course of his or her professional practice as a registered valuer if the advice is a necessary incident of the professional practice of a registered valuer; or
- (gb) any of the following persons making an investment transaction in relation to a security:
  - (i) an issuer or a trustee (within the meaning of the Securities Act 1978 or the Unit Trusts Act 1960):
  - (ii) a nominated person of a trustee (within the meaning of the Unit Trusts Act 1960):
  - (iii) a nominee of a nominated person of a trustee (within the meaning of the Unit Trusts Act 1960):
  - (iv) a statutory supervisor (within the meaning of the Securities Act 1978):
  - (v) a security registrar appointed by the issuer; or
- (gc) a person who only transmits money or other property without being able to apply the money or property for any other purpose; or

*Paragraph (k)*: to omit this paragraph (lines 25 to 27 on page 78) and substitute the following paragraph:

- (k) a person giving advice, or making an investment transaction, in relation to a category 2 product or providing a financial planning service, if the advice is given, or the transaction is made, or the planning service is provided without charge in the course of a service offered by a non-profit organisation; or

*Paragraph (m)*: to omit this paragraph (lines 31 to 33 on page 78) and substitute the following paragraph:

- (m) an employer providing assistance to an employee with the implementation of a decision to acquire or dispose of a financial product made available through the employee’s workplace unless the assistance includes or is accompanied by a recommendation or opinion as to the suitability of the financial product; or

*Paragraph (r)*: to omit this paragraph (lines 6 to 9 on page 79).

*Clause 17*

To add the following subclause as *subclause (2)* (after line 21 on page 80):

- (2) An individual (whether registered or not) who is an employee of a QFE may, in the course of the QFE’s business,—

- (a) give financial advice in relation to a category 1 product of which the QFE is the issuer; or
- (b) make an investment transaction in relation to a category 1 product of which the QFE is the issuer.

*New cross-heading*

To insert the following cross-heading after *clause 17* (after line 21 on page 80):

*Provisions relating to employer or principal of financial adviser*

*New clause 18A*

To insert the following clause after *clause 18* (after line 35 on page 80):

**18A No requirement to be member of approved dispute resolution scheme if employer is member**

- (1) This section applies where a person (**A**) employs another person (**B**) as employee to perform a financial adviser service in the course of A's business for A's client or clients.
- (2) In any case to which this section applies, B must not be required to be a member of an approved dispute resolution scheme for the purposes of registration under the FSP Act.
- (3) **Subsection (2)** applies no matter what the FSP Act says.

*Clause 22*

To add the following subsection (after line 7 on page 82):

- (3) Regulations made for the purposes of this section may prescribe different disclosure according to different classes of authorised financial adviser, financial adviser service, or client.

*New clause 34A*

To insert the following clause after *clause 34* (after line 9 on page 86):

**34A Restriction on use of term sharebroker**

- (1) A person (**A**) must not use the term sharebroker in advertising or promoting A as a financial adviser or advertising or promoting a financial adviser service unless A is a member of a registered exchange.
- (2) A person who contravenes **subsection (1)** commits an offence (*see section 114A*).

*Clause 37(1)*

To omit "held with a bank in New Zealand" (lines 33 and 34 on page 86).

*New cross-heading and new clause 46A*

To insert the following cross-heading and clause after *clause 46* (after line 14 on page 89):

*Commission's direction in respect of breach of disclosure  
or conduct obligation*

**46A Commission may give financial adviser direction in respect of breach of disclosure or conduct obligation**

- (1) This section applies if the Commission has reason to believe that a financial adviser is in breach of a disclosure or conduct obligation.
- (2) The Commission may give the financial adviser notice of his or her alleged breach and, if the Commission does give a notice of breach, the Commission must also give the financial adviser a reasonable opportunity to respond.
- (3) If the Commission concludes, after considering the financial adviser's response, that the financial adviser is in breach, the Commission may give the financial adviser a direction in writing.
- (4) The direction may—
  - (a) direct the financial adviser to comply with the conduct or disclosure obligation;
  - (b) stipulate any steps that the financial adviser must take in order to comply with the obligation;
  - (c) require the financial adviser to report to the Commission within 28 days of the date of the direction stating how and when the Commission's direction will be implemented.
- (5) A financial adviser who fails to comply with a direction by the Commission commits an offence (*see section 128A*).
- (6) Nothing in this section precludes the Commission from exercising any of its other powers under this Act against a financial adviser.

*Clause 51(a)(i)*

To omit "entitled to be registered" (line 8 on page 90) and substitute "complies with **section 12(a) and (b) of the FSP Act**".

*Clause 58(2)*

To omit this subclause (lines 27 and 28 on page 93) and substitute the following subclause:

- (2) The Commission may give the financial adviser notice of his or her alleged breach and, if the Commission does give a notice of breach, the Commission must also give the financial adviser a reasonable opportunity to respond.

*Clause 70*

*Subclause (1)*: to omit this subclause (lines 7 to 9 on page 98) and substitute the following subclause:

- (1) This section applies if the Commission has reason to believe that a QFE is in breach of a disclosure or conduct obligation.

*Subclause (2)*: to omit this subclause (lines 10 to 12 on page 98) and substitute the following subclause:

- (2) The Commission may give the QFE notice of its alleged breach and, if the Commission does give a notice of breach, the Commission must also give the QFE a reasonable opportunity to respond.

*Subclause (4)(a)*: to omit “terms and conditions” (line 17 on page 98) and substitute “disclosure or conduct obligation”.

*Subclause (4)(b)*: to omit “terms and conditions” (line 19 on page 98) and substitute “disclosure or conduct obligation”.

*Clause 73(1(c))*

To omit “**14 and 15**” (lines 17 and 18 on page 99) and substitute “**14, 15, and 17**”.

*Clause 77*

*Paragraph (d)*: to omit this paragraph (lines 5 and 6 on page 102).

*Clause 79*

*Subclause (2)*: to omit this subclause (lines 20 to 23 on page 102).

*New clause 81A*

To insert the following clause after *clause 81* (after line 27 on page 103):

**81A Certain provisions of Crown Entities Act 2004 apply to members of code committee**

Clause 15 of Schedule 5 of the Crown Entities Act 2004 (**Schedule 5**) applies as if the code committee were a committee appointed by the Commission under clause 14 of Schedule 5 and with all other necessary modifications.

*Clause 84(3)*

To omit “**83(2)(b)**” (line 30 on page 104) and substitute “**83(2)**”.

*Clause 88(1)*

To omit “elapsed” (line 32 on page 105) and substitute “expired”.

*Clause 93(1)*

To omit this subclause (lines 10 to 13 on page 107) and substitute the following subclause:

- (1) After receiving a complaint, the Commission must investigate the complaint if it is practicable to do so having regard to—

- (a) the nature and number of complaints to be investigated; and
- (b) the Commission’s regulatory priorities as reflected in its statement of intent; and
- (c) the Commission’s available resources.

*Clause 94*

To omit “contravention” (line 24 on page 107) and substitute “breach”.

*Clause 95*

To omit this clause (lines 25 to 30 on page 107) and substitute the following clause:

**95 Disciplinary committee must give notice of complaint to financial adviser concerned**

If the Commission refers a complaint about an authorised financial adviser to the disciplinary committee, and the disciplinary committee considers that a hearing is necessary to deal with the complaint, the disciplinary committee must serve a written notice of the complaint on the financial adviser.

*Clause 96*

*Heading to clause 96:* to omit “**Commission’s**” (line 31 on page 107) and substitute “**disciplinary committee’s**”.

*Paragraph (a):* to omit this paragraph (lines 1 and 2 on page 108) and substitute the following paragraph:

- (a) state that the disciplinary committee considers that there is reason to believe that A may have breached the code; and

*Clause 97(2)*

To omit this subclause (lines 12 to 15 on page 108) and substitute the following subclause:

- (2) The disciplinary committee may take any of the actions referred to in **subclause (3)** if it is satisfied that A has breached the code.

*Clause 100*

To omit this clause (lines 24 to 30 on page 109) and substitute the following clause:

**100 Functions of disciplinary committee**

The functions of the disciplinary committee are to—

- (a) conduct disciplinary proceedings arising out of complaints regarding authorised financial advisers referred to it by the Commission; and
- (b) take any of the actions referred to in **section 97(3)** as a result of disciplinary proceedings.

*Clause 104*

*Heading to clause 104:* to omit “**Commissioner**” (line 11 on page 111) and substitute “**disciplinary committee**”

*Subclause (1):* to omit this subclause (lines 13 to 15 on page 111) and substitute the following subclause:

- (1) A District Court Judge may, on the application of the disciplinary committee or the person to whom the proceedings relate, give a certificate authorising the disciplinary committee to issue a summons under **section 105**.

*Clause 105*

*Heading to clause 105:* to omit “**Commissioner**” (line 25 on page 111) and substitute “**disciplinary committee**”.

*Subclause (1):* to omit “Commissioner” (line 26 on page 111) and substitute “disciplinary committee”.

*Subclause (2):* to omit “Commissioner” (lines 36 and 37 on page 111) and substitute “chairperson of the disciplinary committee”.

*Clause 108*

*Heading to clause 108:* to omit “**members of disciplinary committee and others**” (lines 4 and 5 on page 113) and substitute “**witnesses and counsel**”:

*Subclause (1):* to omit this subclause (lines 6 to 10 on page 113).

*New clause 108A inserted*

To insert the following clause after *clause 108* (after line 22 on page 113):

**108A Certain provisions of Crown Entities Act 2004 apply to members of disciplinary committee**

Clause 15 of Schedule 5 of the Crown Entities Act 2004 (**Schedule 5**) applies as if the disciplinary committee were a committee appointed by the Commission under clause 14 of Schedule 5 and with all other necessary modifications.

*Clause 110*

*Heading to clause 110:* to omit “**in relation to category 1 product**” (lines 10 and 11 on page 114).

*Subclause (1):* to omit this subclause (lines 12 to 17 on page 114) and substitute the following subclause:

- (1) Subject to **subsection (2)**, a person who, without being authorised, performs a financial adviser service that under this Act only an authorised financial adviser may perform commits an offence and is liable on summary conviction to a fine,—
  - (a) in the case of an individual, not exceeding \$10,000;
  - (b) in the case of an entity, not exceeding \$50,000.

*Subclause (2):* to insert after “product” (line 21 on page 114) “or provides a financial planning service”.

*New clause 114A*

To insert the following clause after *clause 114* (after line 20 on page 115):

**114A Offence of contravening restriction on use of term  
sharebroker**

A person who contravenes **section 34A(1)** commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

*Clause 126*

To omit “commission” (line 18 on page 117) and substitute “Commission”.

*New clause 128A*

To insert the following clause after *clause 128* (after line 4 on page 118):

**128A Offence of failing to comply with Commission’s direction  
in respect of breach of disclosure or conduct obligation**

A person who fails to comply with a direction of the Commission given under **section 46A(3)** commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

*Clause 144*

To add the following subclause (after line 27 on page 123):

- (5) The Commission may impose any conditions in relation to communicating information to an agency to which this section applies, including (without limitation) conditions relating to—
- (a) maintaining the confidentiality of the information (in particular, information that is personal information within the meaning of the Privacy Act 1993);
  - (b) the storing of, use of, or access to the information;
  - (c) the copying, returning, or disposing of the information;
  - (d) payment of the costs incurred by the Commission in communicating the information.

*Clause 147*

*Subclause (1)(b)*: to omit “financial” (line 26 on page 124).

*Subclause (1)(c)*: to omit “financial” (line 28 on page 124).

*Subclause (1)*: to insert the following paragraph after *paragraph (c)* (after line 29 on page 124):

- (ca) prescribing an entity for the purposes of the definition of trust account (*see section 5*):

*Subclause (3)*: to omit “, the Commissioner, and the code committee” (lines 31 and 32 on page 125).

*Subclause (4)*: to insert “in New Zealand or overseas” after “other regulation” (line 37 on page 125).



*Clause 150*

To omit “by a person in New Zealand, regardless of where that person” (lines 28 and 29 on page 126) and substitute “regardless of where the person performing the financial adviser service”.

*Clause 156*

To insert the following subclause after *subclause (2)* (after line 4 on page 128):

(2A) Section 10(1)(c) is amended by inserting “and financial advisers” after “securities”.

To insert the following subclause after *subclause (3)* (after line 6 on page 128):

(3A) Section 11(1) is amended by omitting “10” and substituting “11”.

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### Explanatory note

This Supplementary Order Paper proposes a number of changes to the Financial Advisers Bill. The changes are mostly in the nature of minor or technical refinements. A handful are more substantive, but even then they are of relatively minor import. This last category includes the following:

- excluding registered valuers, on the basis that they are already subject to equivalent regulation (*new clause 12(ga)*);
- extending to an employee of a QFE the ability to give financial advice in relation to a category 1 product or make an investment transaction in relation to a category 1 product, provided in each case that the QFE is itself the issuer of the product (*new clause 17(2)*);
- exempting a QFE employee from being required to be a member of an approved dispute resolution scheme under the Financial Service Providers (Registration and Dispute Resolution) Bill (*new clause 18A*);
- restricting the use of the term sharebroker (*new clause 34A* and, for the criminal penalty for breach, *new clause 114A*);
- empowering the Securities Commission to give directions to financial advisers in respect of a suspected breach of a disclosure or conduct obligation (*new clause 46A* and, for the criminal penalty for failing to comply with a direction, *new clause 128A*);
- importing certain provisions of the Crown Entities Act 2004 in relation to the code and disciplinary committees (*new clauses 81A and 108A*).