

# Attachment 1 to CP 282: Draft instrument



**ASIC**

Australian Securities & Investments Commission

---

---

## **ASIC Corporations (Financial Counselling Agencies) Instrument 2017/XX**

---

I, <insert name>, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 2017

[DRAFT ONLY—NOT FOR SIGNATURE]

<insert name>

---

## Contents

<b>Part 1—Preliminary</b>	<b>3</b>
1 Name of legislative instrument.....	3
2 Commencement .....	3
3 Authority.....	3
4 Definitions .....	3
<b>Part 2—Exemption</b>	<b>5</b>
5 Licensing relief for financial counselling agencies .....	5

## Part 1—Preliminary

### 1 Name of legislative instrument

This is the *ASIC Corporations (Financial Counselling Agencies) Instrument 2017/XX*.

### 2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislation.

Note: The register may be accessed at [www.legislation.gov.au](http://www.legislation.gov.au).

### 3 Authority

This instrument is made under paragraph 926A(2)(a) of the *Corporations Act 2001*.

### 4 Definitions

In this instrument:

*Act* means the *Corporations Act 2001*.

*client* means a person who receives a financial service from a financial counselling agency.

*financial counselling agency* means a person that provides a financial counselling service.

*financial counselling association* means each of the following:

- (a) Financial Counselling Australia Ltd;
- (b) Financial and Consumer Rights Council Inc;
- (c) Financial Counsellors Association of New South Wales Inc;
- (d) Financial Counsellors Association of Western Australia Inc;
- (e) Financial Counsellors Association of Queensland Inc.;
- (f) Money Workers Association of the Northern Territory Incorporated;
- (g) The South Australian Financial Counsellors' Association Incorporated;
- (h) Financial Counselling Tasmania Inc.;
- (i) Financial Counsellors ACT.

***financial counselling service*** means a counselling and advocacy service provided predominantly for the purposes of assisting individuals who are in financial difficulty.

## Part 2—Exemption

### 5 Licensing relief for financial counselling agencies

#### *Exemption*

- (1) A financial counselling agency does not have to comply with subsection 911A(1) of the Act for the provision of the following financial services:
  - (a) financial product advice in relation to any of the following:
    - (i) a deposit product;
    - (ii) a facility for making non-cash payments within the meaning of subsection 763D(1) of the Act;
    - (iii) an insurance product;
    - (iv) an RSA product;
    - (v) a superannuation product;
  - (b) financial product advice to the effect that the client should or may dispose of any of the following:
    - (i) a security;
    - (ii) a financial product referred to in paragraph 764A(1)(b) or (ba) of the Act;
    - (iii) a debenture, stock or bond issued by a government.

Note: *ASIC Corporations (Effect of Licensing Exemptions) Instrument 2015/1115* exempts a person who provides a financial service on behalf of a financial counselling agency from the requirement to hold an Australian financial services licence if the agency would be exempt under this instrument had the agency provided that service.

#### *Where the exemption applies*

- (2) The exemption in subsection (1) applies where all of the following are satisfied:
  - (a) the financial service is provided as part of a financial counselling service;
  - (b) 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 service, other than any fees or charges payable on behalf of the client by the Commonwealth, a State or a Territory;

- (c) no remuneration (whether by way of commission or otherwise) is payable to, or for the benefit of, the financial counselling agency, its representatives or associates by any person in relation to any action by or on behalf of the client arising from either the financial service or any other aspect of the financial counselling service;
- (e) the financial counselling agency takes all reasonable steps to ensure that each person who provides the financial services on its behalf:
  - (i) is a member of, or is eligible to be a member of, a financial counselling association; and
  - (ii) has undertaken appropriate training to ensure that they have adequate skills and knowledge to satisfactorily provide the financial services and any other aspect of the financial counselling service;
- (d) the financial counselling agency:
  - (i) does not carry on or otherwise participate in a financial services business which involves the provision of a financial service, other than a financial service (***exempt financial service***):
    - (A) referred to in subsection (1); and
    - (B) in relation to which paragraphs (a) to (d) are satisfied; and
  - (ii) takes all reasonable steps to ensure that none of its representatives provide or participate in the provision of a financial service, other than an exempt financial service.