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Department of Social Services
71 Athllon Drive
Greenway ACT 2600

Dear Madam/Sir

Financial Counselling Industry Funding Model—Discussion Paper

We write in response to the Discussion Paper, *Financial Counselling Industry Model*, published by the Department of Social Services.

We welcome the proposal to establish an industry funding model for financial counselling in Australia, that would add to existing government and other resourcing. This submission makes the following points:

- That industry funding must be additional to existing funding sources
- That the proposed principles for industry funding need to be embedded into the governance framework for funding of financial counselling;
- That the model should be based on mandatory contributions from industry—voluntary contributions will not work;
- That the funding being sought from industry needs to be increased substantially to meet the ambition of doubling the availability of financial counselling in Australia.
- That the model should resource not only direct delivery of financial counselling, but the range of support, capability and allied services required to ensure a thriving financial counselling sector;
- That the governance body should adopt a representative model akin to external dispute resolution schemes.

Principles for industry funding model

The discussion paper proposes six principles to guide the development of the key components of the industry funding model for financial counselling. Those are:

1. Industry funding helps to address unmet demand and improves the predictability and stability of funding for financial counselling services.
2. Industries that contribute to the demand for, and benefit from, financial counselling, contribute to the funding of the services.

3. Quantum and split of suggested industry contributions are determined on a fair and transparent basis.
4. Industry funding provides an additional funding stream to current funding sources.
5. The operation and effectiveness of the model is supported by robust data and evidence collection and analysis.
6. The model contributes to improved coordination, innovation and capability building and enhanced service delivery across the financial counselling sector.

We endorse these principles. In particular, we emphasise that industry funding must provide additional funding to current funding sources, including funding from states and territories. This is fundamental because, as outlined below, the proposed quantum of funding is unlikely to meet the recommendation from the Sylvan Review that “[a]dditional funding be made from industry sources, collected from the Commonwealth Government, to enable access to financial counselling services to double over the next four years”.¹

Given this, we urge that these principles be embedded in binding commitments from all parties that contribute to financial counselling. This includes the Federal, state and territory governments, and relevant departments. Without such binding commitments, there remains a risk that contributions (particularly from state and territory government) reduce over time. It is our experience that resources made available for financial counselling regularly increase and wane dependent upon government priorities and external considerations. If this process is to deliver on its commitments, it must build in governance arrangements that ensure the principles articulated—including that industry funding is additional—cannot be abandoned.

Voluntary model

We hold grave concerns about the voluntary nature of the funding model. Those concerns centre on the model failing to deliver the funds sought from industry.

As stated by the Discussion Paper, “[t]he voluntary nature of the proposed model is based on the assumption that there is a recognition of the value of financial counselling in assisting individuals in financial hardship”. There are a couple of issues with this assumption. First, while there may be a recognition of the value of financial counselling, that is a different thing from an industry commitment to pay for that value and provide funding. Second, even if that recognition does translate to a commitment in some sectors, it certainly won’t in others. Third, there are some sectors that will not even recognise that value.

We hope and consider that banks, insurers, energy retailers, and water utilities may agree to funding financial counselling. We recognise that there are some contributions already made by businesses in these sectors. We consider those contributions will be redirected to the new industry funding model. While that is not in itself problematic, it will mean that the quantum (discussed below) will need to be adjusted upwards if this scheme is to deliver “additional funding ... to enable financial counselling services to double”.

We do not consider it likely, however, that other sectors will contribute on a voluntary basis. For example, it seems highly likely that many other credit providers (including finance companies), debt collectors and debt buyers, payday lenders (termed ‘small amount credit contract providers’ in the Discussion Paper) and telecommunications providers will decline a request to provide funding. We base this assessment on our organisation’s significant engagement across these various sectors over a long period of time. Even if these sectors did contribute voluntarily, there is a risk that some providers will expect something ‘in return’ for their contribution, for example, the ability to influence financial counselling advocacy. This would be a risk that would have to be managed, and may not be a problem in a compulsory funding model.

¹ Recommendation 2B

Quantum of funding

The Discussion Paper proposes that the funding to be raised via industry contributions for the period 2023-24 to 2025-26 is \$18.1m in the first year, \$18.7m in the second year, and \$19.4m in the third year, and that 92% of these funds will be directed to frontline service delivery. The Discussion Paper does not state the existing resources for financial counselling nationally, however the Sylvan Review estimated this to be around \$45m a year.

As such, we do not understand how the proposed funding quantum will mean that “additional funding [will be raised] to enable financial counselling services to double”. We acknowledge that the Department has undertaken further modelling to assess unmet demand, and that this modelling is used to justify the quantum proposed. Our concern is that this modelling suffers from some problems in methodology. In particular, the Discussion Paper confirms that “the demand modelling does not estimate the population that may be eligible for financial counselling but have not requested the service”. There continues to be many in the community that are not aware of financial counselling, and efforts are needed to improve awareness. Assessing demand based only on those that have requested the service will necessarily under-estimate unmet demand. As such, it seems to us that the quantum being proposed is insufficient.

Furthermore, as noted above, the voluntary nature of the model will mean that it will be highly unlikely that a significant proportion of the proposed quantum will be raised. We conservatively estimate this to be in the realm of a \$5m shortfall, on the basis that only some providers (and perhaps a minority) in the sectors we consider will not contribute voluntarily do not.²

If the Federal Government wish to actually raise in the vicinity of \$18m - \$19m a year, then we consider that the targets set for the other sectors need to be increased by this \$5m. Furthermore, if the Federal Government really want to raise funds to “double the availability of financial counselling”, then we consider that the target set should be increased to around \$45m a year, the amount initially estimated by the Sylvan Review (we reiterate that a significant proportion of this won't be collected as long of the model is voluntary).

Support and capability services

The Discussion Paper notes that around \$0.5m per year of the funds collected will be made available for “innovation and capability building”. However, the Discussion Paper doesn't describe these aspects in significant detail.

We consider that, to be effective, the model must sufficiently resource support, capability and allied services to enable an effective financial counselling service. These include:

Specialist support services

These services would be delivered by specialist community legal centres, and be dedicated specifically to support other aspects of the financial counselling service delivery system with their specialist knowledge. This should include:

- training services – providing training on specialist aspects of the law and practice for financial counsellors;
- advice services – specialist legal advice services targeted at financial counsellors about their clients' disputes (sometimes called 'worker advice' or 'secondary consultations');
- practice advice – the provision of guides and good practice handbooks for financial counsellors (for example, the 'Credit Law Toolkit' or the 'Bankruptcy Toolkit', or specific toolkits (e.g., Consumer Action's

² DSS suggests 'other credit providers' would provide \$2.2m, 'debt collectors or buyers' would provide \$1.8m, 'small or medium amount credit providers' would provide \$900,000, 'buy now pay later' providers would provide \$750,000, and telecommunications companies would provide \$1.3m. This equates to \$6.95m. We assume some proportion of this group will contribute voluntarily, so we have rounded this down to \$5m.

Cigno Loans Toolkit), or various practice guides developed by Financial Counselling Australia for its 'Toolkit' website.

These specialist support services build the capacity of the service system to respond, but also facilitate appropriate referral practices, i.e., when the matter is complex, it can be transferred to the specialist centre. Specialisation areas include consumer credit and consumer law, insurance, social security, and tenancy.

Secondary consultations (worker advice) – what is it?

Research³ has found that the use of secondary consultations, where a lawyer gives advice in a timely and approachable way to non-legal professionals ('trusted intermediaries') who are likely to have contact with the most vulnerable and disadvantaged clients, then this is an effective way of reaching clients who would otherwise not gain help or advice.

Legal secondary consultations build capacity and confidence in professionals to both identify legal rights so they either support a client or, where appropriate, refer clients who would otherwise not get help because of a range of inhibitors. Legal secondary consultations enable people to identify their rights and action them where otherwise they would be overlooked.

Integrated services

Investment needs to be directed to embedding financial counselling in broader community services, so as to ensure financial counselling reaches vulnerable and hard-to-reach groups. For example, financial counselling should be located in:

- Health services, including those supporting people with addictions;
- Mental health services, including those that have in-patient services and the proposed "Mental Health and Wellbeing Services" in Victoria;
- Youth services and hubs, recognising young people may be less likely to attend a generalist welfare service;
- Migrant services, or services supporting particular non-English speaking communities;
- Family violence services, including legal services and "Orange Door" services in Victoria;
- Other community legal services, housing services etc

This type of integration and "innovation" needs specific resourcing to ensure good planning and evaluation. It's not clear that this is part of the proposed model.

Research, evaluation and policy analysis

Capability and innovation should build on the principle of continuous improvement, including in terms of its own service delivery but also in the capacity of the consumer experience to feedback into systemic change and improvement in the delivery of financial and consumer services.

Evaluation and research would ensure that the client voice is fed back into the design of services. This would include assessing client satisfaction with triage services, but also monitoring client outcomes from advice and representation services.

Investment also need to be made in efforts to:

³ Curran, L, 'Lawyer Secondary Consultations: improving access to justice and human rights: reaching clients otherwise excluded through professional support in a multi-disciplinary practice', Journal of Social Inclusion, vol 8, No 1 (20017) available at: <https://josi.journals.griffith.edu.au/index.php/inclusion/article/view/817>

- identify the need for law reform and advocating for needed reform;
- identify the need for changes to industry practice and advocating for that change;
- identify systemic issues, including systemic breaches of the law and drawing them to the attention of the regulator;
- participate in government and regulatory processes; and
- monitor the performance of dispute resolution systems and regulators, and advocating change.

This is core work for the effectiveness of financial counsellors and the service system.

Design and governance of independent body

We broadly support the proposed design of the independent body, including that it:

- be a not-for-profit company limited by guarantee that can receive and distribute contributions, and could seek Deductible Gift Recipient status;
- conduct grant or grant like processes, procure services and activities, and require reporting of activities and outcomes;
- collect and analyse data and reports; and
- engage with other funders of financial counselling on coordination and innovation of funding and services.

We do maintain concerns about approaches to the collection of data that override the privacy of clients and confidentiality of financial counselling. For example, we have previously raised concerns about the approach taken by the Department of Social Services to the collection of clients' personal information and the linking of data.⁴ In the light of recent high profile data breaches, there is heightened concern in the community in relation to these issues.

Data collection and reporting should be appropriate for the service that is being delivered and should not be a "one size fits all". For example, the approach to data for a high-volume telephone financial counselling service may well be different to the approach taken for other types of more intensive services. In either case, client confidentiality should remain paramount and there should be clear and cogent objectives underlying the collection of data.

We also have concerns about the mandated use of a database. Consumer Action has invested significantly in its own databases, after assessing that databases offered through funding agencies do not meet our needs.

In relation to governance, the Discussion Paper proposes two models—one being essentially a skills-based board, and the other a representative board. We consider that there are clear benefits associated with a representative board which also has regard to skills and experience when appointing directors

This model is based on external dispute resolution (EDR) schemes, which are established as independent boards and are generally comprised of half industry representatives and half consumer representatives and an independent chair. In the selection of board directors, a skills matrix is used to ensure that, as a whole, the board has the necessary skills and experience to govern the organisation effectively. Importantly, board directors once appointed are to act in the interests of the company (like any director) and are not there to act for the sector they represent.

Our experience is that a governance model that adopts this equal mix of consumer and industry representatives promotes collaboration, trust and good consumer outcomes. The Ramsay Review into EDR in the finance sector

⁴ See Submission to Senate Community Affairs Committee, Impact on service quality, efficiency and sustainability of recent Commonwealth community service tendering processes by the Department of Social Services: <https://www.aph.gov.au/DocumentStore.ashx?id=646a6192-cbdc-429d-95f7-63f6f5b99a23&subId=304809>

confirmed the value of this model, noting that it provides for 'administrative flexibility and responsiveness so that they can move quickly when circumstances require it'.⁵

The proposed industry funding model requires cooperation across industry and financial counselling sectors. As such, a representative board which has directors with industry and financial counselling experience, along with the appropriate skills across the board, will mean that it is set up to not only promote good governance but to aid that cross-sector collaboration which is central to the funding model's success.

Please contact info@consumeraction.org.au if you have any questions about this submission.

Yours Sincerely,



Gerard Brody | CEO, Consumer Action Law Centre



Karen Cox | CEO, Financial Rights Legal Centre

About Consumer Action Law Centre

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians.

About Financial Rights Legal Centre

Financial Rights 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

⁵ EDR Review Final Report, see <https://treasury.gov.au/publication/edr-review-final-report>, page 10.