ASFONZ
The Voice of Workplace Super

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28 February 2008

Clerk of the Committee
Finance & Expenditure Committee
Select Committee Office
Room 10.04, Bowen House
Parliament Buildings
WELLINGTON

To the Chair of the Select Committee

ASFONZ Submission on the Financial Service Providers (Registration and Dispute Resolution) Bill

We wish to submit the attached in respect of the Financial Service Providers (Registration and Dispute Resolution) Bill released on 13 December 2007.

ASFONZ is an independent, national, not-for-profit membership organisation founded in 1969. Its 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.

The mission of ASFONZ is to promote workplace superannuation in New Zealand.

ASFONZ seeks to achieve that mission through:

1 **Advocacy** – being the recognised voice for all employers and trustees involved in workplace superannuation, through:
   (i) advocating legislative and public policy initiatives beneficial to the industry;
   (ii) making submissions and commentary on existing legislative and public policy initiatives;
   (iii) issuing regular press releases and other public commentary on matters of wider concern or interest to members; and
   (iv) staying in regular contact with responsible Ministers, regulatory and industry bodies, the Retirement Commissioner and Government Departments to project, promote and advance members' interests.

2 **Education** – promoting trustee, employer and member education through dedicated training programmes, newsletters and special interest seminars.

3 **Networking** – providing trustees, employers and service providers involved in workplace superannuation with a regular forum for sharing ideas and information on industry matters.

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Thank you for the opportunity to make this submission.

Yours sincerely

John Melville
Chairman

ASFONZ

(The Association of Superannuation Funds of New Zealand)

Submission to the

Finance and Expenditure Select Committee

on the

Financial Service Providers (Registration and Dispute Resolution) Bill
("the Bill")

28 February 2008

Summary of our submission

In general terms, ASFONZ is supportive of the current Review of Financial Product Providers ("RFPP") and of the aims of the review. We have welcomed the opportunity to contribute to the review process and commend officials for their willingness to discuss perceived problems and options that might be available to overcome these problems.

ASFONZ now supports the thrust of this proposed legislation as a start to putting the findings of the RFPP into effect through this initial Bill.

ASFONZ does, however, in respect of the Bill, offer this submission to cover off the following points where we have concerns:

- We do not believe that there is any value in including an employer who offers membership of a superannuation scheme to their employees as a financial service provider and suggest that they should be excluded;

- We cannot see that there is anything to be gained by establishing Dispute Resolution Schemes on a competitive basis and suggest that the number should be restricted through the approval process so as to minimise the potential for confusion amongst investors

- We think that further thought needs to be given to the provisions relating to the reserve scheme.

The ASFONZ submission

1. Position of Employers who offer membership of a superannuation scheme to their employees.

1.1. Under current Securities legislation, an employer who offers membership of a superannuation scheme to its employees may be regarded as a Promoter of the scheme, where that employer is instrumental in the formulation of a plan or programme pursuant to which membership of the scheme is offered to its employees – in practical terms, where the employer is involved in the design of the terms on which its employees participate in the scheme. This applies equally whether the scheme is a stand alone scheme for the employees of that employer or where the employer is one of a number of participants in a master trust scheme.

1.2. We note that promoters are included under clause 5 "Meaning of financial service" of the Bill as providing a financial service. An employer who is involved in putting together offers of membership of a superannuation scheme for its employees may therefore be required to become a member of a dispute resolution service and be registered under the Act.

1.3. ASFONZ does not believe that it was intended to include such employers as being providers of financial services and sees no value in them being included, particularly if they are merely participants in a master trust scheme.

1.4. Employers participating in a master trust scheme would argue that they have chosen to establish a superannuation scheme for their employees in this way primarily to avoid providing the service themselves.

1.5. We note that an employer choosing a KiwiSaver Scheme for their employees under section 47 of the KiwiSaver Act 2006 is, under section 209 (1) (b) of that Act not a promoter in relation to an interest in the KiwiSaver Scheme.

1.6. We further note that section 6 (1) of the Bill limits the application of the Act to those "who are in the business of providing a financial service.". While this section may have been intended to exclude such employers, it is not clear that this is the case, particularly as section 6 (2) then identifies some specific categories of people to whom the Act does not apply. It is suggested that the position be clarified to provide certainty by the addition to section 6 (2) of: "(f) an employer who is a promoter for the purposes of the Securities Act 1978 of interests in a superannuation scheme offered to employees of that employer."

1.7. It is also noted that a number of people are legally able to employ others, thus becoming employers, but would not satisfy the criteria required to be registered as a financial service provider as they would be regarded as a 'disqualified person' under clause 13 (2) of the Bill.

1.8. ASFONZ submits that employers who offer membership of a superannuation scheme (other than KiwiSaver) to their employees should be specifically excluded from the meaning of "promoter" for the purposes of the Act. Otherwise, the legislation serves as a significant deterrent (and in some cases, will serve as an absolute prohibition) on employers playing any significant role in assisting employees with their savings needs outside of KiwiSaver.

2. Possibility of multiple Dispute Resolution Schemes.

2.1. The Bill envisages that further Dispute Resolution Schemes will be established in addition to those already operating. No restriction on the number of schemes is included although any scheme must be approved by the Minister.

2.2. ASFONZ is concerned that this might result in a multiplicity of schemes covering similar securities. It would even be possible to have more than one scheme applying to the same security if different participants (e.g. the Issuer and the Trustee, or Promoter and Trustee) chose to belong to different schemes. Similarly, it would be possible for a financial service provider to belong to more than one scheme in respect of a particular security or to change the scheme applicable to a particular security after the security has been issued.

2.3. This would result in confusion for investors as well as increase the likelihood of inconsistent dispute resolution processes and outcomes for the same type of security and, we believe, undermine the stated purpose of this part of the Act.

In addition, less scrupulous providers might use the potential for confusion to their advantage at the expense of investors.

2.4. ASFONZ submits that it would be preferable for the number of Dispute Resolution Schemes to be limited and that additional schemes that cover areas already provided for should not be approved unless there is shown to be a need. It is suggested that clause 47 (1) of the Bill could be extended to the effect that the Minister must consider whether the need for the scheme has been shown when other, existing, schemes are taken into account.

3. The Reserve Scheme

3.1. The Bill provides, under section 66, an option for the Minister to recommend that the Governor General makes an appointment of an approved dispute resolution scheme as the "reserve scheme'. ASFONZ understands that there may be a need for a reserve scheme but we do not find the mechanism for assessing a need for the reserve scheme, or for the appointment and operation of the reserve scheme, very clear as drafted.

3.2. By way of background, the regulatory impact statement that accompanies the Bill refers, under "Preferred option" on page 27, to the power given to the Minister to appoint the reserve scheme "in the event of no schemes meeting the approval criteria, or if there is not full coverage of the financial industry by those schemes that are approved". The objective of the power given to the Minister is clear.

3.3. Section 44 of the Bill provides that a financial service provider must be a member of an approved dispute resolution scheme only if the reserve scheme has been appointed under section 66.

3.3.1. If, however, there is "full coverage of the financial industry by those schemes that are approved" there is no apparent need for a reserve scheme, other than to bring the requirement for a financial service provider to be a member of an approved dispute resolution scheme into effect

3.3.2. ASFONZ believes that the absence of a reserve scheme (other than for a fairly short initial 'settling in" period) is undesirable and a potential cause of confusion. For example, what is the position of investors and financial service providers in respect of investments made prior to the introduction of the reserve scheme, once a reserve scheme is introduced, where the financial service provider was not a member of an approved dispute resolution scheme when the investments were made? Are those investors/investments covered by a dispute resolution scheme?

3.3.3. ASFONZ believes that a reserve scheme is essential if the objectives of this part of the legislation are to be met and suggests that the Minister is obligated under the Act to provide a reserve scheme

3.4. Section 66 of the Bill appears to be worded in such a way as to make an appointment, when an appointment is needed, impossible

3.4.1. Section 66 (1) gives the Minister the power to recommend the appointment of an approved dispute resolution scheme to be the reserve scheme. The reserve scheme must therefore have already become an approved dispute resolution scheme;

3.4.2. Section 66 (2) (b) restricts the appointment to an approved dispute resolution scheme that "is capable of resolving disputes relating to all types of providers of all types of financial services and financial adviser services." If an approved dispute resolution scheme was so capable there would not be any apparent need for the reserve scheme. But if there is a need for a reserve scheme because there is not full coverage of the financial industry by those schemes that are approved, no appointment could be made because there is no approved dispute resolution scheme that could meet the criteria required for appointment (that it is capable of resolving disputes relating to all types of providers of all types of financial services and financial adviser services).

3.4.3. In summary, an appointment is only essential (although an appointment may be otherwise desirable) if there is not full coverage by an approved dispute resolution scheme or schemes, but one could not be made because there is not full coverage by any one approved dispute resolution scheme

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