financial counselling australia

Submission

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Pre-Budget Submission to the Federal Government (2020-21 Budget)

24th August 2020

Budget Policy Division
The Treasury
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Financial Counselling Australia (FCA) is the peak body for financial counsellors in Australia.

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About Financial Counselling

Financial counsellors assist people experiencing financial difficulty. Working in community organisations, they provide advice to help people deal with their immediate financial situation and minimise the risk of future financial problems. Their services are free, confidential and independent.

Financial counsellors need an in depth knowledge of credit law, bankruptcy law, debt collection law and practices, industry hardship processes and government concession frameworks.

Financial counselling agencies are exempt from holding either a Credit Licence or an Australian Financial Services Licence as long as they meet certain criteria, including that the services are free and financial counsellors are adequately trained.

Financial Counselling Australia

FCA is the peak body for financial counsellors in Australia. It is a not-for-profit organisation that:

- Provides resources and support for financial counsellors;
- Advocates for a fairer marketplace;
- Works to raise the profile of financial counsellors;
- Advocates to increase access to financial counselling; and
- Works to improve hardship processes for people in financial difficulty.

FCA's member groups are the State and Territory financial counselling associations.

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1 BUDGET PRIORITIES

We recommend that:	Amount
Funding Financial Counselling	
1. The Government implements the key recommendations of the Sylvan Review[1] of financial counselling. This would entail: • formally accepting the recommendations of the Sylvan Review; • immediately starting the process to draft legislation to implement the industry funding mechanism recommended by the Sylvan Review; • provide modest funding in the budget for relevant parts of government that will oversee and implement the new model.	Minimal
Safe financial products	
1. The Government introduces the *National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill*	No cost
2. The Government regulates debt management companies	No cost

[1] The Countervailing Power: Review of the coordination and funding for financial counselling services across Australia, March 2019.

2 FUNDING FINANCIAL COUNSELLING

2.1 Recommendation

We recommend that the Government implements the recommendations of the Sylvan Review[2] of financial counselling in the 2020-21 budget. This will entail:

- formally accepting the recommendations of the Sylvan Review
- immediately starting the process to draft legislation to implement the industry funding mechanism recommended by the Sylvan Review
- providing modest funding in the budget for relevant parts of government that will oversee and implement the new model.

2.2 Background

Inadequate funding for community-based financial counselling been a problem for many years. Each of our previous pre-budget submissions have called for an increase.

The Government now has an opportunity to fix this problem by accepting the recommendations of the Sylvan Review. This was an independent review, commissioned by the Government as part of the response to the Financial Services Royal Commission, that considered the coordination and funding of financial counselling services.

What Commissioner Hayne said

The Government received the final report of the Financial Services Royal Commission in February 2019. In that report Commissioner Hayne noted the vital work of financial counsellors and the need for adequate funding.

> "The asymmetry of knowledge and power between consumers and financial services entities has been evident throughout the Commission's work. Financial products and services have grown ever more complicated, numerous, and difficult to distinguish …
>
> The legal assistance sector and financial counselling services perform very valuable work. Their services like financial services, are a necessity to the community. They add strength to customers who are otherwise disadvantaged in disputes with financial service entities …

[2] The Countervailing Power: Review of the coordination and funding for financial counselling services across Australia, March 2019.

I offer no views about the most appropriate sources, level or mix of funding. However, the desirability of predictable and stable funding for the legal assistance sector and financial counselling services is clear and how this may best be delivered is worthy of careful consideration. Such consideration should look at all options that may be available to supplement existing funding."[3]

The Government Response – An Independent Review

In response to Commissioner Hayne's comments in February 2019, the Government commissioned Louise Sylvan AM to conduct an independent review of the coordination and funding of financial counselling services. Her report was completed in a very short timeframe and handed to the Government in March 2019.

The Sylvan Review made six recommendations. Two of the critical ones were that:

- Additional funding be made available from industry sources, (collected by the Commonwealth Government), to enable access to financial counselling services in Australia to double over the next four years[4]

- The Commonwealth immediately take steps to establish (by 1 July 2020) an independent body that is responsible for the national cooperative financial counselling effort. This body is to be advised by an Advisory Council of Government, the financial counselling services sector and industry.[5]

It was not until October 2019 however, that the Government released the review and it is yet to formally accept, or reject, the recommendations. By the October 2020 budget it will have been 18 months since Commissioner Hayne called for more predictable and stable funding for the financial counselling sector, and little progress has been made to remedy the situation.

Had the Government accepted the recommendations of the Sylvan Review and followed the Review's suggested timelines, by now there would have been an Independent Body in place to provide strategic oversight of the development of financial counselling and the mechanisms in place to collect additional funding for the sector from industry.

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[3] Final Report, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Volume 1, p 490-93.
[4] Recommendation 2B of the Sylvan Review.
[5] Recommendation 3A of the Sylvan Review.

2.3 Why the need is urgent

With Australia's economy now in recession, demand for financial counselling services is expected to increase significantly. This will occur from October 2020 in particular, when government support measures such as JobKeeper and JobSeeker payments reduce. At the same time, various industry support measures, such as loan deferrals, rent moratoriums and a stay on utility disconnections will also begin to be withdrawn.

In February and March 2020, in response first to the bushfires and then to the coronavirus pandemic, the Government provided additional funding of around $26 million to existing agencies that deliver financial counselling services. It also provided funding to Financial Counselling Australia to support the sector and build its capacity to meet changing service demand (growing demand, less face-to-face counselling, better use of technologies etc).

Several innovative projects are underway to secure a pipeline of newly trained financial counsellors to meet the growing demand and to incorporate new technologies, such as live chat on the National Debt Helpline website, to make our services more accessible to those that need them. All of this additional funding ends by 30th June 2021. This means that at a time when financial counsellors will be more needed than ever, we will instead be losing staff (many of them new to the sector), paring back new technologies, and winding down services.

If, however the Government prioritises implementation of the Sylvan Review recommendations, funding from the industries that refer their clients to financial counsellors and benefit when they get back on track – banks, insurers and other financial services providers, utility and telecommunication companies - could fill this gap.

Without additional funding for our services, thousands of Australians will not get access to financial counselling. This will leave them at risk of further financial stress and harm, with detrimental flow on effects to mental health, relationships and families.

3 SAFE FINANCIAL PRODUCTS

3.1 Small Amount Credit Contracts and Consumer Lease Providers

In 2015, when the current Treasurer was then the Assistant Treasurer, he set up a review of the laws regulating payday loans and consumer leases. The Government released the review report in April 2016 and in October 2017 an exposure draft bill to give effect to the recommendations of that review.

The key components of the legislation would address the high cost debt trap posed by these forms of consumer credit. In the case of payday loans, the maximum a person could be charged would be 10% of their net income. In the case of consumer leases, again, the maximum that a person could pay would be 10% of their net income and there would be a cost cap on the price of the goods and a maximum term of 48 months (to stop exploitation). The effect of these reforms is to provide a bright line test so that borrowers cannot become over-indebted and lenders are forced to lend responsibly.

Financial counsellors continue to see the harm caused by payday loans and consumer leases and urge the Government to introduce and pass the 2017 legislation.

3.2 The Problem with For-Profit and Fee-Paying Debt Management Companies

A financial counsellor must always act in the best interests of a client, and no one else. This is why financial counselling is a free service, completely independent of industry.

This contrasts with the growing and very concerning presence in the marketplace of "for-profit debt management firms" that also target people experiencing financial stress. The ASIC report, 'Paying to get out of debt or clear your record: The promise of debt management firms'[6] describes the concerning practices of the four types of debt management firms: credit repairers, debt negotiators, Part IX Debt Agreement brokers and budgeting services. What they have in common includes high set up fees, opaque fee structures and high-pressure sales tactics. They often leave people worse off financially, sometimes seriously (depending on the business model).

The situation has become so bad that the National Australia Bank recently announced that it would no longer deal with unlicensed debt management providers, given that they can leave customers in a worse financial position.[7]

[6] *REP 465 Paying to get out of debt or clear your record: The promise of debt management firms*, ASIC, 2016, http://asic.gov.au/regulatory-resources/find-a-document/reports/rep-465-paying-to-get-out-of-debt-or-clear-your-record-the-promise-of-debt-management-firms/ (Accessed: 31st October 2016).

[7] https://news.nab.com.au/news_room_posts/nab-cracks-down-on-unlicensed-debt-management-companies/

The Australian Financial Complaints Authority, which is the independent external dispute resolution body in financial services, recently banned one paid representative, MCR Partners from lodging complaints.[8]

At a time when thousands of Australians are in financially vulnerable situations because of the coronavirus pandemic, it is dangerous for debt management companies to operate without adequate regulation. People who are desperate, for example, if facing losing their home, can too easily be drawn in by these companies and suffer significant harm.

What is needed is a licensing regime, conduct obligations, a ban on up-front fees, AFCA membership and enforcement.

[8] https://www.afca.org.au/news/media-releases/afca-bans-paid-representative-from-lodging-complaints