



Financial Rights

LEGAL CENTRE

E-FLYER



CALL THE
INSURANCE
LAW SERVICE
ON
1300 663 464

Financial Rights Legal Centre Inc.
ABN 40 506 635 273

Fact sheets are information only and should not be relied upon as legal advice. Some of this information only applies to NSW.

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Welcome to the FINANCIAL RIGHTS LEGAL CENTRE E-flyer.

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1. What we do at the Financial Rights Legal Centre

Every E-flyer we like to give our colleagues and readers an insight into what we do and how we work at the centre. In previous editions we have explained [the limitations of what we can do](#), what we do about [credit repair companies and notices to vacate](#). This month we take a look at financial counsellors.

At Financial Rights, financial counsellors play two roles:

1. Answering National Debt Helpline to provide callers with initial information, referrals and strategies to manage their immediate financial situation; and
2. Providing ongoing casework assistance to some clients.

The casework role of a financial counsellor at Financial Rights is to provide advocacy and assistance in dealing with creditors if a client cannot make their normal repayments, due to unemployment, illness, relationship breakdowns and other circumstances. Our financial counsellors also assist with money management and strategies to assist clients improve their financial resilience.

For a community legal centre that deals with clients who are facing legal action over financial or related problems, it is invaluable to have

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the assistance of in-house financial counsellors, or at least be aware of local financial counselling agencies who can help your clients.

A number of clients seeking the help of a solicitor to deal with legal action over a debt will inevitably have other debts which are/could become a problem in the future. If there is a Statement of Claim over a credit card debt, a solicitor will provide legal advice on how to address the statement of claim, but it may not be the solicitor's role to delve into how the client came to be in the overall situation in the first place.

The solicitor can then refer the client to a financial counsellor to discuss exactly how much they can offer in a repayment plan to the creditor, but also to discuss any other debts they have, and prevent them from getting to the stage where legal action is commenced on other debts.

Some legal centres have had to turn potential clients away because they don't have the resources to deal with problems which are financial in nature, but not strictly legal. In other cases, solicitors may have helped a client address a Statement of Claim or helped prevent a motor vehicle from being repossessed, but the reason a client has ended up in that position in the first place is not addressed. As a result, the client could find themselves in need of a community legal centre again, when some in-house financial counselling could have helped the client gain better money management skills and prevented them from facing further legal action.

If a client has been served with a bankruptcy notice, the solicitor will provide advice about addressing that in the courts, or if the client has decided to apply for bankruptcy to stop legal action, the solicitor can discuss the legal issues surrounding that. At the same time, a financial counsellor can also assist in discussing the positives and negatives of applying for bankruptcy, and how it will affect the client's life and circumstances, and go into this in detail.

The availability of financial counselling on the National Debt Helpline at Financial Rights also helps reduce the impact of wait times for other face-to-face services. There can be up to a three week wait to see a solicitor elsewhere, and for someone suffering financial fall-out from a relationship breakdown, or legal action commencing over their property, this is too long. Financial counsellors at Financial Rights can guide a caller to lodge a hardship request or a complaint in internal or external dispute resolution to deal with the immediate prospect of enforcement action before they see a solicitor or face-to-face financial counselling service.

Ultimately Financial Rights' model works to provide a more holistic and directed approach to supporting the most vulnerable of clients. By supplementing financial counselling with legal advice and legal advice with financial counselling, we work effectively to assist clients from escaping the downward spiral of debt.

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2. There's No Such Thing as a Free Lunch - 0% Interest Finance

Recently Financial Rights has seen the rise of a number of financial service products which purport to offer no interest financing. Increasingly, we are seeing products, such as solar panels, being sold using this type of finance. The catch is often that while the finance company claims not to charge interest, the interest may be built into the loan amount because the cash price of the goods may be different if you paid in a lump sum versus if you paid over time. You may lose some valuable consumer protections by using this type of arrangement including the responsible lending provisions of the *National Consumer Credit Protection Act 2009*. Whilst there are still some protections in the Australian Consumer Law there is not access to free external dispute resolution

If you are considering purchasing products using this type of financing make sure:

1. you have documentation evidencing that the value of the goods being sold to you is equal to the loan amount;
2. that you couldn't buy the product cheaper through a different supplier without finance (or even with finance that is properly regulated);
3. that you have been properly advised of any cooling off period and have been provided with a copy of the application and loan contract (with the terms and conditions);
4. you can afford the repayments; and
5. if buying solar panels, the provider is a Clean Energy Council Member and that you will be entitled to any discount being offered such as the Small-Scale Technology Certificate discount.

Here is a recent example of a client that had a dispute with a "No Interest Payment Service".

Bill is over 70 years old and his only source of income is the aged/carer's pension. In 2013, he purchased and paid for solar panels to cover the roof of his home which cost \$5,000 after the solar panel rebate.

In July 2016, a Solar Panel salesman approached his house uninvited selling solar panels. Bill told the salesman he already had solar panels but the salesman said you can always use more. Two days later, the salesman returned with an agreement and information on how Bill could fund the purchase.

The salesman told Bill there was sufficient space on the roof of his shed to put more panels and that the savings he would make on his electricity bill



would cover the cost - \$8,500. Bill was told:

1. Instead of paying \$120 a month to the electricity company, pay \$99 a fortnight for the solar panels and you will save.
2. The “*No Interest Payment Service*” will give you an interest free loan to pay for the panels. They will direct debit the money from your account.

After 3 months Bill had only saved \$30 on his electricity bills and he could not afford the fortnightly repayments for the new solar panels.

The Financial Rights Legal Centre contacted No Interest Payment Service and alerted them to the fact that, among other things:

2009	The value of the solar panels was around \$5,000 not \$8,5000 and as the cash price was less than the amount Bill had to repay, <i>No Interest Payment Service</i> must be regulated by the National Consumer Credit Protection Act. <i>No Interest Payment Service</i> continued to deny they are regulated by the Act and do not carry out any responsible lending assessments prior to advancing funds.
2010	Bill was never told the company supplying the solar panels was not a Clean Energy Council Member which meant he would not get the solar panel rebate; and
2011	<i>No Interest Payment Service</i> breached consumer law when they failed to outline to our client his cooling off rights.

The *No Interest Payment Service* agreed they breached consumer law by failing to outline our client’s cooling off rights but denied they are regulated by the *National Consumer Credit Protection Act* and refused to comment on the allegations made.

No Interest Payment Service released our client from the contract, refunded the amounts he paid to date (\$900) and allowed our client to retain the solar panels.

3. My Car Has Been Written Off By My Insurer – What Deductions Can My Insurer Make?

When your car has been written off in an accident and you make an insurance claim, you might not receive as big a cash payout as you were expecting. This is because most insurance policies allow your insurer to reduce the final amount you receive by taking out:

- the excess;
- the rest of the year’s insurance premiums;
- the unused car registration and CTP insurance; and
- they’ll usually keep the wrecked car, or deduct the salvage value from your claim.



The authority for the insurer to do this is in your policy (the Policy Schedule and the Product Disclosure Statement (PDS)). Below is some more information about each of these deductions.

1. YOUR EXCESS

Your excess is your contribution to a claim. Where you are at fault, it is normal for the excess to be deducted from the insurance payout. If you dispute you were at fault see our fact sheet: [Making a Claim on Your Car Insurance](#). Sometimes, even if you are not at fault you may still need to pay an excess.

2. THE REST OF THE YEAR'S PREMIUMS

You've agreed to pay for a year's worth of insurance, even if you make your payments monthly. The total cost of your insurance (the premiums) is in exchange for a certain value of coverage, or your 'sum insured'. When you have a total loss claim, the whole premium for the rest of the 12 month period of insurance is due.

For example, your premium is \$1,200 for 12 months insurance cover over your car which has a market value of \$10,000. If you have an accident in month 2, your car is written off, and you have paid \$200 in premiums but you still owe another \$1000 in premiums for the rest of the year. The remainder of the year's premiums (\$1000) will be deducted from your payout amount (\$10,000 - \$1,000 = \$9,000).

3. UNUSED PORTION OF YOUR REGISTRATION AND COMPULSORY THIRD PARTY (CTP) INSURANCE

Most insurance policies define the market value of the car as including its registration and compulsory 3rd party insurance (in the same way as the car's bonnet or wheels forms part of the car's insured value).

In some States the insurer will deduct the remaining value of your unused registration and CTP insurance from your payout. You can recover your unused CTP from your CTP insurer and get a refund for your unused registration from your state's Roads or Transport authority (eg: Roads and Maritime Services (RMS) in NSW). As you can recover these amounts yourself, the insurer is entitled to deduct them.

4. THE WRECK

If the car is written off the insurer will (at their discretion) either:

- Keep the wreck and pay you the sum insured; or
- Give you the option of keeping the damaged car but only pay you the value of the car less its salvage value. You should get advice before deciding to keep the damaged car as it may be difficult or impossible to re-register if it has been deemed unrepairable and is listed on the written off vehicle register (WOVR).



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4. Introducing Financial Rights' New Sample Letter Generator!

Financial Rights is excited to announce that we have just launched a new free interactive legal information tool for consumers!

The new tool is an interactive letter generator that can help consumers, or community workers create professional and legal letters to send to financial service providers like banks, creditors and insurance companies. The tool is designed for consumers to use without assistance, and also for community workers to use with their clients. Letters about credit, debt and banking are only applicable in NSW, but the insurance-related letters can be used all over Australia.

CREDIT DEBT & BANKING

- Requesting Documents
- Letter to Bank Cancelling Direct Debit Authority
- Letter to Business Cancelling a Direct Debit Authority
- Dealing with Debt Collection
- Debt Collector (Old Debts)
- Letter Requesting Hardship Variation on a Consumer Loan or Lease
- Offer of Settlement – Where you agree you owe all or part of a debt

INSURANCE

- Letter to Insurer Disputing Amount Claimed
- Insurance Code Complaint
- Letter to Insurer Raising a Dispute
- Letter to Insurer Requesting Release from Debt
- Letter to Insurer Requesting Documents
- Letter to Insurer Offering to Pay Insurance Debt
- Letter to Insurer – Can't Pay Excess

The Sample Letter Generator can be accessed from the home page of www.financialrights.org.au or www.insurancelaw.org.au or through this direct link: <http://financialrights.org.au/sample-letters/>

If you are a community worker, government employee or lawyer we would like to ask you to please promote this new tool throughout your own organisation as well as to any clients that you think might find it useful. We hope it will help consumers who are having a dispute with their financial service provider to more effectively self-advocate.

Please don't hesitate the Financial Rights Legal Centre if you have any questions or feedback about this tool. We are always keen to improve our resources and your feedback is crucial.

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5. What is Title Insurance?

In Australia, “title insurance” refers to a type of policy offered by two American insurers to cover purchasers, lenders and home owners against a grab-bag of risks relating to:

- illegal/unapproved building works;
- encroachments;
- unpaid rates and taxes;
- fraud and forgery;
- dealings with the property by third parties after exchange of contracts for sale but before the incoming purchaser settles and is registered on title, and
- various other matters.

WHAT ISN'T COVERED BY TITLE INSURANCE?

Like all insurance policies, title insurance policies will contain a number of exclusions. You will need to read these carefully and take advice about their meaning before deciding whether title insurance is for you.

It is especially important to understand that title insurance policies do NOT provide cover in respect of destruction of or damage to a building on your land – title insurance is not the same as, or a substitute for, home building or home contents insurance.

Common exclusions (i.e. things NOT covered) in the policies we have seen include:

- Dilapidation or pest infestation of buildings;
- Buildings that fail to comply with proper building standards e.g. the Building Code of Australia;
- Environmental contamination;
- Things that are known to you at the date your purchase of the land settles (for example, it is already contained in the contract of sale as a known issue).

DO I NEED TITLE INSURANCE?

You need to think carefully about whether you really need title insurance. Some of the protections you are paying for when you buy title insurance may already be contained in the law.

In Australia, almost all land is subject to the Torrens system of land registration. Your title to land is obtained on registration of your interest with the Registrar of Titles in your State or Territory. The State



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guarantees the validity of your certificate of title, and administers a compensation fund for people who, without fault of their own, have lost an interest in land because of the operation of the Torrens system. These are some of the same risks title insurance says it covers.

In addition, one focus of title insurance policies is on “defects” (such as illegal building works or unpaid rates or land tax) that:

- would have been disclosed if proper enquiries had been made (for example of the local council or revenue authority), or
- were not disclosed despite proper enquiries because a mistake was made (by the council or revenue authority, or your solicitor or conveyancer).

One alternative to title insurance would be to use your conveyancer or solicitor to make the proper enquiries, e.g. by getting a building report from the local council (to confirm whether there are any illegal/unapproved buildings on the land) or a survey report (to confirm whether there is anything on your land encroaching on your neighbour’s land, or vice versa).

If your solicitor or conveyancer fails to make the proper inquiries you may be able to claim damages, and call on your conveyancer/lawyer’s professional indemnity insurance policies in the event they fail to perform the searches correctly. Check with you conveyancer or solicitor how the cost of doing these searches compares with the cost of title insurance, and whether they have professional indemnity insurance to cover this sort of work.

You should ask the lawyer or conveyancer assisting you with the purchase to explain the advantages and disadvantages of title insurance for you (and also to tell you about any arrangement they may have with the insurer whose title insurance they are recommending – is there anything in it for them?).

WHAT IF I HAVE A PROBLEM WITH MY TITLE INSURANCE

Read our new [Factsheet here: Title Insurance](#) or contact the [Insurance Law Service for free at 1300 663 464](#).

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6. Financial Rights' viewpoint

We use our expertise gained from our work with clients to help give voice to clients' experiences. In doing so we contribute to improving laws and legal processes to prevent many of the same problems from happening to others. Financial Rights is regularly called on by Government and the financial service industry to assist in policy development and regulatory reviews. The following is a selection of our recent input into regulatory reform.

CIVIL JUSTICE IN NSW

Financial Rights made 15 recommendations to the NSW consultation on civil justice. We supported the use of new smart technologies and online programs to help people in NSW resolve disputes early and get access to justice. However we warned that any new self-help programs should be developed by actual legal caseworkers who have practical experience resolving disputes. We also made recommendations around the timing of providing legal resources to people, the creation of a new Retail Ombudsman, the need for pawnbrokers to be in EDR and the creation of a national justice fund.

SENATE INQUIRY INTO THE GENERAL INSURANCE INDUSTRY

The Financial Rights has extensive advice and casework experience dealing with consumers of general insurance in Australia. Based on that experience we have made many recommendations to the Senate Economics References Committee regarding the following broad problems facing consumers of insurance:

- Reasons behind and solutions to increasing insurance costs;
- The lack of transparency and contestability in insurance pricing;
- Problems surrounding price comparison websites;
- The need for Unfair Terms protections in insurance contracts;
- Standard cover and product suitability; and
- Big data and the future of insurance.

ACCESS TO TELECOMMUNICATIONS DATA IN CIVIL PROCEEDINGS

Financial Rights strongly opposes any exceptions to the prohibition in section 280(1B) for civil proceedings. The data retention regime was introduced for the purposes of national security and criminal law enforcement. The use of metadata for civil proceedings does not meet the original objective in any respect. There is no evidence that the current civil justice system needs access to this data.

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[TIME-SHARING SCHEMES](#)

In response to ASIC's Consultation paper on remaking its class orders on time-sharing schemes, Financial Rights has joined with Consumer Action in putting forward the following views on time-sharing:

- an opt-in regime should apply to timeshares rather than a cooling-off period;
- consumers should be able to more easily terminate their timeshare arrangement and any associated finance arrangement if they determine that it is unsuitable;
- the term of timeshare agreements should be more limited; and
- an increase in the volume of information provided to consumers is unlikely to be of any significant benefit, but there are some areas where more accurate disclosure may assist more sophisticated consumers in making their decisions.

[DOOR-TO-DOOR SALES IN INDIGENOUS COMMUNITIES](#)

A coalition of consumer rights organisations have made a stand alone submission on the issue of door-to-door sales practices in Indigenous communities. We believe the existing Australian Consumer Law provisions governing unsolicited sales fail to address systematic exploitative conduct targeting Indigenous consumers. The most straight-forward way to prevent ongoing misconduct and evident consumer detriment through this review process would be to introduce a ban on unsolicited sales. However, if unsolicited sales are not banned, the review should pursue measures that will benefit those currently most harmed by unscrupulous sales practices.

[AUSTRALIAN CONSUMER LAW REVIEW - INTERIM REPORT](#)

Financial Rights has focused its response to the Australian Consumer Law Interim Report on unfair terms in insurance contracts, the need for a retail ombudsman and unsolicited consumer agreements.

[LIFE INSURANCE INDUSTRY SENATE INQUIRY](#)

The Parliamentary Joint Committee on Corporations and Financial Services established an Inquiry into the Life Insurance Industry to examine the need for further reform and oversight. Financial Rights details the key concerns of life insurance consumers arising from the new Life Insurance Code of Practice, ASIC's recent report into the sector and the need for legislative reform and regulatory intervention.

[MINIMUM STANDARD MEDICAL DEFINITIONS](#)

The Financial Services Council has released draft minimum standard medical definitions for trauma/critical illness insurance products for public consultation. Financial Rights and the Consumer Action Law Centre have submitted that the life insurance sector needs to ensure the definitions are reviewed by independent medical specialists rather than their own conflicted specialist.



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7. Financial Rights in the media

KEEPING DEBT AT BAY

Financial Rights' Principal Solicitor Alexandra Kelly gives viewers of both Channel Ten's The Project and Seven's Nightly News tips on what to do when you are staring down the barrel of debt:

[The Project: Keeping Debt at Bay](#)

[Seven Nightly News: Post Christmas Debt](#)

CHANGES TO CREDIT SCORES

Principal Solicitor Alexandra Kelly spoke Fairfax about Veda Australia's largest credit reporting bureau who changed its scoring model, leaving many customers in the dark about their drastically lower credit scores.

[Sydney Morning Herald: Credit reporting agency Veda Changes its scoring model](#)

GETTING DIRTY IN THE DIGITAL SANDBOX

Kat Lane joined with other consumer representatives to slam a decision to allow new finance businesses to set up and operate unlicensed for 12 months, saying they fly in the face of scandals in the industry and will put consumers at risk.

[Sydney Morning Herald: Consumer groups slam move to allow finance companies to operate unlicensed](#)

Financial Rights' provides comment on a range of debt, credit and insurance related issues for print, radio, television or the internet. We can provide expert commentary on issues facing consumers of financial services, offer detailed background information and, where possible, supply case studies. For media enquiries email Drew MacRae at drew.macrae@financialrights.org.au and remember to follow us on Twitter [@Fin_Rights_CLC](#)

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