



**FINANCIAL COUNSELLORS' ASSOCIATION  
OF WESTERN AUSTRALIA**

Response to ASIC Consultation Paper 282

Remaking ASIC class orders on Financial Counselling Licensing Relief

Financial Counsellors Association of WA (FCAWA) the  
Peak body for Financial Counsellors of Western Australia

## Overall Comments

**Please note that we support the comments made by Financial Counselling Australia (FCA) and support their submission in its entirety.**

We agree with ASIC that CO 03/1063 “is operating effectively and efficiently, and continues to form a necessary and useful part of the legislative framework.”

### “Eligibility” for Membership

Both the current and proposed class order require a financial counselling agency to take:

all reasonable steps to ensure that each person who provides the financial services on its behalf is a member of, or eligible to be a member of, a financial counselling association.<sup>1</sup>

This part of the exemption has caused considerable debate in the financial counselling sector. The issue is whether the requirement should be for mandatory membership of a financial counselling association, rather than simply eligibility.

**FCAWA’s view is that of FCA and that the current wording should remain.**

### Rural Financial Counselling Agencies

Comment made by Ian Macdonald- solicitor for FCAWA makes the following comments in regard to Rural Financial Counselling Services.

*The exemption for rural financial counselling services relates to the National Consumer Credit Protection Act. It exempts RFCS providers from the requirement to hold an Australian Credit Licence. Consumer credit is a small part of the work of rural financial counsellors. Their daily diet is farmers in dispute with banks over business lending for farming purposes, and other financial difficulties arising in the business of farming.*

*I suppose those planning the legislative instruments assume that the general ASIC Corporations (Financial Counselling Agencies) Instrument covers rural financial counsellors as well as town financial counsellors in exempting them from the requirement to hold an Australian Financial Services Licence.*

*However, the latter instrument defines a financial counselling service as a service provided predominantly for the purpose of assisting individuals who are in financial difficulty. The word **individual** is not defined in the Corporations Act, however it is defined in the Act Interpretation Act 1901 (Commonwealth) to mean a natural person. A substantial number of farms are operated as a*

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<sup>1</sup> CO 03/1063 – paragraph (f)(i), proposed new instrument currently (5)(2)(e)(i)

company, or company and trust structure. If the client is a farming enterprise constituted as a company the exemption is inapplicable.

The existing exemption order (CO 03/1063) does not have this problem. It defines a client as “another person”. The word **person** is defined in the Acts Interpretation Act to include a body corporate (section 2 C).

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