



**Submission by the
Financial Rights Legal Centre**

ASIC

**CONSULTATION PAPER 282: Remaking ASIC
class orders on financial counselling licensing
relief, May 2017**

June 2017

About the Financial Rights Legal Centre

The Financial Rights Legal Centre is a community legal centre that specialises in helping consumer's understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates the National Debt Helpline, which helps NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies. Financial Rights took over 25,000 calls for advice or assistance during the 2015/2016 financial year.

Financial Rights also conducts research and collects data from our extensive contact with consumers and the legal consumer protection framework to lobby for changes to law and industry practice for the benefit of consumers. We also provide extensive web-based resources, other education resources, workshops, presentations and media comment.

This submission is an example of how CLCs utilise the expertise gained from their client work and help give voice to their clients' experiences to contribute to improving laws and legal processes and prevent some problems from arising altogether.

For Financial Rights Legal Centre submissions and publications go to www.financialrights.org.au/submission/ or www.financialrights.org.au/publication/

Or sign up to our E-flyer at www.financialrights.org.au

National Debt Helpline 1800 007 007
Insurance Law Service 1300 663 464
Aboriginal Advice Service 1800 808 488

Monday – Friday 9.30am-4.30pm

Introduction

Thank you for the opportunity to comment on ASIC's proposal to remake three ASIC instruments on financial counselling licensing relief. The Financial Rights Legal Centre (Financial Rights) strongly supports licensing relief for financial counsellors and strongly supports ASIC's proposals. We will make a few short comments on the following:

- Importance of free and independent financial counselling;
- Conflicted remuneration; and
- Charging fees or commission directly to clients.

Importance of free and independent financial counselling

Financial Rights has provided free and independent financial counselling services in NSW for 30 years. Financial Rights is the answer point for the National Debt Helpline in NSW and last financial year on the NDH we took nearly 17,000 calls from people in financial stress.

Financial counsellors provide an invaluable service to people in financial difficulty in Australia. They regularly give free and independent information and advice to assist with resolving their financial difficulties and disputes with financial services. Financial counsellors also provide hands-on assistance to people in a number of ways including:

- Assessing a person's financial situation;
- Negotiating with creditors;
- Pursuing insurance claims;
- Developing a money plan;
- Advising about rights, including eligibility for payments and other assistance;
- Advising clients about their options in relation to debt collection, legal debt recovery action and bankruptcy;
- Assisting clients to dispute the actions of a credit or financial service provider in an external dispute resolution scheme; and
- Assisting the client to make strategic decisions about managing their finances.

Financial counsellors are only able to provide this free assistance because they have been granted licensing relief through ASIC's class orders. Many small financial counselling agencies would not be viable if they were required to comply with licensing requirements.

Recommendation

The Financial Rights Legal Centre strongly supports ASIC's proposals to continue the current licensing relief with the proposed new legislative instruments.

Conflicted Remuneration

Financial Rights would like to take this opportunity to express some concerns we have about the potential for financial counselling agencies to receive conflicted remuneration. We believe it is extremely important the financial counselling agencies and financial counsellors remain independent and free of conflict when helping people in financial difficulty. We do not think this is possible if agencies are able to accept funding from creditors, even when it is not directly connected to individual service provision.

Taking funding from a creditor organisation or other financial service provider could put a financial counselling agency in a position where it does not act in the best interests of a particular client or clients/consumers generally when:

- Advising clients of their options and the most effective strategy for managing their financial situation which may be at odds with interests of creditor/service provider funders;
- Contemplating raising or continuing a dispute with a creditor or service provider who is also a funding provider;
- Planning service provision, for example where the service is driven to attract clients or receive referrals from a particular group (such as the funder's customers) when the available evidence suggests there are groups in greater need of services; and
- Making public statements and submissions about the practices and conduct of creditors or service providers in the public interest.

Even if the financial counsellor is not directly remunerated for his or her services, the funding relationship could over time influence decision-making at the management level.

We note that it has taken many years and a significant amount of consumer detriment to remove many aspects of conflicted remuneration from *for profit* financial services. We think it would be a backwards step to then allow conflicted remuneration in the *not-for-profit* sector. While not-for-profits are unable to pursue commercial gain for individual members, there are other potential drivers of conflict such as the drive for organisational self-perpetuation, retaining jobs and salary levels for staff, and increasing influence.

We understand that government funding is limited and at times unpredictable, but taking funds from creditors or other financial services industry members as a means diversifying funding is a not a prudent or sustainable solution. If financial counselling agencies want to take funding from private organisations which might put them in a conflicted position they should be required to get a license, including demonstrating how such conflicts will be managed.

We are not opposed to exempt services receiving funding from a suitably governed Trust, or from a government imposed industry levy, provided there is sufficiently robust governance to ensure the risks above are effectively managed. Preferably such funds would come from a variety of industry members and be pooled for distribution, rather than facilitating direct relationships between particular industry members and service providers with the Trust as a

go between. We are also not averse to Community Benefit Payments being directed to services by regulators provided there are no conditions placed upon the funds that would generate a conflict of interest, including no requirement for the recipient to report to, or be accountable to the service provider responsible for making the payment. This does not prevent the regulator imposing appropriate accountability requirements in relation to the expenditure of the funds.

Recommendation

Financial Rights would like to ensure that proposed Section 5(2) is intended to prevent financial counselling agencies from qualifying for the licensing exemption if they take funding from a conflicted source, including creditors and other financial service providers, no matter how characterised or described. Appropriate pooled Trust Funds and Community Benefit Payments could be excepted provided there were approved governance arrangements in place.

Charging fees or commission directly to clients

We also support the continuing ban on Financial Counselling agencies accepting fees and commissions from clients. We are very concerned about the number of consumers accessing for profit Debt Management Firms, which provide advice that is clearly influenced by their own need to generate fee/commission income. We draw your attention to your Report 465 *Paying to get out of debt or clear your record: The promise of debt management firms* which found that:

- fees and costs were opaque, making it difficult for consumers, often in significant financial hardship, to assess the cost of the services relative to the purported value;
- fees were often high and heavily ‘front loaded’—that is, fees were payable before services were provided or promises met, which is likely to increase consumer commitment and exacerbate sunk cost bias;
- some sales techniques may create a high-pressure sales environment;
- little information was given about important risks;
- some firms had a poor understanding of the relevant law and the consequences of particular strategies, which may lead to unsuitable services for some consumers; and
- firms rarely referred consumers in financial hardship to free, alternative sources of help—such as financial counsellors, consumer law services or ombudsman schemes—or advised consumers they could resolve the problem themselves at no cost.

We also note that when the UK Financial Conduct Authority reviewed debt management firms in the UK they found that, in relation to the quality of advice provided, 60% of fee charging

cases reviewed were assessed as posing a high risk of harm to customers compared to 20% of free-to-customer firms.

Concluding Remarks

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact the Financial Rights Legal Centre on (02) 9212 4216.

Kind Regards,



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