



**Submission by the
Financial Rights Legal Centre**

Department of Social Services

Review of the coordination and funding of
financial counselling services across Australia

March 2019

About the Financial Rights Legal Centre

The Financial Rights Legal Centre is a community legal centre that specialises in helping consumers 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, and the Mob Strong Debt Help services which assist Aboriginal and Torres Strait Islander Peoples with credit, debt and insurance matters. Financial Rights took close to 25,000 calls for advice or assistance during the 2017/2018 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
Mob Strong Debt Help 1800 808 488

Monday – Friday 9.30am-4.30pm

Introduction

Thank you for the opportunity to provide input into Review of the coordination and funding of financial counselling services across Australia.

If your organisation provides a financial counselling service

1. Other than funding, what impacts your organisation's ability to effectively support your clients?

Sheer amount of demand

In the 2017/18 financial year, the National Debt Helpline (**NDH**) in NSW received over 31,500 calls. Financial Rights was able to take nearly 21,000 of those calls, including by returning voicemails. This demand is largely being driven by two things: a significant amount of unmanageable personal debt being carried by Australian households and rising energy costs.

At the NDH we consider ourselves both the frontline triage and key access point for financial counselling, and also the backstop for those with high need and nowhere else to go. The NDH also serves as:

- the primary intake mechanism for our legal service;
- a resource for face-to-face financial counsellors and other community workers in assisting their clients, and
- a rich source of intelligence about policy issues affecting NSW residents.

As the frontline triage service, our first priority when taking calls is to identify whether there is an urgent issue which must be addressed immediately. Urgent issues take many forms. Examples include:

- people facing immediate disconnection of essential services (usually energy), or already disconnected,
- people facing imminent legal proceedings with dramatic consequences (such as being made bankrupt on a creditor's petition, or being evicted from their home),
- repossession of a motor vehicle they need for work or as vital transport due to an illness or disability, or
- people escaping domestic violence who have safety and financial concerns.

Where possible, action is taken to assist these callers immediately, or to at least stabilise their situation pending access to further assistance being identified. In some cases this may mean getting one of lawyers to assist the client immediately, for example assisting a client through a housing eviction through the NSW Supreme Court. In others it may require our financial

counsellor to take time out from answering calls while they contact a third party creditor to negotiate a resolution or at least prevent immediate harm.

Case study – John’s story

John is a 53 year old divorced man living with his aged mother, with no assets and receiving the Disability Support Pension (**DSP**). He called the NDH late one afternoon to ask if anything could be done about his credit card debt of \$1,700 and his personal loan debt of \$4500, both from the same bank.

He had arrears of \$2,000 and the debt was about to go to collections. He was finding the situation very stressful. He was told by his doctor that he had only 3 months to live due to his cancer unless he went to hospital immediately for treatment. He was going to a hospital in Sydney the next morning.

Our financial counsellor set up a conference call with the bank’s financial counselling liaison team and our client. After some initial resistance the bank agreed to talk through the client’s circumstances on the spot. At the end of the call they agreed to waive both the client’s debts immediately to ease his stress and maximise his chances of responding well to the cancer treatment. The waiver has since been confirmed in writing.

Next we determine whether the person needs a simple answer to a question or a referral to another type of service altogether. If so, we provide that information.

For callers with financial problems, but no imminent enforcement action or other urgent issue, we obtain further information about the details of their situation. We attempt to talk them through strategies for addressing their issues at the same time as assessing their capacity to self advocate. The likelihood that someone can successfully self-advocate is usually a function of the complexity of their problem, their literacy and numeracy, and their current health/mental health. Otherwise very competent people can become extremely vulnerable due to a range of external factors. For callers who appear to have the requisite skills and current capacity, we give them the information and tools they need to take control of their problems and encourage them to call us back as their situations develops.

For callers who do not appear likely to be able to resolve their problems without more intensive assistance, we provide referrals to face-to-face financial counselling (and other services where appropriate), and information about what to take and what to expect. We maintain a database of available financial counselling services and keep it as up to date as possible with information about appointment availability, specialties (such as gambling) waiting lists etc.

Many callers also need legal advice. Our service is able to provide this either by live transfer to a solicitor at the time of the initial call, or via a call back service usually within the next 24 hours.

For a small number of callers (less than 2%) who cannot access face to face financial counselling we provide an ongoing financial counselling service remotely. This means doing a full assessment of the client's income and expenditure, working through strategies to improve their financial situations, negotiating with creditors and where appropriate running disputes through internal and external resolution processes.

A lack of access to financial counselling can be due to a number of factors including but not limited to:

- being too far away from the nearest available service (often 100s of kilometres);
- being unable to access the local service due to a conflict of interest with another client (for instance a co-borrower or guarantor);
- the local service not having the capacity to deal with the problem because of staffing capacity or because of the complexity of the matter;
- other access problems (some callers for example, may be homebound and the local service may not be in a position to offer home-visits).

Performing these different roles requires a constant balancing of competing interests. Every caller we agree to provide instant assistance to – for example by conducting a three-way conversation with their energy provider to prevent disconnection, or lodging a dispute with the Australian Financial Complaints Authority (**AFCA**) to ward off repossession of a vehicle or the commencement of legal proceedings – means other callers will not get through on the phones. However, failing to offer those services to those most in need would mean that the NDH is significantly less effective.

We do not, however, advocate separating out these roles as the skillsets required are very complementary. A financial counsellor who has conducted casework, including attempting to contact credit providers to resolve urgent issues on the spot, has fantastic insights into how to guide callers through the same process. Further, experienced financial counsellors can talk to a person who purports to have a problem with cancelling a direct debit and find that they are actually facing a creditor's petition in the bankruptcy court. This is a vital skill in providing effective triage services.

While additional funds to ensure adequate staffing at all times, including time for rotation of staff for training, instant advocacy (task assistance), casework and other related duties, would certainly be welcome, addressing the other issues listed below would also be of enormous assistance.

Referrals from creditors, external dispute resolution and government agencies – a key strength but also a strain on resources

The NDH 1800 007 007 phone number appears on all default notices issued under the *National Consumer Credit Protection Act*. It also appears on warnings required to be given by small amount credit contract providers in their offices and online. A number of creditors also issue the number from their call centres or hardship departments. Energy providers and telecommunications companies refer to the NDH voluntarily or include the number in correspondence about overdue bills. We were recently approached by the NSW government

department which issues and enforces fines about possible referrals. Overall we received 5603 referrals from creditors and other private companies.

In addition Financial Rights received 4,165 referrals (to both the NDH and our Insurance Law Service) in 2018 from AFCA and its predecessor scheme FOS. We also received 1,679 referrals from major Government agencies, including primarily the Australian Financial Security Authority and Centrelink.

It is important to note that we welcome referrals and we fought hard to have the NDH phone number included on default notices because this is an extremely effective way of getting information to people *when they need it the most*.

However, there could be improvements in this process:

- credit providers need to make sure they are not outsourcing their own obligations to work with customers in hardship;
- credit providers and energy providers in particular, who are sending customers to the NDH could do more to make sure the customer understands:
 - why they are being referred to the NDH (so that the customer can communicate that effectively to us); and,
 - that the staff on the NDH will not necessarily be able to provide the service they require – in fact the most common result of contacting the NDH will be a referral to a face-to-face service.

Our financial counsellors waste a lot of time on calls where the customer is unsure why they are talking to us or where we are managing their expectations about how we will solve their often quite complex issues immediately over the phone. While the NDH is an extremely important service, it is not a panacea to all financial hardship.

The NDH works most effectively embedded within a network of effective industry hardship processes and internal dispute resolution and a well coordinated network of local community based financial counselling, legal and other related services.

Patchy and inconsistent service provision across the sector

Financial Rights works with a large network of organisations with differing capabilities and resources. Even the NDH is delivered by eight different services (soon to be 11) in entirely different contexts and with different service delivery models.

Face-to-face financial counselling is also highly variable. Some organisations offer the full suite of services from assessment and “diagnosis” to negotiating with creditors, running disputes in AFCA, or assisting with bankruptcy matters. Other organisations offer only extremely limited services where client appointments and follow up hours are restricted, and as a result, so is the type of assistance that can be provided. This can make it very difficult when making referrals and managing client expectations. It also means that clients may get a different service depending on their location and luck, rather than based on their needs.

Funding programs should be clearer about what financial counselling services should encompass, and include robust evaluation and client feedback. Clients can be very vulnerable and unlikely to complain about the standards of service they receive, or indeed to have any idea of what level of service to expect.

Many services are embedded in organisations which play a number of important roles in very small communities. Clients are reluctant to complain when services do not meet their expectations because they are fearful of being denied access to other necessary services or facing other repercussions. It is very important that there are effective mechanisms to ensure that standards of service are upheld through independent mechanisms such as evaluations, file reviews/supervision and facilitate input from clients.

Services themselves should also be providing robust feedback mechanisms for clients. Some clients have complex needs and may be difficult (or indeed impossible) to assist. Evaluation should be sufficiently sophisticated to take this into account.

Better geographical distribution of services on the ground would also assist the NDH to manage its resources more effectively. While NSW is theoretically covered by financial counselling services in so far as there is a service allocated to every region, our experience is that this is not the case in practice. Some services are expected to cover extremely large areas and have to pick and choose where to locate their outreach services. The result is that inevitably there are areas which are not serviced and disadvantaged clients are further marginalised by simply not having the means or resources to travel large distances.

An effective network of face-to-face services, using a range of methods to service their area including remote casework services conducted via mail and e-mail and tapping into other community resources would mean that it was more likely that there will be somewhere for the NDH to refer clients to and they will receive the assistance they require.

Lack of continuity of funding

As the central referring agency for financial counselling in NSW we see first hand the impact of any change in funding arrangements across the sector.

The past couple of funding rounds for both NSW funding and Department of Social Services (DSS) funding for financial counselling have proceeded by open tender and resulted in changes to the agencies providing financial counselling services across the state. Every time this happens there is a significant cost in terms of a gap in service delivery for clients. The service that is notified of a loss of funding has no choice but to stop taking new clients. It would be negligent to do otherwise as cases can remain on foot for many months. Further the service should rightfully be focused on finalising all currently open matters so that clients are not left in the lurch when the service ends. At the same time, the new service is not funded to open its doors to clients until the date of the changeover, meaning there can be whole areas with no place for new clients to go. In some cases new services are granted further extensions of time in which to recruit and set up service provision (quite reasonably so in some cases but this does not detract from the cost on terms of lost client service provision). There are also significant losses in terms of organisational infrastructure, resources and knowledge as services close down and new services open, sometimes having to develop these things anew.

While it is important to have accountability in the sector, it would be preferable if there was a presumption of service continuity where possible in the interests of maximising service quality and efficiency. Tender processes are at their most inappropriate when used for complex service delivery where there is a need for skilled staff, complex knowledge of subject matter and referral networks and significant service related infrastructure (such as specialist client databases, referral databases, and precedents). Where possible, accountability measures should be aimed at bringing deficient services up to speed, with loss of funding as a last resort. A tender process is a blunt tool for dealing with service accountability issues and will inevitably result in a lot of unnecessary disruption to functional services in the process.

Regardless of whether funding is allocated by open tender or by other means, there is also a significant downside to short term funding agreements and lack of certainty about funding continuity. Looking at the funding of Financial Rights as an example, we are currently in a relatively good financial position because of recent injections of funds from industry as a result of ASIC negotiated enforceable undertakings. Despite this, 41% of our current funding is in doubt (or transitional only) because we are either waiting to hear the result of completed tender processes; are coming to the end of a 3 year funding agreement and have not yet heard whether funding is likely to continue and if so, at what level; or have lost funding through an unsuccessful tender with the DSS. Another 36% is one-off funding that will end within 3 years, and 23% is “recurrent” in so far as we know it will continue until 30 June 2020 but have no certainty beyond that date. This is an extremely difficult environment in which to recruit and retain staff, or to plan long term financial commitments such as commercial leases or investment in IT or telephony (key tools to do our work effectively).

While funding is necessarily cyclical and to a certain extent inevitably subject to political forces, significantly more certainty, improved quality and efficiency, could be achieved by:

- offering longer funding agreements;
- improved accountability mechanisms;
- compulsory, contractually guaranteed multi-year notice periods for potential changes to funding arrangements (including overlaps of service to ensure service continuity where services do move between agencies);
- a broader funding base; and
- coordination of programs across governments.

Rise of for-profit debt management firms

The last decade has seen enormous growth in debt levels across Australia. This has been matched by the emergence of a range of organisations purporting to be able to fix people’s debt problems for a price. Private debt management firms derive a profit from people whose main problem is insufficient money to go around. This diverts funds that would otherwise be available for creditors, or to maintain a decent basic standard of living for the debtor, to the firm. Worse, in many situations we encounter, they do not “fix” the person’s debt problems at all and often make them worse. This complicates our work when not only do we have to

address the remaining debt problems, but also to deal with a layer of complication caused by the poor behaviour and service provision of the debt management firm.

For example, a recent caller to our Mob Strong Debt Help line for Aboriginal and Torres Strait Islander people was a young mum with a six month old baby. She held a consumer lease she could not afford and had debts to her former energy and telco providers. However, her biggest debt was \$3,800 to a credit repair firm she had previously sought assistance from.

Debt Management Firms also draw potential clients away from the NDH and financial counselling more generally with slick advertising and unrealistic promises which are difficult to compete with. Stable and consistent funding for the NDH, including a sustained and dynamic web-presence would, however, be of enormous assistance, along with sensible regulation of the private debt management sector.

Case study –Mark’s story

Mark had a number of debts he was behind on – two loans secured over his car, a loan for a TV, a number of pay day loans and a personal loan. He went to a personal budgeting service in late 2016. They charged an establishment fee of \$1,900, weekly administration fee of \$30. A budget was developed for Mark based on his living expenses other than housing of \$140 week. The Henderson Poverty Index amount for after housing costs for a person in his circumstances at the time was \$350. The budget was based on reduced repayments that had not yet been negotiated with the creditors. Mark’s shifts were cut at work. The budgeting service told him “you need to find more income”. The budgeting service prioritised payments under a consumer lease for the TV, and paid out a pay day loan in full in preference to the loans secured over his car. Mark called NDH when he received a default notice on his car loan and was at imminent risk of having it repossessed.

See also Ben’s case in response to Question 8 below.

- 2. What service improvements or innovations (in either effectiveness or efficiency) have you considered or made over the last 3 - 5 years? What led to these and what has worked (or what barriers may have inhibited the innovation)?**

Integrated financial counselling and legal advice (older than 3-5 years but extremely important)

In 2004 Consumer Credit Legal Centre (as Financial Rights was then called) succeeded in obtaining funding to operate the Credit and Debt Hotline in NSW, a first port of call and referral point for financial counselling staffed by financial counsellors. We did this because we recognised that many callers to the legal service actually needed financial counselling. We also knew that many clients of financial counsellors also needed legal advice and assistance. By

creating a bridge between the two services we were able to direct clients to the service they needed the most – financial counselling, legal advice or assistance, or both.

This model was very successful and in time we integrated the services further by:

- having solicitors rostered to provide legal advice at all times (they also answer the line on overflow, largely because it is so busy);
- having solicitors and financial counsellors working together on client files; and
- running in-house joint training sessions on a range of topics relevant to both teams.

Having legal advice available on the NDH is crucial. In the 2017/18 financial year over 1,100 people who called the NDH were facing legal enforcement processes ranging from a statement of claim to a creditor's petition, (the final stage in the process of making a person bankrupt). As a result over 2,500 people received legal advice, either in addition to, or instead of, financial counselling. Immediate access to legal advice and assistance is a key advantage of a multi-disciplinary service.

Over the years many callers have come through the line at the final stages of repossession of their homes. Having solicitors available means that we can seek a last minute stay in the Supreme Court to allow people to either find alternative accommodation, come up with the money to save the home, or investigate whether they have a defence:

Case study – Brian's story

Brian, a disability pensioner, had a default judgment and order for possession of his home entered against him in the Supreme Court of NSW. Brian lived on the Central Coast of NSW in a very modest fibro house.

While Brian knew he had signed a mortgage over the property, he was duped to do so at the request of his (now estranged) grandson, who told him it was to secure a joint loan so he and his grandson could purchase an investment property together. Brian was told the loan would be secured by the investment property, and that the mortgage over his house was just "back-up". In fact, there was no joint purchase of an investment property and no other security for the loan, and Brian had transferred a 10% interest in his property to his grandson for no consideration.

Brian had no capacity to pay the loan, and thought his grandson was taking care of it. He wasn't. The grandson had drawn down on the loan and spent the money himself (while pretending to Brian that they had purchased an investment property). The grandson then disappeared.

We went on the record in the Supreme Court, and prepared a draft defence and application to set aside the bank's default judgment. We then entered into negotiations with the bank, the broker involved (who set up the entire loan without ever speaking to or meeting Brian) and Law Cover on behalf of the solicitor involved in setting up the loan transaction. The judgment was ultimately set aside by consent after mediation and the

bank agreed to set aside the mortgage and not pursue Brian for any of the funds. Brian was able to retain his home.

Solicitors are also able to run disputes in AFCA or resource the financial counsellors to do so. They can also appear in bankruptcy proceedings or other courts where necessary:

Case study –Gail’s story

Gail rang the NDH about some legal notices she had received in relation to her home unit. She was a very elderly woman living in Sydney. She said her son had told her he was sorting out the problem but she thought she might get a second opinion. It transpired that there was a creditor’s petition against the woman due to be heard in the Federal Magistrate’s Court the following Monday. The son had forged his mother’s signature to obtain a loan. Gail would lose her home unit and tens of thousands of dollars in equity if the court made a sequestration order against her. Our solicitor turned up to the court at short notice and applied for an adjournment on Gail’s behalf. We subsequently successfully set aside the judgment on which the bankruptcy proceedings were based in the Local Court. The son ultimately came up with the funds to pay a negotiated settlement offer to end the proceedings.

Joint financial counselling and legal casework is also a highly effective method of ensuring clients attain outcomes that are realistic and sustainable. Examples include:

- Where a person is facing enforcement action in relation to their home, the solicitor can manage the legal proceedings while the financial counsellor assesses whether any changes can be made to their financial situation to be able to afford the mortgage repayments over the longer term. This may include negotiating with other creditors to reduce repayments and increase available income for the mortgage, disputing debts or locating and claiming on relevant insurance policies, among other things.
- Where a lender may have extended a loan in breach of responsible lending obligations, the solicitor can make legal submissions while the financial counsellor undertakes a forensic investigation of what the person’s income and expenditure was at the time of the loan in order to provide the solicitor with evidence to advocate for the client.
- A caller has engaged a Debt Management Firm to assist them with the finances but their situation has deteriorated and they want to raise a dispute with the DMF. The solicitor can take primary responsibility for running the dispute while the financial counsellor takes over the financial situation to negotiate with creditors and do whatever should probably have been done to address their financial issues in the first place.

Lodging callers in dispute resolution online

A number of years ago Financial Rights made the decision to lodge some callers in dispute resolution on the spot using the online complaint facility regardless of whether we have the capacity to represent the client in the dispute. Financial Rights had noticed that many callers facing legal proceedings were advised to lodge in external dispute resolution rang us back with a judgment a couple of months later. When we enquired whether they had taken our advice, they replied that they lacked the confidence or did not quite know what to write or how to proceed.

Once a judgment has been obtained it is too late to benefit from the fee external dispute resolution process creditors are required to provide (now covered entirely by AFCA). However, a complaint lodged will stall legal proceedings pending the resolution of rejection of the complaint. Financial hardship matters can also be lodged in dispute resolution, even if there is no other dispute.

As a result, Financial Rights decided to lodge a complaint on behalf of the caller when certain pre-conditions were met:

- the caller is facing imminent legal proceedings (they have received court papers and the date to respond will shortly expire);
- the client does not appear to have the capacity or confidence to lodge the complaint themselves;
- there is a dispute of substance, or in the case of financial hardship, a viable plan to put forward or a good reason to seek time to come up with a plan.

The dispute is lodged in the client's own name, rather than as our service and all future correspondence goes directly to the client. Both financial counsellors and solicitors are encouraged to do this for clients in appropriate circumstances.

There is still the possibility that the client will fall out of the process at some point along the way but we get clients over the first hurdle and put a hold on the legal proceedings. We also encourage them to call back at any time in the process to get further advice and assistance. Sometimes these clients do call us multiple times until they get a resolution. Sometimes we end up opening a case after all because the client cannot cope with the process or the issues are more complicated than originally thought.

Factsheet provision

Financial Rights has long provided a website with a large number of fact sheets to assist people to self advocate with respect to their financial issues. Financial Rights has over 80 fact sheets available including:

- What should I do before I borrow money?
- There are black marks on my Credit Report – Should I hire a Credit Repair Company?
- Buy now, pay later services (including Afterpay, Certegy, zipMoney, zipPay, Openpay)
- Accessing Your Superannuation Early

- Debt Recovery in the Local Court

Our fact sheets were downloaded over 35,000 times in the 2017/18 financial year.

Sample letter generator

As indicated above, many people experiencing financial hardship are not necessarily armed with the skills or confidence to write a letter from scratch to a financial services provider. There are also many people who are able to self-advocate but they just need a little nudge in the right direction.

In 2017 Financial Rights launched an interactive Sample Letter Generator on our website. The sample letter generator replaced a series of word templates and allows users to answer a series of questions and then generate a letter based on their response to assist them to solve common financial disputes.

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.

There are currently 14 sample letter generators including:

- Letter to Bank Cancelling Direct Debit Authority
- Letter Requesting Hardship Variation on a Consumer Loan or Lease
- Letter to Insurer Disputing Amount Claimed
- Letter to Insurer Requesting Release from Debt

The Sample Letter Generator can be accessed from the home page of financialrights.org.au or insurancelaw.org.au. The sample letters have become the most used parts of the financial Rights websites being used over 32,000 times in the financial year from 1 July 2017 to 30 June 2018.

Feedback from consumers, caseworkers, community and Legal Aid lawyers has been positive. A 2017 survey found that

- 97% of respondents said they found the tool either 'useful' or 'very useful'
- 83% of respondents said they thought that the generators were easy for a consumer to use without assistance
- 100% said they would recommend the tool

Comments included:

"I love it. So quick, so easy for the client to see what is important to include. My first thought is this is really cool!"

"I really like that it is easy for people to change what they enter and can easily go back and make a different letter- helps people to understand the significance of the information they input."

Find a financial counsellor tool

Financial Rights has maintained a referral database with details of NSW financial counselling agencies since we took over the Credit and Debt Hotline (as it was then called) 2004. Since that time the Australian Securities and Investments Commission (**ASIC**), Financial Counselling NSW (**FCAN**) and Financial Counselling Australia (**FCA**) have started offering find a financial counsellor tool on their websites.

Financial Rights have chosen to maintain our own tool as we find the others are not as up to date, and do not contain the same level of detail as our own database. While some services are very good at keeping us up to date with developments at their service, other are not. We nevertheless receive constant feedback from clients. Because we are referring clients to financial counselling daily, they call us back if numbers do not work or appointments are not available. We then use this information to make contact with the relevant service to update our database.

A couple of years ago we decided to make parts of this database available to the public through our website: <https://financialrights.org.au/self-help-centre/financial-counsellor-search-tool/> Callers who really only want a referral are able to find a financial counsellor on our website and get the benefit of our constantly updated information. We do not make details about waiting lists and temporary closures available publicly because these can be quite volatile. Theoretically this should have reduced the need for us to take as many calls which are straightforward referrals, but there is no evidence that this has been the result. We are aware that people use the tool from web statistics and the occasional call complaining about glitches. But demand has grown consistently for the past few years according to the Telstra statistics distributed by Financial Counselling Australia, so it is impossible to measure any impact of the tool.

Web Inquiries

Financial Rights provide a web inquiry form on our website which allows people to contact us at any time. People complete the form and an e-mail is generated and sent to an internal mail box. Once an inquiry has been received we make an assessment whether we can respond via e-mail or whether we need more information from the inquirer. Quite often we need to make a call to the person because there is insufficient information for us to answer their question provided within the form itself. While web inquiries are very popular with financial rights Insurance Law Service, we have not had the same take-up with National Debt Helpline clients. For example, in the six months to December 2018, 460 web inquiries were received by the Insurance Law Service, but only 67 by the National Debt Helpline. We think this is partly because of the different demographics of people contacting the two services. The Insurance Law Service has plenty of very low income and disadvantaged clients but they are not necessarily the people contacting us via the web inquiry service. We will continue to offer the service as part of the NDH however, because it does provide people with an out-of-hours option for contacting the service and it is being made use of by a small number of people.

Financial Literacy campaigns - Watch Your Nuts

Financial Rights Legal Centre partnered with the Consumer Action Law Centre, and Financial Literacy Australia to explore whether consumer advocates could engage tough-to-reach audiences with important financial well-being messages. Our organisations had noticed a marked increase in the number of clients with pay day loans and subsequent research showed that there has been a massive uptick in the number of people obtaining pay day loans via the internet – particularly in new demographics.

The project culminated in the creation of the 'Watch Your Nuts' campaign (WatchYourNuts.com.au) - a humorous approach to financial literacy that tested the partners' assumptions about influencing behaviour and what it takes to bring together a major creative campaign. The final product was 'Watch Your Nuts'. A quirky video and social media campaign encouraging young men to think twice about payday loans. The campaign led to significant engagement with weekly media buy reports indicated that the campaign performed beyond expectations in terms of views, clicks and shares. The campaign's limited first run was so successful we have been granted further funds to expand the campaign nationally.

Establishment of the Mob Strong Debt help service

In 2014 we received funds from the insurance industry via a process set up by the Fire Services Levy Monitor in Victoria. The money was essentially over-collected insurance premiums that could not be practically returned to the people who had paid them, either because they could not be located or identified or because the amounts were individually too small to justify the costs of distribution.

Tasked with applying these funds for the benefit of insurance consumers, we put the bulk of the money towards resourcing our very busy Insurance Law Service, a nationwide free legal advice and assistance service for consumers of insurance. We isolated some of the funds, however, to set up a national indigenous advice line on insurance issues. The idea was that Aboriginal and Torres Strait Islander callers would get priority via a separate line (the main advice line is notoriously difficult to get through on due to high demand). We also employed an Aboriginal Service Coordinator to promote the service to communities, promote cultural safety within the service and act as a liaison and support person for clients.

It quickly became apparent that Aboriginal and Torres Strait Islander people needed assistance with debt and financial matters even more than they needed assistance with insurance. As a result we opened the line up to all matters within the Centre's expertise and recently rebranded as Mob Strong Debt Help.

25 per cent of our casework overall, including credit and debt matters, is now for Aboriginal and Torres Strait Islander clients. We also use social media to connect to our audience.

Case study – Systemic abuse of point of sale credit provision

Over 13 Aboriginal men and women were referred to us by a financial counsellor and a financial capability worker from Alice Springs after unwittingly incurring debts totalling more than \$180,000 (between them) following visits to a major chain store. Many of the

clients lived in remote communities, and would travel to Alice Springs on occasion.

In several circumstances the clients went to the store to simply look around and not buy anything - but were convinced to purchase thousands of dollars worth of goods on finance contracts and given credit cards with big spending limits.

In all cases the same salesman was responsible for selling the goods and credit to the customers - none of whom spoke English well or could afford the goods and the contracts they were pressured to sign. Many of the contracts signed were also incorrect too, the number of dependents the applicants had were underestimated in several cases and fortnightly income was listed as weekly.

One of the women went "window shopping" at the store but left with a \$2000 credit card and \$16,000 worth of goods on a consumer credit contract. One item was a blu-ray player, which she threw away as she didn't know what it was. But by the time Financial Rights intervened, she had repaid \$9000.

Financial Rights' solicitor sent letters to the two finance companies involved alleging multiple breaches of the NCCPA. Both companies agreed to our terms which were favourable for our clients.

Motor Vehicle Accident portal

Financial noted that a large number of our calls were from both insured and uninsured drivers being pursued by insurance companies seeking advice. The Motor Vehicle Accident Problem Solver at mva.financialrights.org.au was developed to help people through the complications, pitfalls and hurdles of car insurance, and to ease the burden on the phone lines.

The Motor Vehicle Accident Problem Solver asks leads user to the actions you should take and provide you with all advice, sample letters, detailed fact sheets you require. Available on tablets, smart phones or on a desktop at mva.financialrights.org.au, the Motor Vehicle Accident Problem Solver is accessible any time of the day to help answer some of the most common questions people face when they have an accident and are navigating the tricky insurance terrain. The tool is designed for consumers to use without assistance, and also for lawyers, community workers and community advocates to use with their clients.

The problem solver is now used by over 1500 users a month. Examining our statistics it is clear that the portal is mostly being used by people experiencing financial difficulties - the page "I am in financial difficulty and can't afford to pay my excess" is the most clicked on page of the entire problem solver after the home page. It is also clear that uninsured drivers use the service more than insured with uninsured pages making up approximately 58% of users.

Considered live chat service for younger cohort

We have applied for funds for a live chat service for younger people. Younger people are under represented among callers to the NDH, despite being over-represented in the cohort entering Debt Agreements under the *Bankruptcy Act* in the last few years. Debt Agreements are heavily marketed online, on radio and television as an easy answer to debt problems by the rapacious private debt management industry. Debt Agreements are a form of insolvency, with serious long term consequences. They are also relatively expensive.

We have serious reservations about the efficacy of chat as a medium to deal with complex issues. We also note the hurdles faced by a recent trial of chat services by the NDH in other states. Nonetheless we recognise the need to try to engage a younger audience, and to try to compete with the private debt management sector, which can often make matters worse. We are therefore open to experimenting to identify the appropriate role for chat within the wider suite of NDH services.

One of the key issues with chat, and indeed with our web-enquiry forms, is that it is very difficult to answer questions about debt accurately without obtaining a lot of instructions from the debtor about their broader circumstances. What is good advice for one person can be appalling advice for another, and there are a lot of screening questions required and cues to listen out for to identify appropriate solutions and strategies. Further, the advice we provide has serious real life consequences, which can result in bad outcomes for callers and complaints and claims against the service. It is important that the complexity of the subject matter is appreciated in designing innovative solutions.

Financial Advice Assistance Service Pilot Proposal

Financial Rights has long observed that there are no government-funded services assisting consumers who have received poor financial planning advice - the type of advice that has been the subject of recent scandals involving several major banks.

Financial Rights proposed in 2016 to pilot a Financial Advice Assistance Service to provide casework assistance to consumers referred via financial counsellors, legal services, ASIC, the Financial Ombudsman Service and our existing advice lines. We were never successful in receiving funding for the service.

The Service would have had strict intake criteria, because government resources should not be spent on assisting consumers with substantial funds for investment. The Service would have been directed at assisting those consumers who have put their house on the line because they have borrowed to invest, have received poor financial advice (as opposed to simply lost out in the market) and do not have other assets to fall back on.

3. What emerging or changing needs have you identified that are affecting the demand for financial counselling? (What are the drivers for these changes?)

Financial Rights has identified the following trends impacting upon the demand for financial counselling:

- Two decades of irresponsible lending in the mainstream sector, across all forms of credit but particularly credit cards, and home lending (especially where one has bled into the other through multiple refinances).
- Increasing cost of utilities particularly energy.
- The rise of for profit Debt Management Firms, as explained above;
- A significant rise in Part IX Debt Agreements which clients are dissatisfied with or later need to vary. This is in part related to the rise in Debt Management Firms;
- The rise in the availability and use of pay day loans/small amount credit contracts– increased access via the internet, and increased advertising on television, radio, billboards and via online search engines;
- The rise in point of sale credit problems in car yards and retail shops – and related problems in a toxic sales and the lack of regulation;
- The rise of Buy Now Pay Later models which avoid the credit law;
- A rise in junk insurance products– and correlated aggressive sales culture, advertising and business models;
- A rise in gambling issues – increase access to gambling services online.
- A lack of or delay in law reform to curtail many of the worst excesses of the financial services sector.

4. Does your organisation currently support small businesses - is this significantly different legally or otherwise to serving a consumer client?

Financial Rights provides very limited support to small business owners. Where people have been served or threatened with legal proceedings, we can tell them about the court processes and time limits. We can refer them to hardship assistance at the tax department, or advise about the implications of court judgments or bankruptcy. We can also let them know if a particular provider is part of AFCA and how to make a complaint.

We can support small business owners in dealing with their personal finances, in the same way we can assist anyone else.

We cannot, however, provide detailed advice about business or investment related disputes, both because these are not what we are funded to do and because they are outside our area of expertise. Nor can we provide any advice about running the business or its viability.

Legal options for small business owners differ considerably to those of consumers. Where a business is in dispute with a financial service provider such as a bank or finance company, they

will quite often have the right to go to external dispute resolutions (but not always, because membership is not compulsory for business lenders) but they will not be able to argue the same laws. The *National Consumer Credit Protection Act* for example does not apply to business lending. They may have some code of practice protections via industry self-regulation but these provisions can be quite detailed and vary from code to code and hence from lender to lender.

Insolvency options will vary according to the business structure, with many small businesses also being companies and subject to the ASIC insolvency regime rather than the *Bankruptcy Act* for individuals.

Another key problem with providing financial counselling and related services to small business is that quite often their problems relate to cash flow and the need to collect debts from customers or other traders. Financial counsellors are not debt collectors, nor are community legal centres. This could also create potential conflicts for any service assisting multiple businesses or businesses and consumers.

In our experience, some financial counsellors will assist small business owners who are facing personal financial issues because of temporary business problems or other unrelated issues, such as ill health or family breakdown. They may also assist small business owners who are closing their business and picking up the pieces. As a general rule they do not assist to attempt to turn the business around, or assist the business to run disputes.

There is clearly a service gap for small business owners who have disputes with financial services providers, and may be at just as big a disadvantage in their dealings with those providers as a consumer. There is also a gap for people who have been affected by poor investment advice, particularly where their home is on the line and they have no other significant resources to fall back on. A service designed to fill this gap would need to be carefully designed to make sure its limitations were clearly delineated. Government funding is not wisely used to prop up failing businesses or rescue people from unlucky investments where no misconduct has occurred.

As noted above, Financial Rights has previously considered developing a service directed at people who had received poor investment advice with a set of strict criteria but this would require additional funding above and beyond current resources.

If your organisation refers or recommends that consumers access the services of a financial counsellor (i.e. if you are a business, firm, ombudsman or other service)

5. What emerging or changing needs have affected your usage of these services - what are these changes?

Not applicable

6. Have you referred consumers to financial counselling and been informed that there is no availability for the person to be seen? Or that the wait times are extensive? Can you provide any statistics?

Yes, as the central referral point for financial counselling in NSW we are regularly informed that services have closed their books for a particular period because they are already full, or because of unplanned staff absences, or in very small services, so that staff can take their annual leave. We also find black spots where it is difficult to find a financial counsellor to send someone to and clients who are technically “covered” by an agency but are really too far away to attend a traditional face-to-face appointment.

Unfortunately we have not been tracking these issues. We update our referral database with the latest information but keep no archive of changes. We have recently introduced an option in our database for where a financial counsellor is recommended but a suitable service is unable to be found. This option was only set up last week and has already been used twice by NDH staff.

7. How do you view the nexus between your organisation and financial counsellors? Is referring people helpful to your company or service? In what ways?

We refer clients to financial counsellors daily. We also accept referrals from financial counsellors where clients are facing tricky legal issues and require further support. We also provide advice to financial counsellors in assisting their own clients via a dedicated 1800 number for caseworkers to ensure priority access.

8. How do you support the financial counselling services that you interact with? Please outline what this looks like.

Financial Rights (including the NDH and the Insurance Law Service) received 874 referrals from financial counsellors in the 2019 calendar year, and we referred 8,675 callers to face-to-face financial counselling. We cannot say how many of those actually took up the referral. Financial Rights also provides advice to financial counsellors over the telephone in relation to

their own casework practise and, at times, runs cases in tandem with external financial counsellors:

Case study - Ben's story

Ben is 56 years old and has been diagnosed by a clinical psychologist as having schizoid personality disorder in the context of a possible intellectual disability, an underlying diagnosis of autism spectrum disorder and a major depressive disorder. In April 2013 Ben had six credit cards with various providers totaling \$54,752. Ben owns a house, receives Centrelink and works in supported employment earning \$4.87 (initially \$1.83) per hour. Ben wasn't managing his repayments and cost of living expenses very well so he signed up with a personal budgeting service so he could "get his credit card debt sorted out".

The budgeting service proceeded to make agreed repayments on his credit cards but more often than not these repayments were not even the minimum amounts required.

In late 2015 Ben was made redundant and received a lump sum payment of \$38,000 from his employer. Even though the Budgeting Service had been paying his bills for a number of years it appears that at no stage did the budgeting service highlight to Ben that he had a number of income protection and consumer credit insurance policies he had been paying for which he could have claimed against. In fact the Budgeting Service kept paying his income protection policy payments when there was no income to protect

Nor did the budgeting service review his situation and make arrangements or offers of settlement with his creditors. Instead they just kept making the previously agreed repayments, holding his money and keeping his interest, charging him fees and depleting his savings until there was nothing left.

When Ben finally left the budgeting service in late 2017 he had more debt than when he had started with a Personal Loan and four credit cards totaling \$59,545.

Ben then sought the assistance of a financial counsellor in a face-to-face agency. The financial counsellor worked with Ben to improve his financial situation. She helped him increase his income by suggesting he rent out his garage. She also helped Ben reduce his debts by:

- initiating pensioner rebates for Mr C with his water, energy & rates from \$647 per quarter to \$452 per quarter
- negotiating waiver of credit card debt of just under \$9,500;
- negotiating reduction of credit card debt from just under \$30,000 to \$8000;
- reducing his ongoing telco bills from \$220 to \$112 per month; and
- created budget that Ben can live on.

The financial counsellor is now working with Financial Rights in relation to a dispute with the personal budgeting service in AFCA. He had paid \$10,500 in fees to the budgeting service throughout his contract with them, only to find himself in a worse position. Due to his mental health conditions, Ben feels he cannot deal with us over the phone. He feels he is only able to deal with a face to face financial counsellor who understands his condition,

circumstances and with whom he has built trust over a period of some years. Ben's Financial Counsellor helps him provide Financial Right's solicitor with instructions, documents and information by email. With the help of that external financial counsellor we are able to represent him in AFCA.

We note that the case included in the Mob Strong Debt Help section above would also not have been possible without the financial counsellor and financial capability worker on the ground in Alice Springs to meet the clients face-to-face and send us their instructions and evidence.

Funding

9. *The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry*, which has led to this Review, highlighted the crucial role of financial counsellors in redressing the imbalance of “knowledge and power between consumers and financial services entities”; this comment holds true in other sectors of the economy as well. What are your views on which sources of funding for financial counselling should be utilised in Australia

Yes, telecommunications providers and energy providers are huge drivers of the need for financial counselling. The telecommunications sector has many correlations with financial services with young people and people with disabilities and other vulnerabilities being regularly affected by misleading marketing, poor credit assessment practices and other unfair conduct. Telecommunications is a key driver of debt among young people and a source of many complaints by all consumers.

Energy bills have driven a lot of people to seek assistance from the NDH in the last couple of years, even where they have no other significant debt. In February 2019 alone, Financial Rights referred 98 people for energy vouchers and sent many others to face-to-face financial counselling services to deal with large energy debts (often many thousands of dollars). We receive a significant number of referrals from the private sector, including banks, finance companies, other consumer credit providers, telecommunications providers and energy companies. All of these sectors should be required to contribute to the cost of financial counselling.

a. Should industry contribute and if so, which industries and what forms might such funding take?

It is appropriate that industry should contribute for all the reasons noted above. The most effective mechanism for contribution would be via an industry levy. Over time, improved

collection of data for the sector could give better insight into the appropriate mix of contributions from various industry sectors.

What do you see as the role of governments, in supporting financial counselling services?

Financial counselling provides a good return to government. Many clients become more empowered and engaged with their finances and less likely to get into trouble again in the future. Many clients are able to afford to pay something back to their creditors in circumstances where this had previously been unlikely, benefiting those creditors and the economy more generally. Many clients are also able to resume normal activities and relationships in circumstances where these had been derailed by the debilitating and destructive effects of financial hardship. Very importantly, many clients are able to get some recompense for mistreatment by financial service providers and unethical traders, and hold those entities to account for their actions.

Client comments about the service at Financial Rights demonstrating the above impacts of the service:

“Extremely satisfied, was able to have my car back immediately and they gave me a voice, confidence. The car was able to help me during homelessness and get my daughter to school and help me go to my new job!”

“My financial position was much improved due to my experience with your Centre. I learned a lot and am confident that my future decisions will be much more thought through and fully understood, before taking on anything similar again, if at all. Definitely a positive learning experience.”

“Not having to struggle with just meeting the interest each month has allowed me to budget and put aside money to pay for bills and also I'm now able to consult various medical specialists and know I can pay the gap.”

“I cannot tell you how pleased I was and relieved at the result obtained. I know I would never have been able to make it through the harassment by the bank and to get any positive outcome.”

Even in the absence of trader misconduct, people would always need some assistance with their finances. People become sick, have accidents, separate from their partners or are affected by natural disasters. Some people will always have greater financial management capabilities than others, and some will benefit from one-on-one assistance to develop these skills. It is also in the governments' interest that the laws of the land are accessible to its citizens. Financial counsellors play a vital role in assisting people to enforce their rights within the financial sphere and to access public benefits and concessions. It is appropriate that governments fund this basic level of assistance, with relevant industries being required to supplement that funding because of the levels of demand being driven by their respective sectors. Governments may also apply some of their funding to target particular priority issues, such as people at risk of domestic violence or homelessness.

It is also important that both State and Commonwealth Governments play a role in supporting the sector. The government is responsible for the regulation of credit and the financial services sector. However, State governments retain responsibility for debt collection through the state courts, for tenancy laws, for housing, parts of energy regulation and supply, and for strata laws

(strata management fees being a significant source of debt among financial counselling clients and a frequent cause of involuntary bankruptcies.)

b. Should consumers be asked to contribute some nominal amount where they are able to?

It would be a very dangerous step to begin to ask consumers to pay fees to access financial counselling services. Our clients are among the most financially vulnerable in Australia, who in most cases do not have any money to give. Our clients are often living hand to mouth, may be deeply in debt, or experiencing other forms of hardship like unemployment, homelessness or family violence. It is not uncommon for financial counsellors to complete an income and expenditure assessment for clients and find that their budget is in long term structural deficit.

We are concerned that if a model is implemented that asks consumers to contribute any amount at all, then this will lead to a tiered system in which those who can least afford to go without help are excluded.

The definition of “nominal” is also unclear. To many of our clients, an amount of money that policy-makers would see as nominal may be significant in the context of their income and expenses.

It is also unclear in which ways it would be assessed where a client is or is not “able to” contribute. A client who is earning what appears to be a reasonable salary may functionally not be able to contribute any fee at all. She may be, for instance, a single mother of a large number of children paying down several significant debts, or experiencing family violence and/or economic abuse and thus unable to access her own money. The setting up of any financial counselling funding system that involves fee for service will inevitably see vulnerable clients fall through the cracks.

Being free and independent is a key way of delineating our services from the private sector. It is hard enough to convince people that the lines they are being fed by Debt Management Firms are too good to be true in the current environment, where we can tell them they have nothing to lose by trying a free financial counsellor first. Adding another barrier to service in the form of a fee would make this even more difficult.

Administering a fee charging regime would also add costs to the system. An assessment of whether a client has to pay would have to be performed, and then a mechanism introduced to collect and reconcile the funds. Some form of audit would have to be performed to determine whether this was being performed in accordance with agreed criteria. Given the limited means of most financial counselling clients, it is unlikely that this system would even pay for itself, while adding an unnecessary layer of administration to service provision.

For the NDH in particular, charging a fee to callers would be completely impractical. We will give information and limited advice to any caller because it would take longer to assess their ability to pay than to answer their question. For callers requiring more intensive assistance, whether it be a limited task assistance like a one off phone call or letter, or ongoing casework, we already apply intake criteria which includes among other things, whether the client could afford to access alternative assistance.

Financial counselling is a service worth investing in and should remain free of charge to ensure maximum access to those most in need.

Finally we note that *ASIC Corporations (Financial Counselling Agencies) Instrument 2017/792* provides licensing relief for financial counselling agencies provided:

no fees or charges (however described) are payable by or on behalf of the client in relation to the financial service or any other aspect of the financial counselling service¹

While this in theory could be amended, it would then create a new challenge in terms of either having to delineate financial counselling from other financial service providers in a different manner or requiring financial counsellors to be licensed by ASIC.

10. In the case of natural disasters - eg flood, fire, cyclones - should part of government support be to ensure that financial counselling help is available as a matter of course to those adversely affected once critical emergency relief is provided? If so, would this support be prioritised or targeted in any way?

Yes. It is important that people adversely affected by natural disasters are able to access free financial counselling support, and that this is in addition to core financial counselling funding. Natural disasters arise irregularly and when they do, additional funding should be provided to assist affected people rather than financial counselling support being drawn temporarily away from other areas.

It is important that a common definition for natural disasters be established by Government. At present, natural disasters are often defined by insurers or the Insurance Council of Australia (ICA), often in such a way that benefits industry rather than vulnerable people impacted by disaster. Such a common definition is important both for deciding when additional specific financial counselling resourcing is provided, and for ensuring insurers reliably provide payouts to people impacted by natural disasters.

In general, means testing for support to victims of natural disasters is not appropriate. However, there should be exceptions to this, for instance, where someone has significant assets that are unaffected by the disaster.

Coordination

11. If all forms of financial counselling services were better coordinated across jurisdictions how might this impact/benefit: service quality; consistency of service provision; staff retention; and long-term planning?

Financial Rights supports a better coordinated approach to funding financial counselling.

¹ Part 2 Section 5(2)(b)

As noted in the very first point above, stable funding would provide significant improvements to all services by improving their ability to plan ahead; recruit and retain staff; and invest in infrastructure and continuous improvement. It would enable services to focus on quality, efficiency & innovation rather than survival.

The recent tender process for the NDH provides a good example of the result of a lack of coordination, in this case between state and federal governments.

Three services which were previously funded to provide the NDH service in their respective states were unsuccessful in their tender. Two of those services actually receive three quarters of the funding for the NDH from their respective state governments (one of those being Financial Rights in NSW). Both of these services existed prior to the creation of the NDH and offered similar services funded by their respective state governments under a different name. Both services moved to using the common name and number for the NDH to improve access for clients across the country by facilitating the promotion of one name and number by referrers across the country, and the inclusion of the service phone number on legally imposed default notices.

The decision of the Commonwealth Government to award the NDH funding to new service providers meant that new providers would take the name and number for the service, along with all its calls, but only receive a quarter of the funding of the existing services. Given the enormous and rising levels of demand for the NDH this decision will result in very poor outcomes for clients. As noted above, NDH in NSW was only able to answer two thirds of current call levels with four times the resources of the new provider.

Since the initial decision was made, funding has been restored to the original services for a 12 month transitional period, with an understanding that calls will be split between the two providers via a methodology still to be determined in Victoria. In NSW this will be a 3/1 random split applied by Telstra. At the end of the 12 months transition, funding to the current providers from the Commonwealth Government will cease. In one state that service will continue to provide the NDH with state funds and the call splitting will remain permanently. What will happen in NSW is unclear as the current funding agreement with the State Government ends in September this year and decisions about potential renewal will only be made after the upcoming state election.

If the NDH at Financial Rights is not refunded by the NSW State Government there will be a dramatic drop in services in NSW. If it is funded, there will be a sharing arrangement in NSW also and 10 different providers of the NDH across the country (currently there are 11 due to the transitional arrangements).

In NSW we are engaged in negotiations with the new provider to make sure that clients are inconvenienced as little as possible by the new arrangements. This includes introducing processes for identifying clients that are already being assisted by the alternative service and referring them back to that service. It also means having to give existing clients alternative phone numbers to the main NDH line so that they can ring back the service they are dealing with rather than end up at the alternative service via the random 3/1 split.

Financial Rights also receives funding to provide legal advice and assistance to all NSW residents on credit, debt, banking and insurance. The new service does not. Many years ago we

made the decision to stop advertising any alternative number for legal advice and just using the NDH number. Callers do not know whether they need a financial counsellor or a lawyer, they just want help. Now we have been compelled to obtain a new 1800 number for legal advice purposes to provide to key referrers such as AFCA , Law Access NSW, and the new NDH provider, so that callers who end up at that service have a path to legal advice when necessary.

All of these arrangements are adding unnecessary complexity and inefficiency.

a. What form would such coordination take?

Coordination should take the form of a national agreement which provides an appropriate level of Commonwealth funding per State and Territory, contributions by the States and Territories, and a mechanism for collecting and distributing an industry levy to fund community financial counselling and consumer legal services with appropriate departmental/secretariat support. Ideally there would also be coordination with the appropriate elements of Attorney General's to ensure appropriate coordination with the National Partnership Agreement in relation to Legal Assistance Services, which funds community legal centres and legal aid among other services. We refer to the recent submission to the Royal Commission by Financial Counselling Australia and the National Association of Community Legal Centres for more detail in relation to this proposal.²

b. What elements of financial counselling services are best coordinated at a national level and what requires sub-national levels (regional approaches)?

Clearly there are state and regional differences in relation to need and to context. State laws, programs and subsidies differ across the country. Client needs also vary as a result of both demographics and geography. State and Commonwealth governments may also have different priorities. While State by State distribution levels should be determined at the Commonwealth level, there should be capacity for some degree of state or territory based planning to address local needs and idiosyncrasies.

c. What is the role of government in better coordination?

Commonwealth and state governments need to play a key role in better coordination. There needs to be one body with a good overarching view of financial counselling resources across the country as a total and with respect to their geographical distribution. The most efficient way to apply a levy is also via the Commonwealth government. However, as far as possible

² Submission to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry: A proposal for the industry levy to fund community financial counselling and consumer legal services Joint Submission from the National Association of Community Legal Centres & Financial Counselling Australia 26 October 2018
http://www.naclc.org.au/resources/20181026%20NACLCLC%20and%20FCA%20Banking%20RC%20Submission_2.pdf

there should be the capacity for some State level planning and differentiation to meet local variations in law, administrative processes, local market issues, demographics and geography. The National Debt Helpline should be as consistent and accessible as possible across the entire country.

d. Are there any potential disadvantages to a coordinated approach?

A coordinated approach does not need to mean a bureaucratic, one size fits all approach. Provided there is room for flexibility and innovation, including the capacity to respond to emerging local needs, coordination should only improve the system.

Data

12. What data does your organisation (if you are either a financial counselling service provider or organisational user of financial services) collect about financial counselling?

Data is collected as required to meet both the needs of the organisation and to report to funders as mandated in funding agreements.

Financial Rights is particularly concerned with the privacy and security of any data collected. This arises from a number of factors. Firstly, many of our callers receive both financial counselling advice and legal advice. Consequently we must meet our ethical duties of confidentiality as both lawyers and financial counsellors. Secondly, due to the extremely sensitive and intimate nature of the work, Financial Rights clients are often upset when they talk to our counsellors and are particularly vulnerable. In some cases callers do not want to share their personal information, either because they are upset, embarrassed or fearful of privacy breaches and/or fraud.

Financial Rights has subsequently developed the following data collection framework:

For Clients receiving information/referral only:

- Postcode
- State
- Gender
- Problem type
- Referral to

For all clients who receive advice or ongoing support we collect the following demographic information:

- Name
- Any Alias

- First and Last Name
- Year of Birth
- Mobile/contact details
- Gender
- Suburb
- Postcode
- State;
- Indigenous status

Where possible for these clients, we additionally collect;

- Main Language spoken
- Employment status
- Centrelink status
- Income level
- Income source
- Relationship status
- Number of dependent children/other dependents
- Family type (It is particularly important to capture sole parents of either gender)

For all services in relation to advice or ongoing support we record Information in regard to the issue;

- Problem type and description (both presenting issues such as the receipt of court documents and the nature of any dispute, such as responsible lending, or unreasonable fees);
- Other Parties (this enables us to track financial service providers by type and company for example to identify systemic issues within an industry sector or particular institution);
- Financial product types (allows us to identify particular product lines which lead to problems such as credit card debt, consumer credit insurance or consumer leases).
- Case Notes;
- Service Type;
- Funding Category;
- Referral from;
- Referral to;
- Reason for referral;

- Additional/related parties (to allow us to record the external financial counsellor assisting or the support person);
- Conflict check – potential/no conflict;
- Limitation period (to ensure people do not miss any legal time limits for lodging disputes or claims).

In certain cases where applicable we also collect:

- Interpreter required?
- Court or Tribunal
- Other issues (gambling, mental illness etc.) – record when it comes up or can be clearly inferred from the circumstances
- Main reason for hardship
- Financial Disadvantage Indicator
- Family violence indicator- (if it comes up during the conversation we record it.)
- Risk of homelessness – (If it is discussed or it can be inferred from the circumstances.)
- Disability status – (we ask callers about whether they have a disability and if so the type of disability.)
- Tenure type (private tenant, public tenant, owner, mortgagor, boarder, in custody etc)

The NSW State Government collects some information about financial counselling outcomes from our service too. These include:

1. Specifics of service outcome
 - Repayment plan or variation, garnishee reduced or removed
 - Extension of time to pay (or extension to sell home/asset)
 - Debt/Contract release - compassionate grounds
 - Debt Contract release - dispute settlement
 - Arrears capitalised
 - Interest reduced/removed
 - Credit report listing amended/removed
 - Money refunded
2. Specifics of impact on client
 - Retained home/other asset
 - Retained/obtained other housing (rental/emergency housing)
 - Improved financial literacy
 - Bankruptcy entered (voluntarily)

- Bankruptcy avoided
- Access to community services
- Improved personal welfare - health
- Improved personal welfare – economic state.

We answer these questions through a combination of our database records of the service outcome (objective) and our client surveys (client's self assessment). For example, our closed file survey includes questions about not only whether the presenting problem was resolved but also whether the client experienced any of the following as a result:

- Improved health
- Improved family relationships
- Improved ability to understand and deal with money and financial matters
- Improved connections to other community services
- Retained my home
- Retained my vehicle

We are working on our ability to capture the objective outcomes, including putting monetary figures on relevant categories (recognising however that removing a small pay day lending debt, or a monthly junk insurance payment, can be important for one person on a low income as getting a multi-hundred thousand dollar debt reduction for another).

Finally we capture data regarding client feedback to improve the service. At Financial Rights we have two main methods of eliciting client feedback: an advice survey for callers and a consumer feedback survey for casework clients. The latter are sent to all casework clients when their files are closed. The advice survey is accessible on our website or via a link which can be sent to clients by SMS or e-mail at the end of a call. We also encourage people to get back to us if they have used our advice to let us know whether they were able to resolve their problem. These surveys provide good indicators of whether our advice is useful, and of the impact of our casework. At the moment our biggest challenge is to get more people to complete them.

13. Could nationally consistent data collection and analysis be improved through a coordinated approach?

Nationally consistent data collection and analysis could be improved through a coordinated approach, although this would not be without its challenges. Not only do the state and commonwealth governments currently ask for different information about the services we provide and the clients we assist, but many financial counselling services are embedded with wider agencies which have their own data collection needs and other funders to satisfy.

At Financial Rights we currently use the National Association of Community Legal Centres database, CLASS. We are required to use this database for certain accountability purposes related to our legal centre's funding. We are encouraged to use it for all client purposes

because it facilitates pooled de-identified data to be extracted for the sector for research and accountability purposes. There are also financial incentives to use because to purchase and adapt another database would be quite costly. Unfortunately the system leaves a lot to be desired in terms of fitness for purpose, and we can only “influence” rather than insist upon changes.

It is important to ensure data collection and reporting does not become a burdensome and costly exercise for providers.

Any data collection standards developed, needs to be with input from providers and an understanding of the nature of the service. In many cases callers are understandably reluctant to provide personal information without a clear nexus to the issues being discussed.

14. Would an enhanced evidence base (including data) enable, for example: improved service delivery; quicker identification of emerging market problems; and/or clearer measures of demand?

It would help to identify systemic issues quicker for government regulators however none of the data items collected by DSS or State funders would have assisted in identifying a single issue highlighted by the Royal Commission.

Both sets of funders assume that all hardship is driven by personal deficits (such as lack of financial literacy, cognitive disability, illness/mental illness), or external forces such as unemployment, accident or family breakdown. While these factors are clearly important, there is no recognition of the powerful role of market developments, behavioural economics, regulatory arbitrage and trader misconduct.

While funders do not recognise these forces, and fail to collect data about key trends in relation to products and trader conduct, valuable sources of intelligence will continue to be overlooked.

A more comprehensive evidence base could also provide a better picture of fluctuating demand, unmet demand and areas or demographic groups where demands are not being met, but the data collected would have to be designed to fulfil this purpose.

Improved data collection and systemic issue identification could also help to identify what produces successful outcomes and what could be improved, but only by applying well designed evaluation techniques. This is not achieved by applying a one size fits all approach to a range of service types.

15. What can governments contribute to financial counselling services through a data analytic capability?

Governments need to recognise the challenges of data collection within a live service provision environment. They also need to respect the ethical responsibilities of financial counselling professionals in relation to confidentiality and appreciate the crucial element of trust required to support good client/financial counsellor relationships.

At Financial Rights we have not agreed to provide a Statistical Linkage Key (SLK) to DSS based on our client's real name and date of birth. We have done this for many reasons:

- Financial Rights does not believe passing this information to the government is consistent with our strict ethical duty of confidentiality as both lawyers and financial counsellors;
- We believe that if there is a security breach and people's details are obtained by malevolent parties – as is occurring more regularly - the information will be easily reverse engineered and people's personal details will be re-identified and exploited. This is a threat that has been deemed highly likely by Treasury even with respect to the consumer data right. As a general rule we do not even collect clients real dates of birth in our internal database unless we absolutely need it to provide a service because it is such a crucial piece of information that can be used for setting up false identities;
- As a high volume telephone advice service, we already face a considerable challenge establishing rapport with clients and building sufficient trust to get instructions, without sabotaging that exercise by trying to explain about an SLK based on their name and date of birth being passed to government;
- The DSS itself recognises the need for informed consent before collecting and passing on a client's personal details, even as an SLK. We do not think it is practical for us to elicit that consent in the course of a phone call, and it would add dramatically to call times when we are already struggling to meet demand;
- We are yet to be convinced of the usefulness of providing an SLK to improving client outcomes. We think there are a lot of other way of gathering useful data and evaluating programs that will produce richer and more useful information than tracking clients across Commonwealth government services.

Potentially the Government could enable a national data set focused on the issues that cause financial hardship, with a focus on the drivers rather than the people. Data Analytics could potentially identify problem services and providers. This would help to identify the ongoing systemic issues and emerging issues.

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 Financial Rights on (02) 9212 4216.

Kind Regards,

A handwritten signature in blue ink, appearing to be 'Karen Cox', with a stylized flourish at the end.

Karen Cox
Coordinator

Financial Rights Legal Centre
Direct: (02) 8204 1340
E-mail: Karen.Cox@financialrights.org.au