

27 May 2009

AFA Competence Discussion  
Securities Commission  
PO Box 1179  
Wellington

## **ASFONZ SUBMISSION ON THE STAFF PAPER ON AUTHORISED FINANCIAL ADVISER COMPETENCE**

We wish to submit the attached in respect of the discussion document released on 20 April 2009.

ASFONZ is a national, not-for-profit, apolitical membership organisation that represents the interests of employers who offer workplace superannuation, their trustees and members, as well as superannuation industry service providers and professional advisers.

Our membership embraces all types of workplace superannuation schemes (KiwiSaver, public and corporate, union-sponsored and industry-based), as well as employers and service providers to the workplace superannuation industry. Current membership comprises around 100 major workplace superannuation schemes and around 50 organisations and individuals representing the various product and service providers for workplace superannuation. Together, our members support the retirement savings of over one million New Zealanders, and look after more than 90% of total funds under management through workplace superannuation schemes and KiwiSaver.

The **mission** of ASFONZ is to be the Voice of Workplace Savings, advancing the sustainable, effective, and efficient delivery of workplace savings outcomes for all involved.

ASFONZ seeks to achieve that mission through:

- Promoting ASFONZ as the "Voice of Workplace Savings"
- Working with the Government to develop policies that achieve improved workplace savings and KiwiSaver outcomes
- Identifying and promoting initiatives and reforms that will provide efficiencies and enhancements to minimise the extent to which regulatory factors impede delivery of effective and efficient workplace savings outcomes, and those that will encourage sustainable participation in workplace savings
- Supporting employers, trustees and providers in their delivery of optimal workplace savings outcomes
- Improving public confidence in workplace savings by consistently reinforcing integrity, accountability, and professionalism within the workplace savings industry
- Serving ASFONZ members, and its supporters, by providing a range of services to meet their needs and deliver value for their participation

Contact:

Bruce Kerr  
Executive Director, ASFONZ  
PO Box 19-194, Wellington, NZ  
Ph. (04) 381 3382  
Fax (04) 381 3392  
Mob. (027) 284 0481  
Email Bruce.kerr@asfonz.org.nz  
Web Site [www.asfonz.org.nz](http://www.asfonz.org.nz)

Thank you for the opportunity to make this submission.

Yours sincerely



David Ireland  
**Chairman**



Bruce Kerr  
**Executive Director**

# **ASFONZ**

(The Association of Superannuation Funds of New Zealand)

**Submission to the Securities Commission**

**on the**

**Staff Paper on**

**Authorised Financial Adviser Competence**

**("the Paper")**

**May 2009**

# **Our submission**

## **Background**

ASFONZ made submissions on the Financial Advisers Bill in 2008. On earlier occasions ASFONZ has offered comments relating to financial advice and financial advisers to the Ministry of Economic Development during the Review of Financial Products & Providers (RFPP), and to the Task Force on Financial Intermediaries.

As we have stated in our earlier submissions, ASFONZ's interests do not generally cover financial advisers and the giving of financial advice.

However, there is one aspect of this discussion that has been of concern to ASFONZ and that is the position of:

- employers who offer workplace retirement savings solutions for their staff – be they KiwiSaver, a Master Trust, or a Corporate Superannuation Scheme; which includes that employer's employees/representatives who may discuss the retirement savings offer/membership with staff members; and
- trustees of employer-sponsored superannuation schemes who discuss the terms of their scheme with staff members;

and whether or not they should ordinarily be considered to be providing 'financial advice' in respect of such duties.

ASFONZ has consistently submitted that we believe that this group of people should not generally be included in the definition of a financial adviser unless they, or the firm they work for, are in the business of giving financial advice or the assistance they provide to staff extends to making a recommendation or expressing an opinion as to the suitability of a particular product.

Limited success was achieved through submissions made directly to the Minister in that the Financial Advisers Act 2008 now refers to "an employer providing assistance to an employee .." under section 12 (p), which deems employers not to be performing a financial adviser service in the limited circumstances prescribed. That exclusion, however, does not provide relief to the full extent we had submitted. In particular, limiting the scope of the exclusion to assistance in relation to 'the implementation of a decision to acquire or dispose of a financial product' significantly reduces the efficacy of the exclusion. Unfortunately, the exclusion as enacted still leaves employers in a position of uncertainty and unnecessary constraint.

## **The ASFONZ submission on the Paper**

We confirm our support for the review of the legislation as it relates to financial advice and financial advisers. We think that the review, is timely and should be of significant value in improving the position of investors in New Zealand.

We also believe that the Commission is proceeding in a logical manner with much to be completed in a relatively short time span. We do not have any specific comments to make on the particular competence levels for financial advisers expressed in the Paper, but nevertheless wish to make a submission at this time.

The purpose of the ASFONZ submission is threefold:

1. To draw the Commission's attention to the concerns of ASFONZ regarding the position of employers and trustees of employer-sponsored superannuation

- schemes as raised above, noting that previous submissions and comments have not directly involved the Commission;
2. To indicate that we believe that ASFONZ does have a role to play when considering the regulatory environment for financial advice and financial advisers;
  3. To point to the wealth of experience and knowledge of ASFONZ Councillors, and our members, and our willingness to provide input and assistance at any time.

-----

## **1. The ASFONZ concerns**

We have outlined ASFONZ's concerns above and feel that this summary is sufficient to achieve the purpose outlined.

As indicated above, we believe our concerns have been only partially addressed in the resulting legislation. Regrettably, in our view, the concerns we raised were not addressed completely due to the rather hurried finalisation of the much amended drafting. When opportunity presents itself, we would like to be involved in any legislative initiative allowing for the 'tidying up' of the wording used in section 12(p) of the Financial Advisers Act in due course.

For now, our submission is that employers and trustees of employer-sponsored superannuation schemes who offer any form of guidance or assistance to their employees or employee members in relation to financial products made available to them through the workplace, and whose guidance or assistance does not extend to making recommendations or expressing opinions as to suitability, should not have to observe any level of competence before being allowed to provide such guidance or assistance.

The ideal outcome from ASFONZ's perspective would be an environment where employers are freely able to discuss workplace financial products with employees, and then refer those employees on to suitably authorised financial advisers for proper financial advice. If employers are going to remain regarded as financial advisers in situations where any guidance they provide extends beyond mere assistance with the implementation of a decision made, but falls short of making a recommendation or expressing an opinion as to suitability, we would like to see them recognised as a specific category of financial adviser. This category would have very limited standards of competence imposed on them, and would enjoy extensive relief from the wider application of the Financial Advisers Act, to the extent possible through regulation. We are happy to discuss pragmatic solutions to the challenge presented, without undermining the policy underpinning the legislation.

## **2. ASFONZ's role**

While we do not have any specific comments on the contents of the Paper, ASFONZ does have an ongoing interest in the regulatory environment for financial advice and financial advisers. Members of ASFONZ employ and/or provide workplace retirement savings benefits to many thousands of New Zealanders. As such, we feel that ASFONZ can make a useful contribution.

It would be appreciated if we could continue to be included on the list of those receiving documents such as the Paper for comment and submissions.

### **3. ASFONZ Councillors' expertise, and that of our Members**

The ASFONZ Councillors, and our members representatives, have an in depth knowledge of the industry as well as many years of financial services industry experience. Through their involvement with ASFONZ and other similar bodies, all involved have demonstrated their commitment to industry matters, and the general wellbeing of those making their savings decisions through the workplace.

While recognising that consultation must have a logical end point to be of value, we have appreciated opportunities in recent years to be involved in consultation and discussions with Officials and review bodies. Resulting legislation has been the better for it.

ASFONZ is more than willing to continue the consultation process that has now become established. Please free to make contact with us whenever you see a need arising.

**Submission Ends**