

Submission from the Institute of Directors

On the Additional consultation document released during April relating to
the Financial Advisors Bill

16 May 2008

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Secretariat
Finance and Expenditure Committee
Parliament House
Wellington

Dear Sir/ Madam

Submission on the Financial Advisers Bill

Background to the Institute of Directors

The Institute of Directors in New Zealand (Inc.) (“the IoD”) was formed approximately 37 years ago as a branch of the United Kingdom Institute of Directors based in London. In 1989 the IoD adopted its own constitution and became a separate legal entity in its own right. It has branches in Auckland, Hamilton, Wellington, Nelson, Christchurch and Dunedin. Its administrative office is in Wellington.

The IoD’s mission is:

To enable and encourage New Zealand boards and board members to add value to their organisations and adopt the highest standard of corporate governance.

We represent and support our members by:

- providing members with the knowledge of best practice and encouragement to apply it
- representing member interests and positively influencing stakeholder opinion and policy on governance issues
- enhancing the prestige and value of membership by providing high quality services that underpin the Institute of Directors’ profile as a world class professional body

The IoD currently has over 4000 members with the number growing steadily. These members are individuals, not companies or other organisations. They are typically company directors in their own right. They represent and sit on the boards of organisations of every size throughout New Zealand, from the largest to some of the very smallest. The organisations are in every industry and are of every type of corporate form; they are in both the private and public sector, whether established for commercial or not-for-profit purposes.

Members also include senior academics, managers, and professionals such as lawyers and accountants.

The IoD is apolitical.

Summary of Key Submission Points

- The key principles on which the Bill is based; disclosure and full licensing do not result in an effective and efficient regime. The risk that financial advice and/or financial products will not be appropriately matched with a client's needs and risk profile is not effectively addressed.
- Full licensing is a high cost regime with several disadvantages relative to other alternatives.
- The proposed requirement to disclosure is intended to allow consumers to make fully informed decisions when selecting a financial advisor and acting on their advice. The assumption that consumers will adequately understand all of the relevant information in an advisor's disclosure statement is invalid in IoD's opinion.
- The merits of an accreditation regime as an alternative to the disclosure proposals should be fully investigated.

Structure of this submission

This submission deals with the principles underlying the Financial Advisors Bill (the Bill). In view of the fundamental concerns the Institute of Directors (IoD) has relating to these principles it is not appropriate to comment on the specific questions posed within the consultation document entitled Proposed Changes to the Financial Advisors Bill (the consultation document).

Overall Observations

IoD agrees with the objective of the Bill “to ensure that consumers can access advice tendered by skilled and competent financial advisors”. The consultation document lists three specific objectives the Bill aims to achieve and they are:

- Ensuring that consumers are able to make informed decisions about financial advice received from Financial Advisors;
- Ensuring that Financial Advisors have necessary competencies and skills to serve consumers’ needs; and
- Ensuring the Financial Advisors are accountable for financial advice provided to consumers.

IoD supports all of the specific objectives listed.

IoD notes that the Bill is drafted on two key principles; disclosure and full licensing. IoD does not support the adoption of a disclosure regime nor full licensing as the appropriate solutions to the problem.

A disclosure regime is based upon the assumption that consumers are able to understand the information presented to them and to then make rational and informed decisions on whether the advisor is sufficiently skilled to advise them. IoD considers that such an assumption is not valid. Consumers cannot be expected to have sufficient knowledge to be able to determine whether an advisor has the appropriate skills and experience to advise them.

Financial Advisors are already required by the Securities Act, with effect from 29 February 2008, to present a disclosure statement to clients prior to providing advice. IoD is not aware of any other professional advisors; lawyers, accountants, medical practitioners who are required to disclose their qualifications, experience, continuing education, and the approved dispute resolution scheme they operate under, for clients/patients.

IoD also notes that the Bill seeks to operate a full licencing regime where all financial advisors are required to register with an Approved Professional Body which must lodge member’s names with the Securities Commission. The Bill does not allow unlicensed financial advisors to operate.

IoD observes that such a regime runs counter to the de-regulation of service providers in New Zealand, taxis operators and accountants to name two, in the interests of lowering costs and providing consumers with choice.

IoD is concerned that the principles of disclosure and full licensing will result in a Bill that will when passed be ineffective and costly to the end consumer.

IoD proposes the merits and benefits of an accreditation regime be further considered. An accreditation regime has sufficient flexibility to allow for the creation of categories of advisor. This would permit specific tailoring of requirements with regard to initial qualifications, on-going education, and the level of quality and compliance review; the more complex the financial advice, the more stringent the requirements for accreditation. In this way financial advice and products are more likely to be effectively matched to a client's needs and risk profile.

Because IoD's concerns are fundamental to the design of the Bill it recommends that officials undertake further research and consultation to define a regime that will be both effective in managing risks to the consumer and cost efficient.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Nicki Crauford', written in a cursive style.

Nicki Crauford
Chief Executive Officer