Finance Industry Delegation
Australia

SUBMISSION IN RESPONSE

TO THE

FINANICAL COUNSELLING INDUSTRY FUNDING MODEL

DISCUSSION PAPER

Submitted by:

The Finance Industry Delegation

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INTRODUCTION

The Finance Industry Delegation was founded in 2011.

It is now one of three entities that represent non-bank (non-ADI) credit providers regulated under the National Consumer Credit Protection Act and the only one of the three to represent significant numbers of non-bank small, medium and all other (amounts) credit providers. With 157 current supporters, the Finance Industry Delegation now communicates on behalf of approximately 10 times the number of supporters of either of the other representative entities.

In the years since formation, representatives of the Delegation have presented 63 major submissions to government inquiries, met with six relevant responsible Commonwealth Ministers, appeared as witnesses before relevant Senate Committees on four occasions and participated in numerous consultation meetings, particularly involving Treasury and ASIC. The Delegation's coordinators were also substantially involved in the consultation groups leading up to the creation of the National Consumer Credit Protection Act itself from 2008 to 2013.

Despite the Delegation's submissions all being listed on relevant Treasury and Senate Committee websites, we note that neither the Delegation, nor the Financiers' Association of Australia - the two industry sector representative entities for non-bank small amount credit contract, medium amount credit contract and all other credit contract credit providers that do not have a listed public company amongst their supporters - have been ignored by the Department of Social Services (DSS) to date. We trust that this is nothing more than an unfortunate oversight and not symptomatic of the "big end of town" mentality that is continuously shown by other Commonwealth Departments and Ministerial offices.

The non-bank credit provider sector of the finance industry is dominated by small and medium enterprises, most of whom are so disillusioned with the Government inquiries that have been presented as being "legitimate", since the Commonwealth took over the entire regulation of the sector following the 2006 COAG Agreement, that they see no value in bothering to participate in representative organisations.

To claim peak representative organisation status is therefore nonsense. To attempt to introduce a funding model involving any so-called peak industry entity for this financial sub-sector will not work, because none of the representative entities associated with the sub-sector has that status amongst the relevant credit providers in general.

Despite the Delegation's history, it has never claimed peak industry body status because, for any of the three relevant representative entities to make such a claim is a misrepresentation. None of the three can deliver what the Department of Social Services outlines, in its November 2022 Discussion Paper, as a funding model determination mechanism.

DSS' intention to obtain a formal commitment concerning voluntary funding from the National Credit Providers' Association, its membership representing a tiny proportion of the total number of credit providers in the industry sub-sector and flagged in Appendix E of the Discussion Paper, is nonsense, given DSS expects all credit providers in the sub-sector to contribute. It would also invite a challenge that participating in such a commitment regime is ultra vires its incorporation constitution.

Consideration of the Delegation's sub-sector's involvement in funding financial counselling must recognise that Delegation members are already facing compulsory levies to fund ASIC, AUSTRAC and the Australian Financial Complaints Authority, to which will be added the Compensation of Last Resort levy requirement anticipated to commence in 2023. This is in an environment where the Delegation's supporters are regulated under a strictly enforced, stringent, price-control regime imposed by the National Credit Code.

If the voluntary funding model is adopted, industry sub-sector representation in the policy development and on-going management of the model would be sought, but it would have to be granted by DSS with the above in mind.

Response to questions posed in the Discussion Paper

Discussion Question 1

What are your views on the proposed principles for developing the industry funding model?

In summary:

1. Much reliance is placed on the 2019 Sylvan Review.

It must be noted that the Delegation supporters' sub-sector was never invited to participate as a source of evidence/comment, or be involved in this review - individually or collectively - or the Hayne Banking Royal Commission from which it evolved.

2. Assuming that the financial counselling sector is efficient and effective.

   The presumption that anything claimed by this sector is an objective and verifiable assessment - without any independent audit to date or any proposed independent audit of that sector's efficiency, effectiveness and management competence in the future - is untenable.

3. The proposed Financial Counselling Industry Funding Advisory Group.

   The proposed model copies the Australian Financial Complaints Authority and proposed Compensation Scheme of Last Resort model – ignoring small and medium businesses who make a major contribution to the organisation's finances and who are disproportionately impacted by the costs imposed. There is no indication of the Delegation supporters' or their industry sub-sector having any representation on this Advisory Group.

   It must be noted that the Australian Finance Industry Association, with a published support for Buy Now/Pay Later transactions and membership including a law firm commissioned by ASIC to prosecute at least one small amount credit provider, cannot be considered as offering representation for non-bank credit providers.

   Similarly, the industry subsector cannot be confident that it is appropriate to consider someone with Mr Peter Kell's impressive employment history of working for organisations often perceived as being anti-credit provider, as being appropriate to be nominated as a potential or actual "Independent Chair".

   We note that the Advisory Group's terms of reference will include providing "*evidence based advice to the Department*".

   The Delegation views this claim with extreme cynicism. Despite the Delegation commissioning more research programs into the non-bank credit provision sector than any other Australian entity since 2011, the practice of those associated with government has been to acknowledge receipt of this research in report footnotes or the equivalent, but never engage with the findings and never refer to the findings in the various reports issued.

   In contrast, comments like "our view", "we think" and the like from non-business stakeholders, and a highly selective and very limited range of "case studies" provided by financial counsellors and consumer advocates, have been taken as "gospel" and referred to as if they had substantial universal industry application. With that history in mind, the Delegation does not have any confidence in the "evidence-based" claim on page 5 of the Discussion Paper.

4. National co-ordination.

   The 3 industry sector representative entities associated with non-bank credit providers will be able to make very limited and fragmented contribution to such national co-ordination.

   However, it cannot be overlooked that the industry sub-sector has substantial experience dealing with vulnerable and other consumers that have become clients of financial counsellors, notwithstanding that <u>they represent well under 1% of the sub-sector's total borrowers</u>.

5. "*A specific quantum of industry funding*".

   Calculation of the specified amount to be contributed to this quantum by the non-bank credit providers will be very difficult in the formative years. The recent passing of the Financial Sector Reform Act, based on Delegation industry research conducted in October this year, is anticipated to force over 200 small amount credit providers out of the market and permanently reduce small amount credit borrowing opportunities by 70% in the 6 months after the relevant provisions in the Act commence mid-next year.

   That means the quantum contribution of the industry sub-sector will have to be adjusted from that proposed in the Discussion Paper, because the small amount credit sector will not be generating the previous levels of client numbers when the proposed financial counsellors' funding scheme commences and thereafter.

6. "*An independent body to collect and distribute industry contributions*".

The Delegation considers this approach to be another expensive construction. ASIC, with its industry funding scheme, has the existing structure to facilitate collection.

The "independent body's" distribution function could be achieved by continuing to use the existing DSS grants application assessment mechanism. Properly reviewed government department/authority involvement offers a greater chance of independence than a hand picked "body" that excludes substantial stakeholder sub-sector involvement.

However, these views do not preclude the establishment of an oversight panel, with all stakeholders represented. There is no need for an expensive and cumbersome company structure creating "jobs for the boys" and another opportunity for empire building analogous to the Australian Financial Complaints Authority model.

7. The assumption that industries benefit from financial counselling being available.

   This is wishful thinking. The current modus operandi and philosophically based attitudes of the "financial counselling industry", with some impressive exceptions, do not deliver this ideal at present and do not encourage achievement of this ideal in the future. Financial counselling organisations' aggression, lack of reasonable co-operation, automatic acceptance of client lies, assuming all credit providers are continuously involved in irresponsible lending and/or maladministration is, in general, the current norm.

   In addition, with few notable exceptions including Christians Against Poverty and a number of individual financial counsellors who do not work for financial counselling organisations, the financial counselling industry's partiality to commence communications with credit providers by attempting blackmail - threatening complaint lodgement with the Australian Financial Complaints Authority (AFCA) and thereby attracting an initial cost to the credit provider approaching $1,000 - is deeply resented by the industry sub-sector. From the credit providers' perspective, the financial counsellors' commitment to a code of ethics is not obvious.

8. Evidence collection and analysis.

   If those responsible for collection and analysis are selected with close links to non-credit provider stakeholders, we can have no confidence in this proposed process. The current environment of presenting evidence, by non-credit provider stakeholders, is one of unprofessional, highly selective and distorted "evidence" collection, based on a relative miniscule number of unverified "case studies".

   Evidence collection and analysis must be objective and thorough, to encourage support for any model eventually adopted.

9. "*Enhanced service delivery*" to follow.

   The only criteria offered in the Discussion Paper is the opportunity for financial counsellors to interact with a greater number of clients. This is limited to a numbers outcome, quantity not quality and not "*enhanced service delivery*".

10. Funding.

    There is no recognition in the Discussion Paper that the capacity of the small amount/medium amount/all other credit contract sub-sectors of the finance industry to fund further compliance costs, voluntary or imposed, is constrained by government price fixing - as provided for in the National Credit Code.

Discussion Question 2

What are your views on the proposed quantum for each year of the first three years of the model?

In summary:

1. As indicated above, with the commencement of most of the provisions in the Financial Sector Reform Act mid-next year, the Delegation supporters' financial sub-sector is about to be radically changed following the decimation of small amount credit contract lending.

2. The model will introduce another expense just as the proposed Compensation Scheme of Last Resort is introduced, with its anticipated substantial levies. Close consultation with responsible Minister Stephen Jones on this issue is essential for DSS going forward.

3. Page 6 of the discussion Paper lists the anticipated industry funding to be collected. There is no attempt anywhere in the Discussion Paper to detail the veracity as to how these amounts have been calculated, by verifying the information provided by financial counselling organisations with an independent audit.

   The modelling noted on page 10 of the Discussion Paper is based on a 2019 survey of what financial counsellors determined was unmet demand for their services, in an environment where those counsellors had vested interest in exaggerating or adopting arbitrary criteria for what constitutes unmet demand. It was also prior to the explosion of Buy Now/Pay Later finance opportunities, which is now creating massive consumer problems.

4. The 2021 survey of financial counsellors, on the limited description included in the Discussion Paper, does not segregate small amount loans from medium amount loans and ignores what Delegation supporters refer to as “All Other Credit Contracts” (meaning for terms in excess of 5 years and for amounts in excess of $5,000), or from all other non-bank credit providers (see also Diagram 1). The Delegation considers this lack of detail means a significant cross-subsidisation between these sub-sectors, favouring small amount credit providers, will be built into the model. This is totally inequitable.

5. Total funding.

   On page 7 of the discussion Paper it is stated that “*the funding commitment would not increase beyond the Australian Government’s contributions to generalist financial counselling, or the Sylvan Review’s recommendation of $45 million per annum, whichever is the greatest*”.

   The Delegation interprets this to mean that the financial counselling sector will receive towards double the current funding it enjoys, following the introduction of industry contributions. This is extraordinary and cannot be supported by the limited and unaudited information provided to date by the financial counsellors and included in the Discussion Paper.

6. “*Letters of commitment*”.

   The assumption that so-called peak industry bodies can all confidently bind their membership to a certain quantum is nonsense.

   This concept is a considerable issue for the non-bank credit provider sub-sector because, as previously explained, there is no credible “peak industry body” as DSS imagines exists for each sector and/or sub-sector. Not only are many industry sub-sector participants not involved as supporters of any of the industry bodies, but it must be questioned whether or not what is anticipated is beyond the constitutions of the different representative entities.

   A further concern, where the industry bodies are incorporated, such as the National Credit Providers’ Association, is the personal liability of the directors once the entity provides its letter of commitment.

7. Collection and distribution.

   No new and expensive entity is required for these functions. ASIC is capable of providing the collection function as a manageable add-on to its industry funding levy division. DSS is capable of continuing its distribution by way of a grants mechanism.

8. Evaluation of the model.

   With the voluntary nature of the proposed model comes a significant problem. The non-bank credit provision sub-sector has a universally low opinion of most financial counselling organisations and there will be a real challenge to convince that sector as a whole to positively recognise any “*value of financial counselling*”.

9. Spending of the funding from industry.

   The model is promoted as providing funds for more counselling sessions until you get to page 11 of the Discussion Paper, where the reader learns that industry will also be paying for the training of financial counsellors, with its 3% contribution to “*innovation and capability building within the sector*”.

   With this contribution it would be appropriate for the industry sector to expect to have an opportunity to participate in the design and presentation of financial counselling training courses.

The Delegation notes that there is no mention in the Discussion Paper as to the contribution from government grants that will be allocated to training, or is there an expectation that the industry sectors will pay for all training of financial counsellors?

This would be totally unjust.

Further, there is no indication that government will make any contribution to the operating costs "of the body", which will replace the current DSS involvement, impacting favourably on the DSS budget at the expense of the industry sector.

10. Derivation of the quantum.

    The Delegation warns that, unless the decimation of the small amount credit provider sector commencing mid-2023, the socio-economic disaster of the continuing and exponentially worsening online gambling situation, plus the unregulated Buy Now/Pay Later credit disaster were carefully factored into the modelling undertaken, the anticipated quantum suggested on page 10 of the Discussion Paper will be inaccurate and/or grossly understated.

Discussion Question 3

Are there any evidence-based adjustments that could be made to the suggested contributions methodology? What are they and how could they be incorporated into the methodology?

In summary:

1. Audited reviews of financial counsellors' unmet hours claims, to be incorporated on each occasion a calculation of contributions is to be made.
2. Surveys of non-bank credit providers to explore the opportunities for greater efficiency and effectiveness in the allocation of time by financial counsellors with their clients, by avoiding unnecessary financial counsellor aggression and encouraging a more objective and robust assessment of client provided information - including their level of personal responsibility - rather than automatically assuming all fault lies with the credit provider (as is currently the case). Too often financial counsellors are found to unknowingly be supporting fraudulent client claims and/or dealing with situations where consumers have provided information during the loan application process to credit providers - which is then contradicted or ignored when briefing the financial counsellor at a later date, or involves commitments entered into after the loan in question was approved - all in an attempt to absolve the client from their freely entered into contracted financial obligations.

Discussion Questions 4

(a) Should any businesses within a subsector be excluded (e.g. small business)

Yes – start up businesses which are currently facing substantial government and associated authority establishment costs, and are now discouraging new entrants to the industry sector. The provision of continuing access to responsible lending credit cannot be ignored.

Yes – small business, unless financial counsellor records indicate repeated malfeasance on the business' part.

(b) What are your views on options 1 and 2 for determining the split within subsectors for voluntary contributions?

Neither will work for the non-bank credit providers, because there is no industry sector-wide recognised "peak body" and none have the perceived or actual legitimacy to undertake the work DSS has anticipated will be associated with the determination and commitment process.

(c) What is your view on the different methods for within subsector splits, for your subsector?

The Delegation has two views. The AFCA membership levy is the more appropriate, because its criteria is more inclusive and the individual 'size of company' model has legitimacy, because it is an often employed model which companies are used to.

However, whether adopting the AFCA, ASIC or business size approach, there is an important fundamental overlooked.

None of these methodologies incorporate any recognition of the level of financial counsellor services generated by the lending activities of the entity. In other words, the responsible

credit provider, adopting careful analysis of potential borrowers, is penalised because, in numerous - but not all - financial counsellor client cases, they are paying for the irresponsible lending of other less responsible credit providers.

We emphasise - there is also the issue of the Discussion Paper combining the sub-sectors of both small and medium amount lending. These sub-sectors generate different levels of financial counsellor involvement in lending outcomes (see Table 3).

Discussion questions 5

(a) What is your view on the proposed 3 year commitment? Is this an appropriate length to ensure flexibility and stability of funding?

While 3 years may suit management of the model and the financial counsellors' planning, it will be hard to "sell" to the industry sector. As with all businesses, the non-bank credit provider operates in a business culture of annual expenditure and annual adjustments.

Three years might provide some stability for funding, but not acceptable industry sector flexibility.

(b) When would be an appropriate time to review the functioning of the model?

To recognise good business management and established business culture – annually.

(c) Are peak organisations an appropriate mechanism to obtain formal commitment…? Are there alternative methods to secure commitments in a timely manner?

As indicated above, the Delegation's industry sub-sector does not have a "peak organisation".

Further, whether peak bodies are involved or not, formal commitment must come from each company within the sector. Therefore, skip the time consuming and unauthorised middle man and go directly to each company within the sector. ASIC has all the contact details required.

Discussion Question 6

What are your views on the proposed characteristics of the independent body as set out in Table 4. Are there other characteristics that should be considered?

A new body is completely unnecessary.

The functions of quantum setting and collection can be done by ASIC, using the ASIC industry funding levy section and the DSS continuing to review financial counsellor grant applications and allocate the funds.

The other characteristic (opportunity) to be considered is a comprehensive representative forum for the industry sectors to meet with the financial counsellors, and the minutes of these meetings to be provided to DSS to assist their grant allocation task and (indirect) supervision of financial counsellors.

Note:

(a) The financial counsellors already have their own representative organisation that must remain responsible for encouraging innovative practices and good management amongst its members.

(b) Given it is in charge of the government funding to financial counsellors, DSS has a continuing responsibility to continue to collect and analyse data from the financial counselling sector.

(c) If a board is established, it must be able to hold financial counsellors to account, recognise the performance of financial counsellors according to appropriate KPIs and review whether or not financial counsellors involved as members of industry bodies, such as the Australian Financial Councillors' Association, behave in a manner that is consistent with the relevant codes of ethics.

Discussion Question 7

What board composition option do you prefer and why? Are there other options?

Given that an independent, expense creating body is not needed, no board is required.

However, if such a body is created – an elected board, with all stakeholders nominating and voting for their allocated board member position, must be adopted. The situation that is the unrepresentative AFCA board must not be repeated.

Discussion Question 7

What are your views on the proposed questions the evaluation could test?

Further questions are required, recognising the dynamic environment within which any model adopted will be working:

(a) What are the trends in financial counselling demand?

(b) How efficiently are current financial counselling organisations meeting current demand for their services?

(c) What is the current range of client outcomes?

(d) What are the current levels of unmet demand and can they be categorised to assist funding grant determinations?

(e) What are the foreseeable trends in the demand and provision of financial services and products and how will this impact on the nature of financial counselling needs in the next 12 months?

(f) If the financial counsellor performance figures quoted on page 3 of the Discussion Paper are generally applicable to the financial counselling industry, what have the financial counsellors been doing and what are the financial counsellors planning to do in the future to improve these fairly unimpressive reported outcomes?

In Conclusion

We note, on page 37 of the Discussion Paper, that the sub-sector the Finance Industry Delegation represents (in part only), referred to in the Appendix C as "*Small amount of credit contracts*", has 6,791.00 aggregated time (minutes) allocated to it. This is 6.54% of the total allocated to "*Financial services*".

We are puzzled that 6,791.00 is the same figure that is listed as a minimum threshold in Appendix D, but on that basis, nevertheless calculate the Finance Industry Delegation's subsector will be expected to contribute some $850,200 towards the anticipated $13 million to be provided by financial services in 2023-24.

The Finance Industry Delegation supporters acknowledge with appreciation the generous, informed and insightful involvement of the Delegation's Policy and Editorial Committee members and that of Haydn Cooper, from Min-It Software, a major national software management supplier to the industry sub-sector, in the preparation of this submission.

Thank you for reading this submission.

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