



**Submission by the
Financial Rights Legal Centre**

Department of Social Services

Financial Wellbeing and Capability Activity
Discussion Paper, January 2017

31 March 2017

About the Financial Rights Legal Centre

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

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

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

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

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

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

Monday – Friday 9.30am-4.30pm

Introduction

Thank you for the opportunity to comment on the Discussion Paper in relation to the Financial Wellbeing and Capability Activity. The Financial Rights Legal Centre (“Financial Rights”) operates the National Debt Helpline in NSW (and has operated a similar service under a different name since 2004) and our submission is informed by that experience. Financial Rights employs both solicitors and financial counsellors with a variety of sources of funding including DSS (for the latter only).

Role of the National Debt Helpline

The Discussion Paper describes the role of the National Debt Helpline (“NDH”) as “a 1800 telephone services that expands the reach of financial counselling to people who are unable to use face-to-face services.” We suggest this is only one of the roles played by the NDH and not even the major role.

The following comments relate to the NSW answer point for the NDH operated by the Financial Rights Legal Centre. We are unable to comment on how it operates in other States and Territories and appreciate there are some differences.

The NSW NDH began in the late 80’s/early 90s (Originally as the Credit Helpline and later as the Credit and Debt Hotline) as a central referral service to assist clients find their nearest financial counsellor in NSW. The service was funded by the NSW Office of Fair Trading as an adjunct to the state financial counselling program. Fair Trading remains the majority funder of the service (along with DSS who provides about 30% of funding), although the role of the service has expanded over time to include:

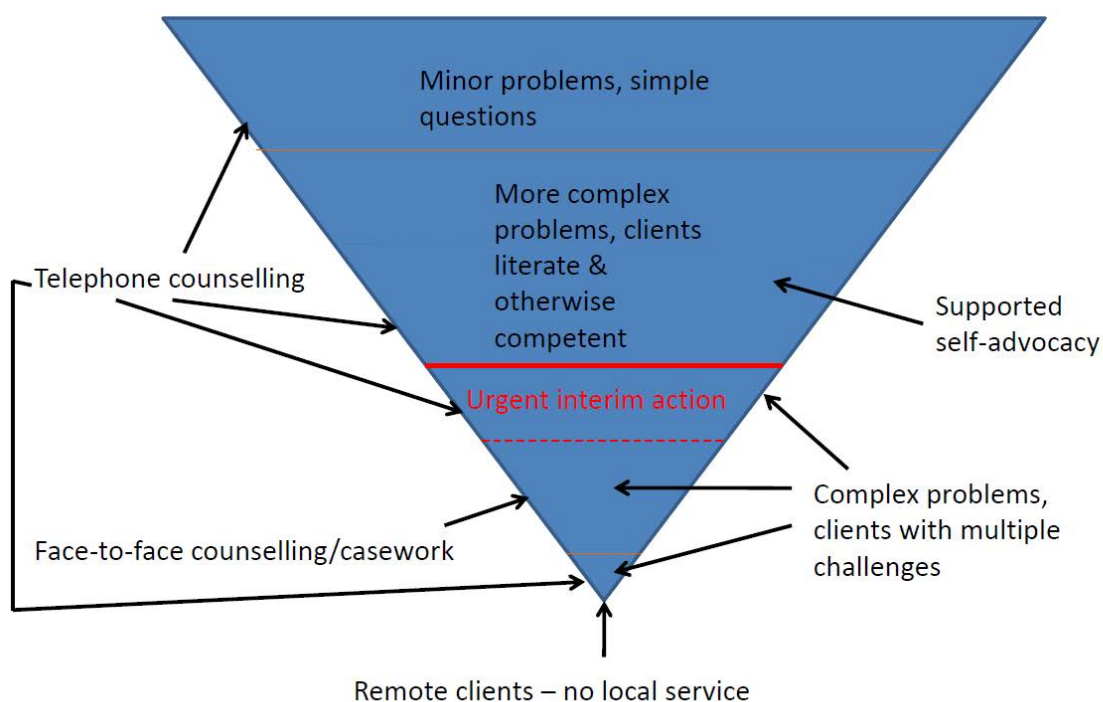
- It’s original purpose as a central referral point to ensure access to face-to-face financial counselling services in NSW; plus
- Advice for clients who are booked into a financial counsellor some weeks down the track about how to prevent enforcement action by their creditors, or further deterioration of their financial position, while they wait for the appointment with a face-to-face financial counsellor;
- Information and referral service to NSW residents who have a quick question about their financial issues and rights that can be resolved quickly without the need for further assistance;
- Advice service for callers who are experiencing problems with credit, debt and banking (most commonly being unable to pay their debts), who are literate and able to self-advocate with some guidance. These people may call the service a number of times as they work through their issues with their financial service providers and other creditors;

- Legal advice about credit, debt, banking and insurance (including for example hardship rights available under the credit law, responsible lending, disputes arising when claiming on insurance following adverse events);
- Professional support, legal advice & assistance for other financial counsellors operating in NSW;
- Training for financial counsellors, community workers and community lawyers;
- Intake to our legal assistance services
- Ongoing financial counselling assistance (for clients who are unable to realistically access a face-to-face service, or for clients are using the services of the Centre's solicitors and have associated financial counselling issues).

Financial Rights provides legal assistance services related to all of the above. These are funded separately but intake is through the NDH (and our other advice lines such as the Insurance Law Service and the Aboriginal Advice Service).

As shown in the diagram below, the telephone services plays a vital role in the efficient resolution of client problems, by allocating resources according to client needs. Telephone financial counselling (and associated legal support) can deal with all of the client issues described above the bold red line. It can also assist with urgent advice for those between the bold red line and the dotted red line, before those clients can get into to see a financial counsellor, and at the very bottom tip of the triangle for those who cannot access face-to-face financial counselling at all. The bottom tip includes not only those clients who are physically remote, but also those who may be housebound or face other barriers to accessing face-to-face services.

Efficient distribution of resources



In this way the NDH has the capacity to play a number of roles including:

- Prevention of the escalation of financial problems with early access to advice and support;
- Reducing the burden on face-to-face services by assisting appropriate clients to self-advocate;
- Facilitating access to fact-to-face financial counselling and related services in appropriate cases;
- Initial crisis support; and

- Ongoing assistance for those who cannot access face-to-face financial counselling.

The service in NSW is so busy¹ that we spend the vast majority of our time executing the first four functions described directly above, and only a relatively small amount of time and resources on the last one (being the role as described by DSS in the Discussion Paper).

Recommendation

DSS should recognize a wider potential role for the NDH than as an alternative to face-to-face financial counselling. The NDH has a significant role to play in enhancing the outcomes discussed in this Discussion Paper such as early intervention, targeted access to services and improved referral pathways.

Strategies to improve the targeting of services

1.1 *What impacts do you expect restricting eligibility criteria in the manner proposed above will have on your service?*

If the Department is considering restricting services to those “*at imminent risk of not being able to pay their debts*”, we have 3 points to make:

- **Preventative action** - The Department should be careful to avoid excluding people who could benefit from preventative assistance. While we support services prioritizing assistance to those most in need (which may in effect often result in the same outcome as the proposed test), it is important not to exclude people with a blanket rule that may have unforeseen consequences.
- **Overly bureaucratic implementation** - Even if the rule were implemented it should not add additional steps to the workload to justify the client’s suitability for the service. Requiring additional data fields, evidence of qualification for the service, etc. can take up valuable time, further limiting the resources available for service provision and undermining or defeating the purpose of the exercise. Many services already use intake criteria to guide their decision-making in relation to client services.²
- **Phone services should be exempt for basic information, advice and referral** – As noted above, the phone services can play a vital role in preventing people from making poor financial decisions which could exacerbate their situation, or assist them to

¹ In February and March 2017 we have been receiving an average of over 130 calls per day. We are able to deal with about 75% of those calls on average. It is unclear how many of the remaining callers eventually get through by re-dialling.

² At Financial Rights we have intake criteria for all ongoing assistance (as opposed to phone information and advice, including repeat advice). The intake criteria are sufficiently flexible to weigh up a number of factors including the client’s level of disadvantage, the likelihood they will get assistance elsewhere, whether there is a public interest aspect to the case, whether the service will make a significant difference to the client and whether we have adequate staff available. For financial counselling the client must either be unable to access face-to-face financial counselling, or be a current client of the legal service who could benefit from financial counselling assistance to stabilise their situation and enhance longer term outcomes.

resolve a dispute at an early stage before it escalates into a more serious problem. Further, in the context of relatively brief telephone interactions, it can take longer to assess whether a caller is eligible for the service than to simply answer their question.

1.2 What strategies can be employed to ensure that services are accessible for those who need them the most?

As identified in the first section above, Financial Rights is of the view that the National Debt Helpline can play a vital role in sifting clients to ensure that those who can be assisted with relatively light touch supported self advocacy are not referred on to face-to-face services, ensuring that those who have complex needs do find their way to more intensive assistance.

We are also supportive of services being required to develop intake criteria to ensure clients can be prioritized according to need and the likely impact of the service, however we suggest that the detail of such criteria should be developed at the service level rather than imposed in a funding agreement. In this way the service can monitor and adapt their criteria to local conditions and over time to maximise outcomes.

Strategies to increase service integration

The NDH in NSW is already very well linked in with other financial counselling services. We maintain a detailed database of financial counselling services in NSW including their opening hours, appointment practices, closures and other relevant information. We also have a find a financial counsellor function on our website (<http://financialrights.org.au/self-help-centre/financial-counsellor-search-tool/>) that we update regularly along with our internal staff database. All Office of Fair Trading funded services are required to have the NDH number on their recorded messages in case clients need urgent assistance.

Financial Rights also develops resources for financial counsellors (the Credit Law Toolkit, The Bankruptcy Toolkit, and The Mortgage Stress Handbook³) and provides regular training at financial counselling conferences and throughout the year as part of general professional development. We do this in regional areas of NSW in addition to the capital city. We also take calls from financial counsellors in relation to their client casework. We make over 8,000 referrals to face-to-face financial counsellors annually for the past few years. We also receive referrals into the service from the other financial counselling services.

We use the DSS online service directory to refer clients to ER and the NILS 1800 number for clients who may be eligible for No Interest Loans. We maintain a referral list of a range of other community based services.

Legal Assistance

The Discussion Paper is silent on integration between financial counselling services and legal services. We consider this a major oversight.

³ The Credit Law Toolkit and the Mortgage Stress Handbook were joint projects with Legal Aid NSW. The Mortgage Stress Handbook is intended for the public but is also used by financial counsellors. The other two publications were developed with financial counsellors and community lawyers as the primary audience.

The following table shows the callers to the NSW NDH in the past 3 calendar years who were facing a legal process to enforce a debt:

Legal Process	2014	2015	2016
Bankruptcy Notice	104	113	104
Creditor's Petition	67	59	63
Part IX Agreement	74	108	103
Repossession car	164	151	225
Repossession other goods	6	6	13
Statement of claim	564	379	316
Judgment debt	444	322	298
Writ for levy of property	57	66	66
Writ of possession	46	24	14
Notice to vacate (house)	120	95	37
Garnishee (wages/salary/account)	200	256	209
Examination notice/order	45	49	32

Callers to the NDH can be provided with immediate legal advice and in some cases vital legal assistance.

Case study 1 - Last minute application to the Supreme Court to prevent eviction for NDH caller

Bobby and Kalinda received a Notice to Vacate their home. The lender was a bank, and they owed about \$240,000. They have 5 kids, one of whom is autistic. Bobby worked in mining. He had good jobs with solid incomes but when his youngest was born 9 weeks premature Kalinda had to travel to Adelaide for treatment. Bobby had to leave his job in a mine in WA and return to look after the remaining 4 children. They never really recovered financially.

Bobby returned to working in mining, but was always playing catch up with the home loan and a shortfall on a car that was repossessed. A statement of claim was eventually issued and judgment entered by the Court. He found employment in a local Broken Hill mine, and entered into a repayment arrangement but was made redundant a year later. They were already on a repayment arrangement, so when the redundancy ran out and they stopped paying the bank issued a Notice to Vacate (“**NTV**”) meaning eviction was imminent. Bobby called the NDH.

At about the same time Bobby was offered another well paying job in a Queensland mine and he flew out to commence work 1 week after the NTV was issued. His wife Kalinda, who never really recovered from the birth of her youngest, suffered depression, anxiety and fibromyalgia. Ideally they wanted to stay in the home, and our solicitor commenced negotiations. The lender refused to budge due to the last payment being many, many, months ago and the property being in negative equity. Our solicitor went to the court and applied for an urgent temporary stay on the eviction. This bought some time. There was no prospect of a sale. Kalinda frantically tried to find alternative accommodation, and shortly before the hearing of the NTV stay application, she found suitable

rental accommodation. A stay by consent was negotiated to allow for Bobby to return on his week off to assist with the move to the new premises.

Case study 2 – Caller to NDH facing imminent bankruptcy and loss of home

Mary and Joe first proposed a Part IX Debt Agreement with the help of a Debt Management Firm (“DMF”) because they had a lot of unsecured credit card debt and a house with a mortgage they wanted to try to keep.

Mary’s Debt Agreement proposal only had one debt to a debt collector for about \$14,000. The debt collector rejected Mary’s Debt Agreement proposal and issued a Creditor’s Petition based on the Debt Agreement proposal as the act of bankruptcy.

Joe had heart problems– his credit cards were taken out when he was in hardship after an earlier heart attack, and then last year he was hospitalised twice more. Both were on a part-pension. Joe was also self-employed as a driving instructor but his health was interfering with ability to work very often.

Joe’s Debt Agreement was accepted for four debts totalling \$32,200. Mary and Joe paid \$5000 all up to the DMF who set up the proposals (\$2,500 each).

Joe and Mary were struggling to meet Joe’s Debt Agreement payments, behind on their mortgage and facing the bankruptcy proceedings against Mary. The house they were struggling to hold on to was clearly at risk on several fronts. If made bankrupt, the house would have vested in the trustee and tens of thousands of dollars would have been added to their debts in trustee’s fees.

They contacted the NDH.

A Financial Rights solicitor raised a possible defence to Mary’s debt with both the debt collector and the original bank behind the initial credit card account. She also lodged in the CIO against the Debt Collector. Mary had received a number of credit limit increases while receiving only a part pension. The solicitor negotiated to have the Creditor’s Petition discontinued by consent. The bank bought the debt back from the debt collector and agreed to a 50% reduction in the debt with an affordable repayment arrangement and no further interest or fees.

One of our financial counsellors negotiated a hardship variation with the mortgage provider, including a reversal of the default fees and additional penalty interest they had incurred while in hardship. Joe stopped paying his Debt Agreement and the couple got back on track with the mortgage.

After 6 months of non-payment Joe's Debt Agreement was terminated for a 6 month payment default. His debts were also credit card debts granted in questionable circumstances and all were waived or collection ceased following advocacy setting out his circumstances by our financial counsellor.

Our solicitor also raised a dispute with the DMF complaining about a number of issues (the debts could have been challenged and/or dealt with under hardship provisions, Mary only had one debt, the fees only added to their financial stress, the arrangements were not sustainable, and they were not warned about consequences including bankruptcy proceedings) resulting in the reversal of the set up fees for the Debt Agreement.

In addition to the above, Financial Rights runs many disputes in the external dispute resolutions schemes (the Financial Ombudsman Service and the Credit and Investments Ombudsman Service), advises clients about those processes and resources financial counsellors in other services to run such disputes for their own clients. Those disputes may include: responsible lending, hardship under the law, non-compliance with other aspects of the credit law (including for pay day loans and consumer leases), relationship debt issues, financial abuse cases involving co-borrowers and guarantors (including both family violence cases and elder abuse among other things), to name a few.

Case study 3 – Referral from a financial counsellor, mortgage fraud

Mrs N emigrated from a non-English speaking country to Australia with her husband and three children in 1968. She and her husband bought a property in inner city Sydney in 1976 for \$20,000. She was widowed in the 90's and has been in receipt of the Aged pension. Despite being in Australia for forty years, her English is limited and she relies on her children to translate for her and to help her with her communicating. She owned her now quite valuable home unencumbered.

One of her daughters (Ms L) moved back to live with Mrs N after she separated from her husband. Ms L started to have mental health problems, leading to her being admitted for observation and receiving out patient help. Ms L was lured into an online international love scam, and she started borrowing money from relatives and sending it overseas to Nigeria. Ms L took Mrs N to a bank branch, and tried to convince Mrs N to take out a loan against the house. Mrs N did not want to take out a loan and after this incident she visited the bank alone and told them that anything she had signed to that effect should be cancelled.

Six months later Mrs N received a letter from the bank and discovered there was a \$200,000 reverse mortgage secured over the home. After seeking help unsuccessfully from a number of sources, Mrs N went to a financial counsellor who contacted Financial Rights.

Financial Rights took the matter on and argued that the mortgage was a fraud. We maintained that none of the documents produced by the bank in support of the mortgage were actually signed by our client (the one document she did remember signing was never produced and may well have

been destroyed as requested). The matter was in the Financial Ombudsman Service for 12 months, and was about to be referred to a handwriting expert. At that stage the bank agreed to release Mrs N from the liability and release the security.

Case study 3 – Referral from a financial counsellor, credit repair bill

Jack's applications for credit cards and a telephone contract had been declined. He got a copy of his credit report to find out why. He realised that a Telco company made a default listing years before. The listing was updated as "PAID". Jack searched the internet and found a Credit Repair company. After a very lengthy phone conversation, he agreed to its services. It was only after Jack did some research, including speaking to a financial counsellor, that he realised default listings cannot be automatically removed. He also found out that they will stay on the credit report for 5 years.

Jack told the company that he wanted to cancel the contract, but the company refused. He made two weekly payments, before he stopped paying. He was a university student on Centrelink benefits. Eventually, Credit Repair engaged lawyers who demanded immediate payment of approximately \$4,500.

Jack's financial counsellor referred him to Financial Rights. To prevent costs from accumulating, and prevent legal action, our solicitor lodged in Credit & Investments Ombudsman. After an exchange of letters and negotiations Credit Repair eventually agreed to release OC from all liability.

Financial Counselling and legal assistance are closely related, with many financial counsellors performing essential para-legal tasks and/or referring to or working with legal assistance services to properly assist their clients.

The services which operate the NDH in NSW, Victoria and the ACT also offer legal assistance services. In NSW we are fully integrated with the lawyers providing legal advice to a significant number of NDH callers every day, and also answering the phone line in first instance on an overflow basis to help manage call volumes. In all three aforementioned services, clients are regularly referred to the legal practice for ongoing representation. The solicitors also enlist the assistance of financial counsellors to provide a range of services for their legal service clients including for example: analyzing the client's financial position to determine whether a loan is affordable in the longer term, negotiating with other creditors when the solicitor is dealing with a dispute over one loan to ensure that the clients overall financial position stabilizes, looking for and assisting the client to claim on available insurance (consumer credit insurance, total and permanent disability insurance, income protection insurance), or assisting the client to access their superannuation in appropriate circumstances.

Requirement to establish formal relationships and referral pathways with other FWC providers

Financial Rights cautions against requiring formal relationships to be formed, although we are very supportive of informal relationships and referral pathways. In our experience formal relationships tend to get bogged down in detail and protocol out of proportion to the results in terms of client outcomes, especially if they are being formed in order to tick a box under a funding agreement rather than in response to an identified need or opportunity. We do however agree with encouraging strong networking, co-location, joint ventures and other relationships established on a “what works” case by case basis.

Another method of encouraging improved networks and referral pathways would be to specifically ask for reporting of successful examples, including specific details of client outcomes achieved.

Recommendations

DSS should acknowledge the vital role of legal assistance in providing effective financial Wellbeing and Capability services, and include legal services in the types of services to which financial counsellors should be linked in.

Where possible the NDH should be integrated with legal service provision.

DSS should not contractually require formal relationships to improve cooperation and referral pathways, but look at alternative methods of fostering these outcomes.

Strategies to support client outcomes

Financial Rights does not provide ER (although we regularly refer clients for ER, especially for energy bills). We support efforts to address the underlying issues which cause clients to present repeatedly for ER, however, we caution that sometimes the underlying issues are beyond the client’s control. For example, we have dealt with clients that have undertaken all reasonable efforts to minimize their electricity usage and still cannot keep pace with rising energy costs.

Similarly some clients present for repeated assistance because other things go wrong in their lives. For example, Mary in the case study earlier in this submission returned for further assistance from Financial Rights some time after these events because Joe had become terminally ill and she could no longer pay the mortgage. She needed assistance to negotiate a deal with her mortgage provider to allow the couple to remain in the home for the few months Joe had left to live and to then provide her with a reasonable period to sell the home and downsize for her own future needs.

Any changes to the ER process need to recognize this.

In relation to employment services, we note that many clients have long terms illnesses and disabilities , or are carers for others with the same, and are therefore simply not in a position to take up employment.

In relation to the phone services in particular, we encourage clients to re-use the service as often as necessary to either resolve their current problems or tackle new ones before they become unmanageable. In fact an evaluation of our joint mortgage hardship project with Legal Aid NSW noted preparedness to seek help earlier in the future as a positive outcome of service provision.

Recommendations

Any move to limit access to ER and other services for repeat clients should recognize both that:

- Sometime clients are affected by systemic issues which are beyond their control
- Clients can face different life events which mean they may present for assistance on multiple occasions
- In some cases clients re-presenting for assistance can be a positive outcome.

Strategies to build a strong workforce

We note the predominance of legal issues in financial counselling work and emphasise the need for training and ongoing professional development to include relevant law and legal or quasi legal processes.

Strategies to strengthen evidence, improve practice and measure outcomes

Financial Rights supports measuring outcomes and improving practice based on evidence. We strongly support a focus on client outcomes and not just client satisfaction. We are constantly looking to improve the way we record client outcomes for ongoing casework clients in concrete terms (including dollars and cents taken off debts or refunded, legal processes halted, defended or successfully pursued) and we have recently changed our client feedback forms to specifically seek information about other outcomes such as:

Question 8: Did you experience any of the following as a result of our assistance? Tick all that apply.

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

Evaluating the phone services for anything more meaningful than whether the client was happy with the service immediately following the call is a challenge. Even immediate satisfaction is often dependent on whether the caller likes the advice they are given, rather than whether it is correct. For example, a caller rarely likes being told they have exhausted all available options and they need to pack up their bags and pets before the sheriff forcibly ejects them, and yet this is the answer to their question and information they should be aware of.

We have made a number of attempts to evaluate longer term outcomes for callers; did they successfully resolve their issue with our assistance? It is a resource intensive process, with very few clients being successfully contacted for every attempt and the cause and effect of any outcome, not always easy to analyse. We note the recent report available from Consumer Action Law Centre evaluating Money Help (now the Victorian answer point for the NDH) which provided some useful insights but also faced the same challenges we have identified. This is an area we will continue to work on.

Concluding Remarks

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

Kind Regards,



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