

29 June 2017

By email: Tegan.Lemm@asic.gov.au

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Australian Securities and Investments Commission
Level 7, 120 Collins Street
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Dear Tegan

Consultation paper 282: Remaking ASIC class orders on financial counselling licensing relief

The Financial and Consumer Rights Council Inc (FCRC) welcomes the opportunity to provide feedback on the Australian Securities and Investments Commission (ASIC)'s proposals for the three ASIC instruments on financial counselling licensing relief. The orders play a key legislative role in preserving free and independent financial counselling services and minimising consumer detriment. We support these policy objectives including that financial counsellors are properly trained to deliver financial counselling services to consumers. We agree with ASIC that the orders are generally operating efficiently and effectively and are mostly supportive of the proposals, however, we wish to raise some specific matters for your attention as outlined below.

About FCRC

FCRC is the peak body and professional association for Financial Counsellors in Victoria. FCRC actively supports Victoria's 250 Financial Counsellors by promoting the needs of those experiencing financial hardship. FCRC works with government, banking, utilities, debt collection and with many other sectors and organisations to achieve the best outcomes for vulnerable and disadvantaged Victorians.

Part 1 – Preliminary

4 Definitions

Financial counselling association

ASIC defines the meaning of financial counselling association by listing the agencies (a) to (i). We note that all of the state/territory associations (b) – (i) are individual and agency membership based incorporated associations, however, Financial Counselling Australia is a company limited by guarantee comprising state/territory association membership. We suggest this could be clarified by providing a separate definition for the FCA or a note which draws this distinction.

Financial counselling service

We support the position put by Financial Counselling Australia (FCA) that the word advice be added to the definition of a financial counselling service:

‘a counselling , advocacy and *advice* service provided predominantly for the purposes of assisting individuals who are in financial difficulty’

Part 2 – Exemption

5 Licensing relief for financial counselling agencies

Where the exemption applies

(2) (c)

The current clause 2 (c) supports the central principle of the legislation that financial counselling services are provided free from conflict of interest by preventing remuneration of any kind.

ASIC proposes changes to the wording of 2(c) to further clarify that the prohibition of remuneration extends to any remuneration *‘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 wither the financial service or any other aspect of the financial counseling service’. We strongly support the intent of this clause to protect the reputation of the financial counselling sector from any real or perceived conflicts of interest.

As ASIC is aware, there have been significant developments in the financial counselling sector since the licensing exemption was introduced in 2010, including greater industry partnership, significant fluctuations in government funding and structural change. Industry engagement with the associations has increased and partnerships and new business models have developed between various industries and individual financial counselling agencies.

Pleasingly, many of the industry partnerships have been driven by growth in the profile and reputation of the financial counselling sector, including its training and expertise. Individual industry sectors have increasingly wanted to engage with the associations and individual agencies. Some have been proactive, recognising the benefits of developing community partnerships. Others have been exposed to the pressures of increasing proportions of their customers struggling with payment difficulty. Some financial or utility service providers have sought engagement following regulatory or media attention, in an effort to improve their performance and limit their reputational risk.

As a result, a diverse range of partnership arrangements have developed. These include services aimed at assessing and analysing customer service intake and hardship response, and the provision of operational solutions, cultural awareness and training. We support these kinds of initiatives as they improve the experiences of consumers in payment difficulty and hopefully reduce demand on financial counselling services.

It is a common practice for industry to refer consumers to financial counselling agencies for assistance including to provide advice on such issues as capacity to pay without any financial reimbursement to these agencies. Conversely, other business models have emerged whereby a company makes a formal arrangement with a financial counselling agency to refer customers in payment difficulty to an agency for the provision of financial counselling service assistance. If these arrangements are underpinned by a commercial payment or fee, then these business models may currently be in contravention of the exemption and be more clearly so under the proposed rewording.

We recommend that in addition to the proposed wording for 2 (c), that ASIC provides clarification of its position through the provision of a practice note that assists agencies in ensuring that any industry funded initiatives are compliant with the exemption or require a license. This would in turn

provide the transparency necessary to ensure public confidence in and the reputation of a sustainable financial counselling sector.

(2) (e)

Under the current and proposed wording, a financial counselling agency is required to take all reasonable steps to ensure that each person providing financial services on its behalf

(1) *is a member of, or is eligible to be a member of, a financial counselling association*

We are concerned that the exemption, to the extent possible, should support appropriate standards of training and continuing professional development. We suggest that these standards are best maintained through membership of state/territory associations. While there are some training and supervision variations across the states and territories, the sector is working to establish equivalent approaches where possible. The national standards for membership and the national registration system provide additional certainty and verification.

FCRC has had direct experience of financial counsellors who self-assess as being 'eligible' to be a member and thus seek to avoid membership compliance requirements of the state peak association. This self-assessment is based on past qualifications and not current training/professional development requirements. As an aside FCRC coordinates the delivery of between 70-80 hours of professional development annually.

The lack of clarity around eligibility puts the association under additional pressure in handling these matters.

It is not uncommon for the law to require particular professions to comply with licensing requirements by being a member of a professional association and we point to the legal profession as an example.

The eligibility clause was written in 2010 and state peak bodies and the national peak have worked incredibly hard to lift the standards of the sector. Removing the eligibility clause would reflect the growth in professionalism of the sector. The majority of sector funding is provided by state and federal governments. In the event of severe funding cuts, agencies may well come under pressure to reduce training and professional standards where there is continued demand to maintain the service.

We are aware that ASIC propose to not change this wording and that this is supported by Financial Counselling Australia. Should ASIC determine to not change the wording then we would recommend that ASIC provide greater certainty to state peaks, financial counselling agencies and financial counsellors by clarifying its expectations in a practice note.

The practice note should outline:

- what actions may constitute agency obligations for taking *reasonable steps* to ensure the financial services it offers are provided by a member of a financial counselling association
- ASIC's evidentiary expectations of training where the person delivering financial counselling services is not a member of an association but relies on their 'eligibility' to be a member
- the role of state peaks in bringing potential breaches of this exemption to the attention of ASIC

- that ASIC is the 'gatekeeper' of the license exemption, not the state peaks
- that non membership status of a state based FC peak means that a financial counselling agency's eligibility for the license exemption with ASIC may require review in accordance with the relevant class order
- the range of actions ASIC may take in investigation and breaches of this exemption such as requiring the agency to apply for an Australian Credit License, or restrict their practice

We suggest that the ASIC practice note should be provided in a letter to agency managers.

Changes to the National Credit Regulations

We note that changes are proposed to amend Regulation 20(5) of the National Credit Regulations to mirror those dealt with in clause 2 (c) and draw your attention to our comments in this regard.

ASIC Corporations Instrument

We draw your attention to the following:

- under part 1.4 (a), Financial Counselling Australia (FCA) is listed as a financial counselling association. FCA is not a member based association, rather the national peak financial counselling body that operates under a federated structure. All financial counsellors in Australia are required to be a member of their respective state based member FC organisation
- our registered name is Financial and Consumer Rights Council Inc.

Thank you once again for the opportunity to respond to Consultation Paper 282. Should you have any queries please don't hesitate to contact me by email on pgartlan@fcrc.org.au or by phone on 03 9663 2000.

Yours sincerely

Peter Gartlan
Executive Officer