



SUBMISSION

Prepared by the
New Zealand Retailers Association

For the
Ministry of Consumer Affairs

In respect of the
**Financial Service Providers Act 2008
Reserve Scheme**

July 2009

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Introduction

These submissions are presented by the New Zealand Retailers Association (“the Association”).

The Association is the largest trade association involved in the retail industry in New Zealand.

We represent an industry that has annual sales of \$66billion and which employs 325,000 people (approx 20% of the New Zealand workforce) in more than 49,000 outlets throughout New Zealand.

Our national membership includes the major supermarket and general merchandise chains, specialised chains, traditional department stores and thousands of owner operators spread throughout the country.

The membership also includes a number of specialised trade groups representing manufacturers, distributors and retailers in the plumbing materials, metal fastener, pet, equestrian, jewellery, bicycle and sporting goods sectors.

Background

The Association actively participated in the Financial Advisers Bill debate prior to it being passed into law. We remain supportive of the intent to increase transparency, competency and accountability of financial advisers and in so doing providing greater protections for those making investment decisions.

The fact that there was subsequent redrafting and further input sought from submitters on the definitions of financial adviser, highlighted the difficulty that the Select Committee encountered when they considered the wider implications of the Bill.

In the draft stages of the Bill, and since its enactment, the Association has and continues to strongly argue that retailers and retail staff who facilitate consumer credit products and services (such as Hire Purchase contracts and Store Card products) through a third party (which is the majority of cases) are a group that are unintentionally caught by this legislation.

We also consider that retailers who do provide their own consumer credit products and services (Hire Purchase, Store Cards etc) are providing a financial service/product.

However, in both cases (retail provided finance, or third party provided finance), as the requirements and accountability for disclosure are captured within the requirements for the retailer to comply with their obligations to the Credit Contract and Consumer Finance Act 2003, Retailers - as a Financial Adviser, and Credit

Contract and Consumer Finance - as a product should both be excluded from the Financial Advisers Act 2008.

However, implementation of the Act is imminent, and accordingly it is necessary for us to, in tandem with continuing to advocate our concerns outlined above, prepare our industry to meet the obligations it will be confronted with.

Under the Financial Advisers Act 2008, Retailers and retail staff are caught in regards to the category 2 product of consumer credit.

Retailers are implicated in the following ways:

- As a provider of their own financial product/service. Eg. A retailer who offers their own consumer credit product/service (store card, hire purchase). This retail may wish to be registered as a QFE.

NB. It is likely that a retailer may have its finance company separate to its retail brand or multiple store brand names eg. ABC Retail Finance Ltd that provides finance to ABC Ltd. In this instance, we consider that the ABC Retail Finance Ltd would be a QFE, and that the retailer (ABC Ltd) and/or its staff be an "agent" of that QFE. If there was no separation of the two entities, then the Retailer would need to be registered as a QFE, and the staff would be employees of the QFE.

- As a third party provider of consumer credit products and services. In this instance, the finance provider would become a QFE and the retailer and/or their staff would be "agents" and under the responsibility of that QFE.

NB. Many retailers will have at least 2 providers of consumer credit and will therefore be agents of two or more QFEs.

For the purposes of this submission, we are commenting on behalf of those retailers who provide their own financial service/products (credit contracts, store cards etc) to consumers.

Submission Overview

The Association is supportive of the requirement for a comprehensive approach to consumer dispute resolution and redress.

An individual or entity is entitled to be registered as a financial service provider if they are a member of an approved dispute resolution scheme or the reserve scheme.

Retailers providing their own financial services and who register as a QFE will be likely to utilise the reserve dispute resolution scheme, as they are not likely to be

of a sizeable entity to bear the significant costs in setting up and managing this process and meeting the obligations required.

Specific Submissions

In general, we consider the proposed operating rules of the reserve scheme to be reasonable mechanisms for delivering on the purposes of the Act. There are some specific comments which we wish to make.

Improving Regulation of the Finance Sector

As mentioned, the Association is supportive of the requirement for a comprehensive approach to consumer dispute resolution and redress. We are also supportive of the need for any approved or reserve scheme to comply with the principles outlined in the discussion paper, namely:

- Accessibility
- Independence
- Fairness
- Accountability
- Efficiency
- Effectiveness

We wish to reiterate the point outlined in the submission overview, that it will not be commercially viable for some QFE's to develop and register their own or an industry-based dispute resolutions scheme in relation to the volume of complaints that provider or industry currently receives, and so requiring them to instead opt for the reserve scheme.

The Reserve Scheme

It is proposed that the scheme be fully funded by industry. If there are only a handful of members in the reserve scheme, would those members be expected to equally share the costs of the total scheme? This may in fact be greater than the costs of establishing and managing their own scheme, and perhaps that is the logic. We believe that the minimum and maximum levels of cost of membership to the reserve scheme should in fact be determined (there will be a significant level of fixed costs associated with implementation and ongoing operations to provide this).

Further, the discussion document does not appear to outline in any detail how member levies are to be determined, yet, a requirement of joining the scheme is the obligation to meet all and any fees or levies of the reserve scheme. We believe that this information needs to be made available for consultation immediately.

We also recommend that the requirement for itemising the specific make-up of levies (example, levies required to fund the contracted Service Provider of the reserve scheme, levies required for advisory body etc) should be stated within the operating rules.

Conclusion

We appreciate the opportunity to have input to the discussion document, and would like to meet with Ministry's officials to discuss our views further.

New Zealand Retailers Association
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