



## **SUBMISSION**

Prepared by  
**New Zealand Retailers Association**

For the  
**Commerce Select Committee**

On the  
**Financial Service Providers (Pre-  
Implementation Adjustments) Bill**

15 April 2010

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## **1 Introduction**

- 1.1 These submissions are presented by the New Zealand Retailers Association (NZRA).
- 1.2 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.
- 1.3 Our national membership includes general merchandise chains, specialised chains, traditional department stores, grocery stores, supermarkets 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.
- 1.4 The NZRA welcomes the opportunity to comment on the Financial Service Providers (Pre-Implementation Adjustments) Bill (referred to as “the Bill”).
- 1.5 Overall, we support moves by Government to ensure that amendments to both the Financial Service Providers (Registration and Dispute Resolution) Act 2008 and Financial Advisers Act (FAA) 2008 mean that these Acts are implemented effectively and are consistent with existing policy frameworks. We are of the view that the amendments in the Bill will provide a positive step towards such changes.
- 1.6 However, the Association wishes to raise industry issues regarding the Financial Advisers regime as a whole to be considered in the context of pre-implementation of the Act. While these issues are not included in this Bill, we believe that action will need to take place if a successful outcome is to be reached. Our submissions therefore are weighted on these particular aspects that if left unaddressed could cause significant confusion and problems for our sector.
- 1.7 The Association wishes to acknowledge our appreciation of the consultative approach taken by officials from the Securities Commission and MED in seeking to understand our issues and concerns, and work through solutions to mitigate the impact of the legislation on our sector, and provide clarity of obligations.

## 2 Background

- 2.1 Members of the New Zealand Retailers Association are deemed to be captured by the Financial Advisers Act 2008 if they sell goods on credit or offer an insurance product such as extended warranty insurance or travel insurance. Under the interpretations of the Act, those retailers **may** be required to:
- register their business and employees on the register of financial service providers;
  - obtain “QFE” (qualifying financial entity) status from the Securities Commission;
  - produce appropriate disclosure statements in relation to the financial arrangements they offer;
  - train employees to comply with the duties imposed by the legislation;
  - become a member of an approved dispute resolution scheme.
- 2.2 Retailers may provide their own products/services, or be an agent for a third party provider. The latter is more commonplace amongst smaller-medium sized businesses.

## 3 Specific Submissions

- 3.1 The Association in its previous submissions to the Finance and Expenditure Select Committee on the Financial Advisers Bill, and the Securities Commission in response to the Staff Paper on Regulating and Supervising Financial Advisers have continued to argue that frontline (Point of Sale) retail staff are the providers of **information only** in respect of such products outlined in 2.1 above. That is, the sales staff are **not** providing advice to the consumer, but simply relaying facts that will allow the customer to make a decision – for example what payment option they prefer to choose (cheque, credit card, debit or eftpos or hire purchase), or whether they opt to purchase an extended warranty etc.
- 3.2 An extensive review of the process of consumer finance offered and facilitated at Point of Sale has been done by the Association and discussed with officials of the Securities Commission. The Association’s view remains that the conversations held between a retail sales person and a consumer in regards to consumer finance or extended warranty type products to be of an information-provision type only.

- 3.3 However, the Association still considers that the definition of financial advice in Section 11 of the FAA 2008 to be too broad in that it captures a range of discussions unlikely to constitute “financial advice”.
- 3.4 We have considered that to avoid confusion, and to reduce the risk of the conversation between retail sales persons and customers straying into being deemed as recommendation, opinion, advice or guidance (thus rendering the conversation as provision of financial advice), that a script be prepared and utilised at point of sale by those retail sales persons.
- 3.5 This proposal would continue to protect the integrity of the Act, with the QFE or Finance Provider of the Products/Services outlined in 2.1 above retaining their accountabilities in respect of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 and Financial Advisers Act 2008. The Point of Sale person, in our opinion, is incidental to that integrity.
- 3.6 Accordingly, we recommend that the Committee consider:
- a revisiting the definition of financial advice and
  - b including an exemption in section 12 of the Act for Retail Point of Sale Staff

#### **4 Conclusion**

- 4.1 Retail frontline sales persons who are offering customers consumer credit contracts or the likes of extended warranty insurance either on behalf of the retail company itself, or a third party provider are currently captured under the broad definition of financial advice.
- 4.2 The Association, in our review of the point of sale process for such financial products and the documentation, have found that retail point of sales persons are in fact providing information only, and therefore those persons would not need to be registered financial advisers.
- 4.3 The Association will continue to work with officials of the Securities Commission and Ministry of Economic Development to ensure that retail point of sale persons are not at risk of conversations being deemed as a recommendation, opinion, advice or guidance by providing a script guideline to be used in relation to those consumer credit or insurance products outlined in 2.1 above.

- a However, to ensure clarity of obligations under the FAA, we recommend that the Committee consider revisiting the definition of financial advice and
  - b including an exemption in section 12 of the Act for Retail Point of Sale Persons
- 4.4 The Association wishes to appear before the Committee to speak to our submissions.

New Zealand Retailers Association  
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