

# **Submission**

By



To

**Commerce Committee**

On

**Financial Service Providers  
(Pre-Implementation Adjustments)  
Bill 2009**

**25 March 2010**

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# INTRODUCTION

The Insurance Brokers Association of New Zealand Inc (IBANZ) is the professional body representing the interests of virtually all general insurance brokers (advisers) in New Zealand. Membership consists of 170 member firms employing approximately 2,000 brokers and risk managers. Insurance brokers handle over 90% of commercial insurance and a significant proportion of domestic insurance in New Zealand. Our members act for clients advising on risk management and where appropriate arranging insurance.

We have consulted widely with our members before preparing this submission. Members fully support all aspects of this submission to the Commerce Committee.

***IBANZ would appreciate the opportunity to appear before the Select Committee in support of this submission.***

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# EXECUTIVE SUMMARY

IBANZ is generally supportive of the amendments contained in this Bill. However we strongly believe a further amendment is required to ensure the effective implementation of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSPA) and the Financial Advisers Act 2008 (FAA).

IBANZ submits that the definition of “Financial Planning Service” in the FAA is such that it creates significant uncertainty for advisers giving a professional level of financial advice on Category 2 products. An amendment to the definition is necessary to ensure effective implementation of the FAA and FSPA.

IBANZ recommends that the definition of “financial planning service” be amended to exclude a financial adviser service delivered solely in respect of one or more Category 2 products.

## Definition of “Financial Planning Service”

IBANZ believes that the original legislation, FAA, clearly distinguished between two categories of financial products. The complexity and therefore the risks associated with advice on the products in each category are quite different. Indeed experience in recent years would indicate problems arising from advice on Category 1 products are substantially greater than those arising on Category 2 products.

The provision of a financial planning service over rides the distinction between financial products. It is critical therefore to ensure a clear definition of “financial planning service”.

In the Securities Commission Staff Discussion Paper dated 18 June 2009, “Regulating and Supervising Financial Advisers” there is the following statement:

21. *We therefore propose to interpret a financial planning service as involving more than merely doing a basic needs analysis for a particular product or combining two products where one product is ancillary to the other (such as life insurance taken out at the same time as a loan to cover the outstanding loan). We believe this is consistent with the intended application of “financial planning service” and allows product category 2 advisers and advisers covered by a QFE’s designation to give customers a professional level of service.*

This would indicate in our opinion that it is desirable for those giving advice on Category 2 products to be able to carry out a financial planning service appropriate to the requirements of a Category 2 product. It is suggested that this will enable the delivery of a professional service to consumers which is a stated purpose of this legislation.

We have noted however in recent commentary from the Securities Commission that in their view the existing definition may well capture a greater range of activities than originally envisaged in the above paper.

It would appear there is now a view that financial planning service encompasses performing a needs analysis even if only Category 2 products are involved. The comments suggest that advising on several of these products is sufficient to activate a financial planning service.

The conclusion is that any general insurance adviser (broker) is likely to be offering a financial planning service whenever they are advising clients on general insurance. By giving customers a professional level of service they will be captured by this definition.

As a result all advisers on Category 2 products would be required to be authorised, thus rendering the differentiation between Category 1 and Category 2 obsolete. The only alternative is for advisers to avoid carrying out any needs analysis which would result in a significant reduction in the level of service and support for their clients.

IBANZ submits that this is contrary to the purpose of the legislation.

There would also be a loss of the advantages offered by the QFE provisions in relation to the employment of advisers delivering financial adviser services for Category 2 products. The QFE Adviser Business Statement Guide issued by the Securities Commission states:

*Benefits are limited for QFEs engaging only authorised financial advisers (ie those advising on category one products issued by third parties or providing financial planning services). The Act requires these advisers to be individually registered and authorised even if they work for a QFE....*

*On the other hand, QFE status may substantially benefit businesses engaging many advisers who do not have to be individually authorised. The business and these advisers can take advantage of streamlined registration, disclosure, disputes resolution arrangements and regulatory supervision.*

Where a financial adviser service is captured by the financial planning service definition, even when being delivered on Category 2 products only, the adviser is required to be authorised. As a consequence the effectiveness of the QFE status is lost.

Finally IBANZ submits that if all advisers dealing only in Category 2 products have to become authorised to continue their profession the numbers needing to be authorised this year will be greatly increased. Even before adding advisers from our sector it appears the numbers of advisers seeking authorisation are creating a real challenge for the process over the next 6 months.

IBANZ submits that for the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008 to be effectively implemented it is necessary to give greater certainty on the definition of “financial planning service”.

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