

# House of Representatives

# Supplementary Order Paper

Tuesday, 23 September 2008

## Financial Service Providers (Registration and Dispute Resolution) Bill

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*Proposed amendments*

Hon Lianne Dalziel, in Committee, to move the following amendments:

*Clause 4*

To insert the following definition after the definition of **due date** (after line 5 on page 8):

**family trust** has the same meaning as in section 5 of the Credit Contracts and Consumer Finance Act 2003

Definition of **insurance**: to omit this definition (lines 27 and 28 on page 8) and substitute the following definition:

**insurance business** includes—

- (a) mortgage guarantee insurance as defined in section 2 of the Insurance Companies' Deposits Act 1953;
- (b) life insurance (including endowment and annuity contracts);
- (c) reinsurance;
- (d) every other class of insurance business

Definition of **licensing authority**: to omit this definition (line 33 and 34 on page 8) and substitute the following definition:

**licensing authority** means a body, identified in **Schedule 2**, that licenses, registers, authorises, or otherwise approves a person to be a licensed provider

Definition of **licensed provider**: to omit this definition (lines 35 to 37 on page 8) and substitute the following definition:

**licensed provider** means a person, identified in **Schedule 2**, who—

- (a) provides or offers to provide a licensed service; and
- (b) is licensed, registered, authorised, or otherwise approved by a licensing authority

Definition of **licensed service**: to omit this definition (lines 1 to 3 on page 9) and substitute the following definition:

**licensed service** means a financial service that is required by an enactment identified in **Schedule 2** to be provided only by a person who is licensed, registered, authorised, or otherwise approved by a licensing authority

To insert the following definition after the definition of **Ministry** (after line 22 on page 9):

**person** includes a corporation sole, a body corporate, an unincorporated body, and a superannuation scheme as defined in section 2A of the Superannuation Schemes Act 1989

*Clause 5(m)*

To omit this paragraph (line 13 on page 11) and substitute the following paragraph:

(m) carrying on insurance business:

*Clause 5A*

To insert after “providing” in the second place where it appears (line 21 on page 11) “or offering to provide”.

*Clause 6(2)*

*Paragraph (ca)*: to insert after “Reserve Bank ” (line 10 on page 12) “of New Zealand”.

*Paragraph (cd)*: to omit “providing” (line 16 on page 12) and substitute “in respect of”.

To insert the following paragraph after *paragraph (ce)* (after line 20 on page 12):

(cf) a trustee of a family trust in respect of financial services provided by the trustee to the beneficiaries of that trust:

*Paragraph (d)*: to omit “**paragraph (a), (b), (c), (ca), (cb), (cc), (cd), or (ce)**” (lines 22 and 23 on page 12) and substitute “any of **paragraphs (a) to (ce)**”.

*Clause 12*

*Paragraph (b)*: to omit this paragraph (lines 29 to 32 on page 14) and substitute the following paragraph:

(b) the person is a member of an approved dispute resolution scheme, or the reserve scheme, if required by **section 44**; and

*Paragraph (c)*: to omit this paragraph (lines 33 and 34 on page 14) and substitute the following paragraph:

(c) in the case of a person who provides or offers to provide a licensed service, the person is a licensed provider.

*Clause 14*

*Subclause (1)(a)*: to omit “contain” (line 37 on page 15) and substitute “state”.

*Subclause (1)(a)(iii)*: to omit “applicant is applying in relation to” (line 4 on page 16) and substitute “application relates to”.

*Subclause (2)*: to omit “to obtain an appropriate licence” (lines 14 and 15 on page 16) and substitute “to become a licensed provider”.

*Clause 15(1)(a)(iii)*

To omit this subparagraph (lines 25 to 28 on page 16) and substitute the following subparagraph:

- (iii) if the provider is a licensed provider in relation to a particular licensed service, that fact and the name and business address of the relevant licensing authority:

*Clause 16(1)(b)*

To omit this paragraph (lines 10 and 11 on page 17) and substitute the following paragraph:

- (b) in the case of a financial service provider that is a licensed provider, the relevant licensing authority:

*Clause 20B(2)*

*Paragraph (c)*: to omit this paragraph (lines 17 and 18 on page 20).

*Paragraph (d)*: to omit “would be in the public interest” (lines 20 and 21 on page 20) and substitute “is consistent with the purposes of this Act”.

*Clause 26*

*Paragraphs (ca) and (d)*: to omit these paragraphs (lines 37 and 38 on page 22 and lines 1 to 3 on page 23) and substitute the following paragraph:

- (d) in relation to a licensed provider,—
  - (i) the relevant licensed service:
  - (ii) the name and business address of the relevant licensing authority:

*Clause 42(2)*

To omit “any enactment providing for the licensing of licensed providers” (lines 21 and 22 on page 32) and substitute “the relevant enactment identified in **Schedule 2**”.

*Clause 44(1)*

To omit “scheme or the reserve scheme if the provider provides a financial service to the public” (lines 10 and 11 on page 34) and substitute “scheme, or the reserve scheme, in respect of a financial service provided to the public.”

*New clause 44A*

To insert the following clause after *clause 44* (after line 14 on page 34):

**44A Meaning of reference to providing financial service to public**

- (1) The reference in **section 44** to providing a financial service to the public includes—
  - (a) a reference to providing the service to any section of the public, however selected; and
  - (b) a reference to providing the service to a person if the person became known to the provider as a result of any advertisement made by or on behalf of the provider and that was intended or likely to result in the public seeking further information or advice about the service.
- (2) Providing a financial service to any or all of the following persons only does not constitute providing the service to the public:
  - (a) relatives (within the meaning of the Human Rights Act 1993), related companies, or close business associates of the provider;
  - (b) persons, or classes of persons, that are connected to the provider in the prescribed manner or that meet prescribed criteria;
  - (c) any other person who in all the circumstances can properly be regarded as having been selected otherwise than as a member of the public.
- (3) A person is not precluded from being regarded as a member of the public in regard to the provision of a financial service to the person by reason only that the person is a purchaser of goods or services from, or an employee or client of, the provider.
- (4) Proof of providing a financial service to 1 person selected as a member of the public is prima facie evidence of providing the service to the public.

*Clause 61A(c)*

To insert after “series of” (line 10 on page 44) “material”.

*Clause 66*

*Subclause (3)*: to omit “make a recommendation” (line 27 on page 46) and substitute “recommend an Order in Council described in **subsection (1)(a)**”.

*Subclause (3)(b)*: to omit “; and” (line 30 on page 46) and substitute “.”.

*Subclause (3)(c)*: to omit this paragraph (lines 31 to 33 on page 46).

To insert the following subclause after *subclause (3)* (after line 33 on page 46):

- (3A) The Minister may recommend an Order in Council described in **subsection (1)(b)** only after consultation with—
  - (a) the Minister of Finance; and
  - (b) the Minister of Commerce; and

- (c) any persons (or their representatives) that the Minister considers are likely to be substantially affected by the recommendation.

*Clause 69A(c)*

To insert after “series of” (line 14 on page 49) “material”.

*Clause 74(1)*

To insert the following paragraph before *paragraph (a)* (before line 11 on page 53):

- (aa) prescribing, for the purposes of **section 44A(2)(b)**,—
- (i) persons, or classes of persons, that are connected to a financial service provider; or
  - (ii) criteria that persons, or classes of persons, must meet:

*Schedule 2*

To omit this schedule (page 56) and substitute the following schedule:

**Schedule 2**

**s 4**

**Licensing authorities and licensed providers**

This schedule identifies—

- (a) bodies who are licensing authorities; and
- (b) the persons that each licensing authority licenses, registers, authorises, or otherwise approves to provide a licensed service; and
- (c) the enactments that require the relevant financial service to be provided only by a person who is licensed, registered, authorised, or otherwise approved by that licensing authority.

<b>Licensing authority</b>	<b>Licensed provider</b>	<b>Enactment</b>
Government Actuary	Registered superannuation schemes	Superannuation Schemes Act 1989
Government Actuary	Registered KiwiSaver schemes	KiwiSaver Act 2006
Securities Commission	Authorised financial advisers and qualifying financial entities	Financial Advisers Act <b>2007</b>
Reserve Bank of New Zealand	Registered banks	Reserve Bank of New Zealand Act 1989

### **Explanatory note**

This Supplementary Order Paper amends the Financial Service Providers (Registration and Dispute Resolution) Bill.

Apart from making minor drafting amendments to the Bill, the key changes are—

- some clarification around the definition of insurance:
  - amending *clause 5A* to ensure that those who have not actually provided a financial service but are offering to provide one are included:
  - amending *clause 6* to exclude from the Bill financial services provided by the trustee of a family trust to beneficiaries of that trust:
  - changing *clause 20B* to remove a requirement that the responsible financial entity be responsible for its affiliated entities, with the intention being to tailor this requirement into conditions as appropriate in the factual circumstances:
  - changing *clause 20B* to provide that a decision to recommend that an entity be a responsible financial entity be consistent with the purposes of the Bill, which is a clearer test than a consideration of the public interest:
  - amending *clause 44* and adding a *new clause 44A* to indicate when a financial service is provided otherwise than to the public for the purposes of *clause 44*:
  - requiring the series of complaints referred to in *clauses 61A and 69A* of the Bill to be material ones:
  - amending the consultees in *clause 66* to more appropriately reflect the nature of the decisions concerned:
  - clarifying *Schedule 2* and the definitions of licensing authority, licensed provider, and licensed service.
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