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FAMILY BUDGETING SERVICES (INC.)  
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Finance and Expenditure Committee  
Parliament House  
Wellington

## **SUBMISSION: Financial Advisers Bill**

### **Background**

The Federation is a collective of community organisations that share a common code of ethics, philosophy, and commitment to delivering quality, free budgeting advice to families/whanau and individuals. The current membership comprises 143 budget services throughout New Zealand that employ over 1200 predominantly volunteer staff and represent more than 30,000 clients annually.

### **Snapshot**

Federation member services provide budget advice from Kaitia to Invercargill and, including the West Coast, Great Barrier, and Waiheke Islands, provide coverage to most towns and cities in New Zealand. In the year to 30 July 2007, the Federation personnel included 706 certificated budget advisers, 173 service coordinators and staff, 307 other volunteers, 36 Federation tutors, and 104 community educators. Over that 12 month period, Federation services fielded 244,825 enquiries, worked with 30,748 client families, and delivered almost 700 education programmes to the community.

The Federation, essentially, acts very similar to how an Approved Professional Body would. The Federation has a clearly defined governance structure that is bound by a set of Rules. Federation members must meet a number of affiliation criteria before being accepted and must undergo an annual audit as well as meet ongoing professional development standards. All members have equal opportunities to offer policy or rule changes as well as to vote for and, indeed, stand for representation in the governance structure. The Federation has a well-defined complaints procedure that is outlined as part of the disclosure process to all clients seeking ongoing financial advice. Further, the Federation National Board has the power to revoke membership from any member that does not meet the affiliation or training requirements or does not satisfactorily resolve a complaint.

It is from more than 30 years working in New Zealand in a similar role as to that of an APB that the Federation makes this submission on behalf of its entire membership.

### **Introduction**

Thank you for allowing the community the opportunity to provide feedback on the Financial Advisers Bill. The Federation, on the whole, endorses the proposed approach in the Code and would like to offer the following amendments for consideration:

### **Submission**

#### **1. Explanatory Notes**

1a. Under the heading 'Financial advisers' the explanatory notes suggest that the cost of joining an APB has been estimated at \$1,000-\$5,000. This figure would be a significant amount of money for most of our members. The Federation makes the suggestion that the Bill allow for the setting up of a fund specifically for the purpose of

helping certain sectors cover these initial costs. Our members cannot pass on extra costs to their clients as they provide advice 'pro bono'.

1b. Under the heading 'Steps taken to minimise compliance costs' again costs are identified as a potential risk in implementing this legislation. Again the Federation would like to point out that neither it nor its members is able to pass on compliance costs to its clients and that the setting up of a fund for certain sectors to access will go some way to mitigating this risk.

1c. The Federation believes that the timeline suggested in the explanatory notes for implementing the Bill is far too long. Consumers are being detrimentally affected by poor advice in New Zealand right now and, as recent media reports would indicate, this may continue to be the case for some time. The Federation believes that the requirements under the Bill are not so arduous that APBs cannot be setup in most industry sectors well before 2012. If the Bill is indeed passed into law by mid 2008 then the cutoff time for advisers to belong to APBs should be no longer than by the end of 2010; eighteen months being more than long enough for APBs to set themselves up, register and have members join up.

## **2. Financial Adviser Service**

The Federation strongly endorses clause (b) with regards to handling and investing client's monies. Money management-type practices would necessarily come under this distinction and this extra level of security would go some way to preventing situations such as the 'Debt Relief' fallout that occurred in Paraparaumu in 2006.

However, the Federation asks the Committee to carefully consider the example of a Summary Instalment Order under the new Insolvency Act 2006. In this situation a Supervisor handles a client's monies specifically as a result of a financial decision. The Federation would expect then that all summary instalment order Supervisors would also necessarily come under this distinction and, therefore, be expected to join an appropriate APB.

## **3. Financial Advise**

The Federation strongly encourages the Committee to consider specifically including pro bono advice in this section. Pro bono advice is considered to be financial advise according to the definitions offered by the Ministry of Economic Development:

"The definition of Financial Advisers includes those people who call themselves mortgage brokers, insurance brokers, investment advisers, financial planners, including those who give pro bono advice..." (MED, 2008).

Pro bono advice is well recognised in terms of a definition and, more specifically, means professional work undertaken voluntarily and without payment for the public good. The Federation asks that pro bono advice be specifically included in the definition in the Bill. This will ensure that this already well-recognised industry in New Zealand is under no illusions as to whether it is included or not by this Bill and will prevent the possibility of volunteers being caught out due to their community organisations not realising that they are included as 'financial advice services'.

One of the risks outlined in the explanatory notes is that the act may unintentionally cover people who do not pose a significant risk to consumers. The level of involvement that budget advisers have with their clients financially (i.e. with creditor negotiations, insolvency advice, debt consolidation advice, SIO and NAP advice, etc.) means that inexperienced advisers pose a *considerable* risk to consumers. This has already occurred in New Zealand on numerous occasions. Therefore, to mitigate this risk properly the term 'pro bono' advice *must* be included in the definition. The Federation suggests the following change:

'(a) means any advice (including that given pro bono) relating to the financial implications of a financial decision; and'

#### **4. Financial Decision**

As a further example of the need to specifically require financial advisers offering pro bono advice in the Bill it is of note that budget advisers offer advice to their clients on:

- (a) saving money
- (b) borrowing money
- (c) incurring a debt; and
- (d) making financial provision for the future.

This is 4 of the 7 examples of what constitutes a financial decision in the Bill. Therefore, it is of the opinion of the Federation that budget advisers must come under the new rules in the Bill.

#### **5. Section 14**

The Federation asks the Committee to consider including fraud and dishonesty as a criminal conviction disclosure requirement. Fraud could well occur outside of an advisers professional capacity yet consumers would expect to know if an adviser had been convicted of this.

#### **6. Section 16**

The Federation notes that disclosure in section 16 includes a financial adviser's remuneration including commission, fees or other benefits but not including salary or wages. The Federation would ask the Committee to consider how this requirement may affect budget advisers offering pro bono advice. They do not receive a salary or wage yet they may receive a stipend, petrol cost recovery, expenses or mileage benefits. Would they need to disclose this to the client as a benefit?

#### **7. Section 20**

The Federation notes that the requirement to make disclosure in writing is fraught with the same anomaly as credit contracts as required by the Credit Contract and Consumer Finance Act 2003. Although credit contracts are supposed to help the consumer understand the requirements of the agreement the Federation has found that many clients have little or no understanding of the credit contracts at all. The Federation would like to see the Bill require that a certain level of understanding by the consumer occurs when disclosure is made. Further the Federation would like to see the onus of ensuring understanding has occurred be put on the financial adviser. This requirement prevents an unscrupulous adviser simply handing over a wordy statement document to their client and then claiming that they made full disclosure.

#### **8. Section 38**

The Federation notes that assistance is to be offered by the Commission to APBs in setting up their rules, governance structures and other internal processes. The Federation again reiterates that it has already substantially set up these processes but endorses the fact that help will be offered. The Federation notes, also, that although it has most of the structures in place to set up as an APB already, compliance costs will still be a significant issue for it and refers the Committee back to point 1.

#### **9. Section 58**

The Federation would like to advise the Committee that rule changes cannot be implemented by the Federation in just 28 days. Many other APBs may find this to be the case. Under the governance requirements of the Federation making a rules change requires a majority vote be cast at either an Annual or a Special Meeting of the organisation. The Federation suggests that 90 days might be a far more realistic timeframe for this.

#### **10. Section 63**

The Federation would also like to advise the Committee that the requirement in section 63 would be entirely impossible to uphold. The Federation has its accounts professionally audited and this process takes *at least* three months to complete and can often take much longer; up to five months. This process is completely out of the Federation's hands and, therefore, a 30-day timeframe is not realistic. The

Federation would advise that submitting of APBs final reports within 6 months is a much more realistic option.

#### **11. Section 136**

The Federation is very concerned by the wording of the current Bill in terms of pro bono community budget services. The specific words 'pro bono' have not been included anywhere in the Bill and section 136 allows the Commission to grant exemptions to financial advisers under certain conditions. The Federation would certainly not like to see this exemption used in the community sector.

#### **Conclusion**

The Federation believes that there is a *very serious* risk that some community organisations will be able to continue to provide financial advice under the auspices of 'budget advice services' without having to come up to the level of service delivery expected by consumers in New Zealand. The Federation is aware of a number of organisations offering financial advice currently who have inexperienced advisers, poor governance structures and very little ongoing professional development. The level of service delivery from some of these organisations goes from poor to downright dangerous. Some of these organisations have very good intentions but a lack of capability and others are run on self-interest and not exactly 'charitable' at all. Some of these organisations are even previous members of the Federation that have had their memberships revoked due to not meeting the Federation affiliation criteria.

This Bill has the opportunity to ensure that these pro bono organisations and their financial advisers either come up to the level of service delivery expected by New Zealand consumers or stop delivering financial advice; either of which is a positive outcome for the consumer and in keeping with the intentions of the Bill.

#### **Call to Action**

The New Zealand Federation of Family Budgeting Services Inc thanks the Committee for offering it the opportunity to make this submission on the Financial Advisers Bill.

The Federation fully endorses the intentions of the Bill but has some very specific concerns. In particular the exclusion of the term pro bono, the very long implementation timeline, the exclusion of disclosure of fraud, the requirement for disclosure to be only in writing, and the timelines suggested for changing rules and submitting annual reports.

The Federation would like to make an oral submission to the Committee to provide some further and more specific comments on the above concerns.

Yours sincerely

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