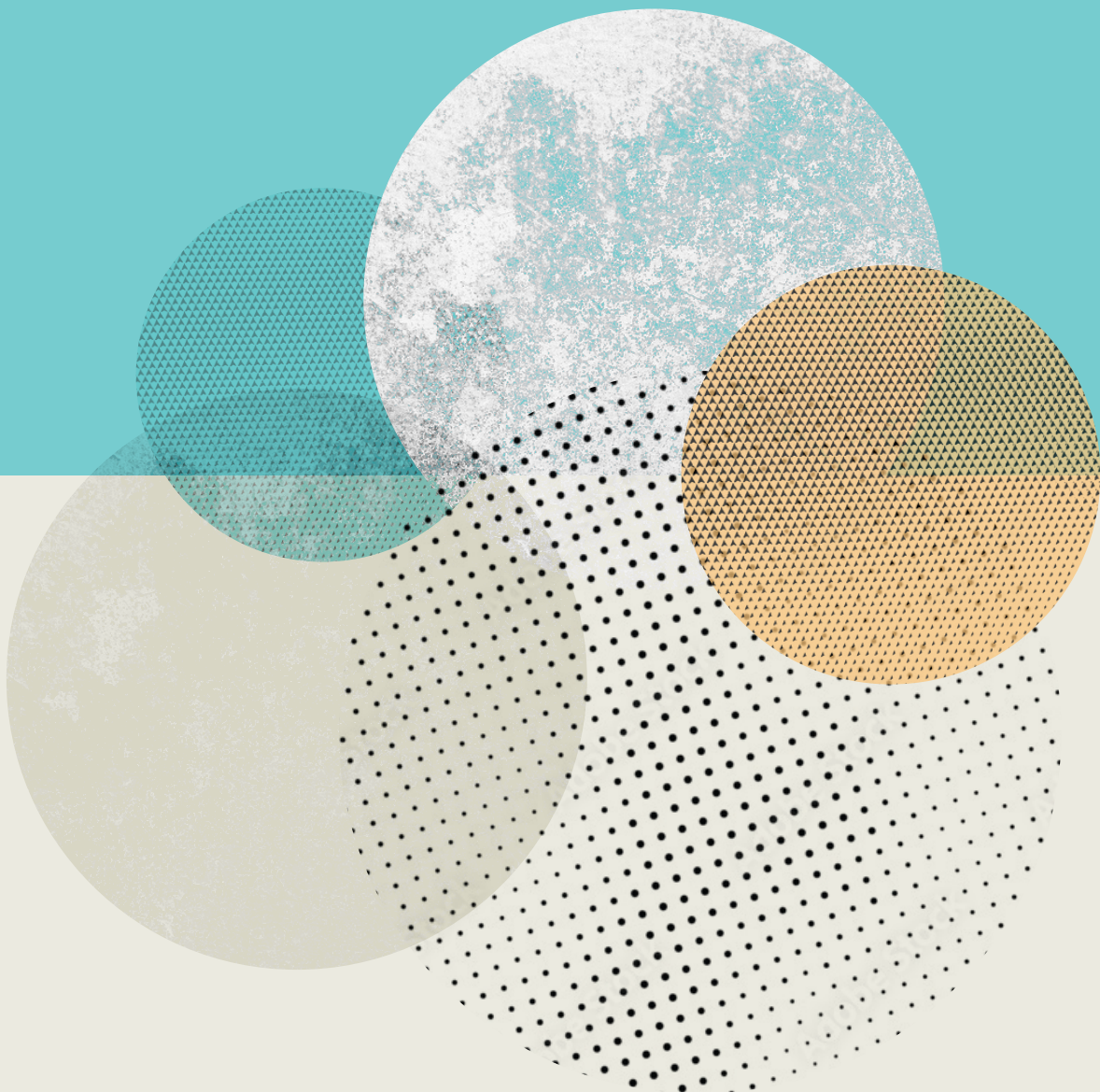
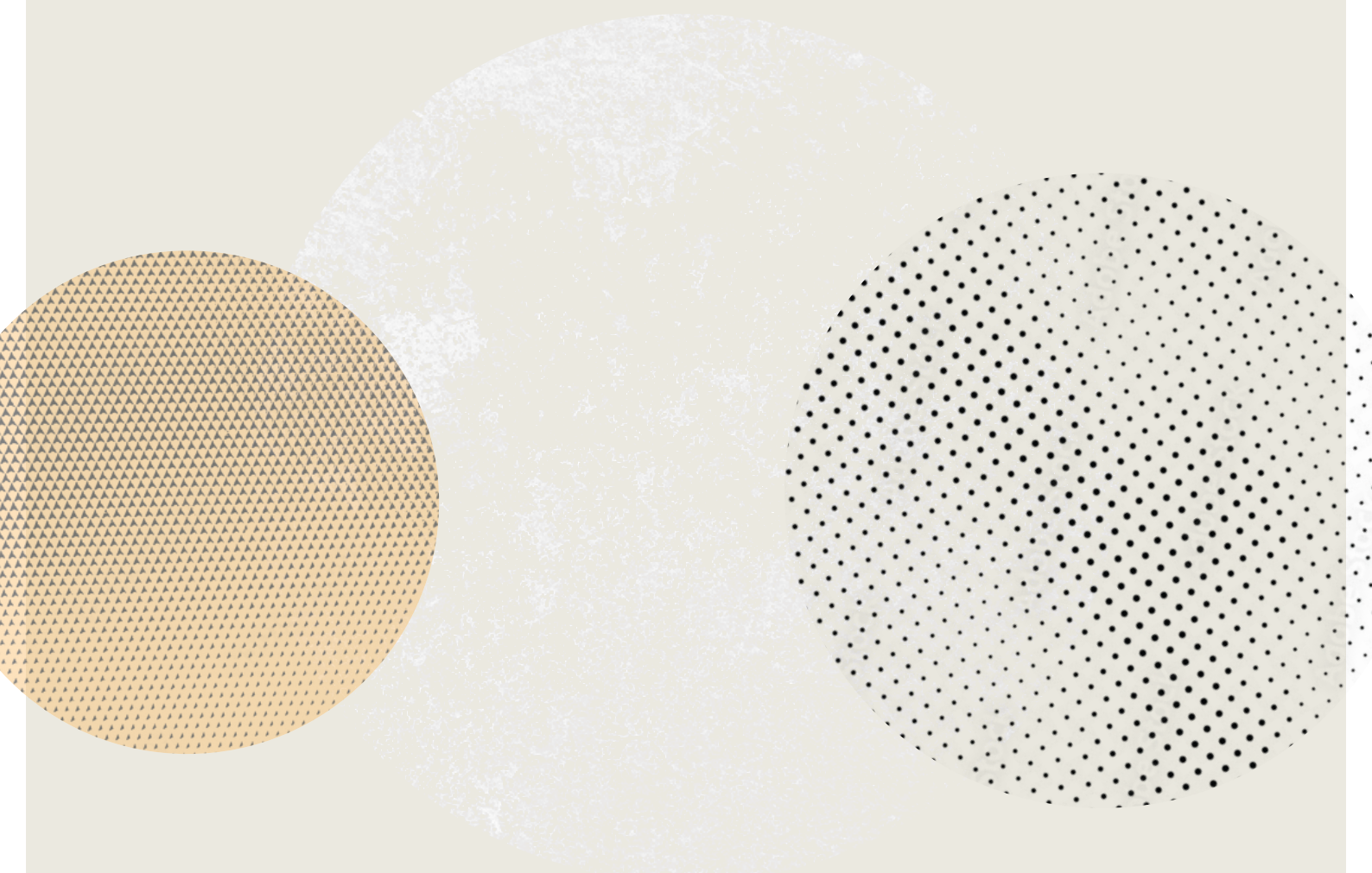


# Financial counselling in community legal services rewards and challenges.





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Written by **Carolyn Bond** and **Denis Nelthorpe** | October 2023

The Financial Counselling Foundation is a charitable trust, set up to accept donations from industry and the public to advance financial counselling services. The Foundation has funded a number of community legal centres to employ financial counsellors. This paper raises some matters which legal services might consider when planning the integration of financial counselling.

The views expressed in the paper are those of the authors.

Integrating financial counsellors<sup>1</sup> into community legal centres (CLCs) can have great benefits for clients, staff and the organisation. Within the sector, successful examples are rightly show-cased, however some of the challenges can be down-played. This paper is designed to alert CLCs to some of the issues that should be considered.

Our experience and conversations with people in the sector suggest that successful integration of community professionals is more complex than positive stories might suggest – one sector colleague told us they’d been warned that detailed discussion could “open a can of worms”!

We’re not the experts, and others have spent much more time researching and writing on this topic.<sup>2</sup> We are sharing our views, based on our personal experience and informal conversations with lawyers, financial counsellors and others in the sector.

Our aim is to encourage more open discussion, and to introduce CLCs that are newer to financial counselling, to some of the issues they may wish to consider in their planning.

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<sup>1</sup> While we focus on financial counselling, some of our comments may relate to other community professionals such as social workers.

<sup>2</sup> For example, Eastern Community Legal Centre, Integrated Practice – Better Practice Principles, (ECLC is undertaking a 3 year project ‘Integrated Legal Practice – Impact and Influence’); Donovan, Jennifer Ann. “Socio-legal collaborations in Australia - models of service provision and the influence on practice”. 2019. See Resoures below.



# Benefits of Financial Counselling for Community Legal Centre (CLC) clients

**After many years working in, and with, community legal services that offer financial counselling, we have no doubt that many clients achieve better outcomes due to the integration of financial counselling with legal services.**

From a client's perspective, debt could be the most pressing problem and having a financial counsellor assist them may enable them to feel equipped to address their other matters. As one lawyer told us "clients who have had financial counselling or social work help from the centre are likely to disclose more to the lawyer which helps the legal matter."

Financial counsellors provide advice and advocacy for people who are in debt or are unable to meet their ongoing expenses. They can help clients prioritise payments, access grants and concessions, deal with fines, negotiate with creditors and access dispute resolution schemes. Financial counsellors often have better contacts and more practical knowledge than lawyers do about debt and credit law, about how financial complaints schemes work, and the best way to advocate for their clients with various businesses. Financial counsellors regularly achieve significant debt reduction/waivers and positive outcomes from financial disputes for their clients, which can sometimes remove the need for a legal response. The involvement of a financial counsellor can improve the financial situation of some clients by tens of thousands of dollars and improve mental wellbeing. Specialist family violence financial counsellors are aware of the family violence policies and obligations of financial services, utilities and other businesses to customers experiencing family violence.

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*The good relationship between lawyer and financial counsellor seems to have been a crucial element in the success of our program.*

Lawyer

Some community legal services have employed financial counsellors for many years, for example WEStjustice, Women's Legal Service Vic, Consumer Action Law Centre and Financial Rights Legal Centre in NSW. As the benefits of financial counselling are increasingly recognised, and more legal services wish to offer financial counselling to their clients, questions arise about how financial counselling services are best provided alongside legal services.

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*All processes may not have been perfect, but some of the outcomes we obtained as a team were amazing and we all say it was better than working in isolation.*

Financial counsellor

# Managing Risk

**One of the barriers to integrating financial counselling is the approach taken to managing risk. We have heard some concerns from financial counsellors about excessive supervision and complicated processes to avoid any risk that legal professional privilege might be waived (by sharing the information with other professionals such as a financial counsellor), which make the financial counsellor's work difficult.**

[The Integrated Practice Toolkit](#) published by the Federation of CLCs takes a conservative approach to legal professional privilege and mandatory reporting risks, which in practice should be balanced against potential benefits for clients of integrating services.

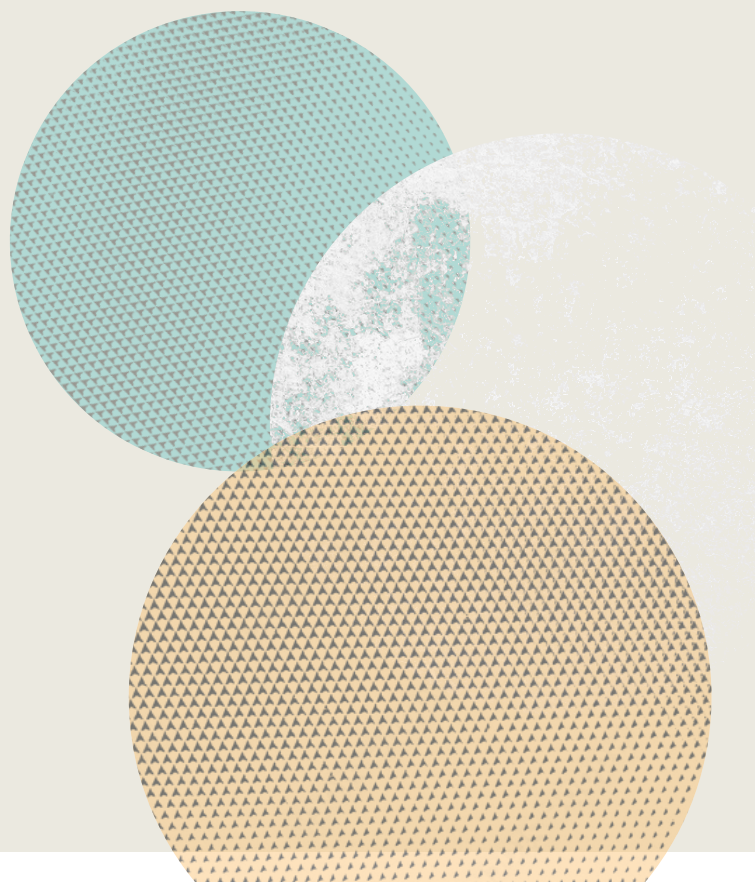
Adding professionals from different disciplines, such as financial counsellors, to a legal team requires planning. Issues such as casework supervision, potential impacts on client confidentiality and legal professional privilege should be considered. However, if clients are to receive the maximum benefits from financial counselling, any risk management procedures should be balanced against limitations these may impose on the access to, and quality of, service. The greatest risk for many clients, especially those with complex needs, is that they will not receive the assistance they need, which often requires seamless access and a closely integrated team.

In managing the risks of a subpoena of a financial counsellor's records or their reporting obligations, consider whether the clients are likely to be involved in litigation, the likelihood that the service's records would be successfully subpoenaed (we believe this is extremely rare), and the likelihood that the client will disclose reportable information which has not previously been disclosed to another service provider. Consider whether the processes for managing these risks could be made easier for clients and staff to negotiate. Of course, these are some of the risks that need to be managed, but they may not be the most significant risks faced by CLC clients.

The approach of centres varies considerably. Most insist on financial counsellors and lawyers having separate files, while some see benefits in one combined file. Most require the client to have a legal file before the financial counsellor is involved, but we heard of some intake processes where the client may be referred first to the financial counsellor if required.

One larger centre with a number of teams considers the barriers to access for clients of each team, and applies different processes to managing risks depending on the characteristics of clients. This includes consideration of vulnerable clients not returning if they don't receive a seamless service at first engagement. Another centre also had different structures depending on the team, for example having a social worker as part of one team but having a partnership with an external social worker for another team.

To achieve the outcomes for clients, financial counsellors often undertake a high level of advocacy, by letter, email or telephone. Their training and experience gives them an understanding of relevant regulation, dispute schemes and industry practice. They also (as a collective profession but also individuals) have relationships with third parties such as banks and utilities which can allow faster, more practical client outcomes. It's important that there are respectful, problem-solving conversations between lawyers and financial counsellors, avoiding the temptation to classify everything as a legal issue. While it is also important to manage risk, an approach which is over cautious will be frustrating and stifling to experienced financial counsellors.





## Understanding and respecting different professions

**While financial counsellors usually understand the laws relevant to their role, they are often able to get results through knowing who to contact within a financial service, or understanding internal processes of banks and utilities. They also understand the types of results achieved through dispute resolution schemes and applying industry codes. While this may be an unfamiliar way for some lawyers to work, lawyers can learn how to better service their clients.**

Financial counsellors can also benefit by working closely with lawyers, enabling them to see how their work interacts with legal work (for example financial abuse cases and Family Law procedures) and sometimes having the opportunity to better use the law with the support of a lawyer.

It is likely that some financial counsellors may find it difficult to work within a CLC, where they have previously had significant autonomy. Equally, working closely with financial counsellors can be a new experience for some lawyers, who may not understand the financial counselling role find it challenging to work in a partnership.

CLCs should ensure lawyers and financial counsellors understand each other's role and professional requirements. For example, financial counsellors are required to meet specific educational requirements, and if they meet certain conditions Australian Securities and Investments Commission exempts them from any requirement to hold a financial services licence.

Ideally, the lawyers and financial counsellors will have ongoing curiosity and communication leading towards a deeper understanding across both disciplines.

# Culture – making integration work

Regardless of the systems and processes put in place, it appears that the key factor in successful integration is a culture across the organisation that values the integration of other services with legal services – not just making other services available to clients, but closely integrating those services. When we first decided to write on this topic, we thought that we might be able to suggest ‘better practice’ – including specific processes, but as we have talked to more people, we have found that processes vary considerably, but it’s the culture, or attitude to integrated services that seems to make the difference.

If management, and staff, clearly understand and value integrating other types of services with legal services, the CLC will be alert to ways to value the roles of all professionals as part of a team, and to look for ways to reduce any actual risks while maximising client access and outcomes. As one lawyer told us “No-one has the perfect structure [for integration], but we constantly aim to improve”.

When integration works well, lawyers and financial counsellors value each other’s expertise, learn from each other, and discuss cases and problem solve together. It is difficult to avoid some ‘cross-over’ of the issues being addressed by the lawyer and by the financial counsellor, and sharing of some information is needed to ensure all workers are clear about what they are doing, and also to share any ideas on issues relevant to both disciplines (for example a question may arise about the impact of seeking a debt waiver before or after a family law property settlement.)

## Some points to consider

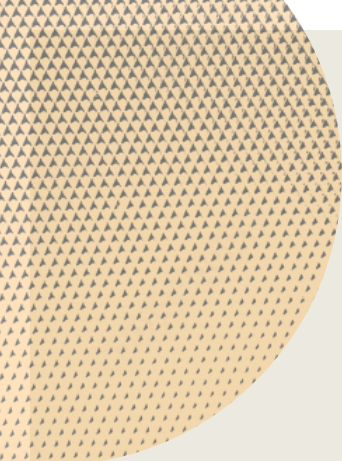
### Culture

- Does management recognise the benefits of professionals from different disciplines, such as financial counsellors, within legal services and have a desire to make it work?
- Does the organisation recognise that financial counselling can’t be just an “add-on” to legal services, that respect and collaboration is required between the professions for clients to achieve the best outcomes?
- While potential risks should be considered, have these been balanced against the benefits of an integrated service and the quality of client outcomes?

### The size of the centre

- What works in a small centre may not work in a larger centre and visa-versa.
- Larger centres with several community professionals may require a specific staff position to manage integration.



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- Is integrating a financial counsellor into your team the best option, or should you instead, build a relationship with a separate financial counselling service?

### **Risk management**

- How can you ensure that risk management processes don't unduly add complexity to intake and casework? Can adjustments be made to improve this for the client (and staff)?

### **Supervision**

- Can/should the financial counsellor be supervised by a principal solicitor? This can work well where the solicitor has a good understanding of financial counselling but can be problematic if the lawyer will only allow the financial counsellor to work in areas the lawyer is familiar with.
- Will the financial counsellor be restricted from working in any areas (for example bankruptcy) where the CLC solicitors lack expertise?
- What other (internal or external) options are there for supervision.

### **Professional obligations**

- Do the solicitors understand the role of a financial counsellor, their level of expertise and professional obligations?
- What is in place to ensure that the financial counsellor understands the role and obligations of solicitors?

### **Communication between lawyers and financial counsellors**

- What processes ensure that lawyers and financial counsellors can consult each other on cases where required? If solicitors and financial counsellors don't discuss cases, it could be an indicator that processes could be improved.
- How will decisions be made where there is cross-over between the legal and financial counselling work? (where both are qualified to handle a particular aspect of a client's case).

### **Files**

- Should files be separate or combined? Most CLCs separate files of lawyers and financial counsellors, but we heard of some CLCs where they felt there was benefit from having one joint file.
- Is there alignment between the level of assistance provided by lawyers and financial counsellors? If not, how can this be managed? (for example if one generally provides advice or short interventions and the other has cases that may be open for 1-2 years).
- Is there alignment between the average time files are open, or the mix between shorter-term and long-term client work? Depending on the type of service, the legal matters might generally be advice-only or short-term, while the financial problems require ongoing assistance – or visa versa. Is the financial counsellor permitted to continue providing assistance once the legal file is closed?

### Intake

- Who decides what matters to take on?
- Does the client have to have a legal matter before they receive financial counselling assistance?
- Is the initial interview a joint interview to explain roles and assess what assistance is required?
- If the legal matter isn't urgent, can the client receive financial counselling assistance prior to a legal file being opened?

### Recruitment

- How can you recognise the ability to work collaboratively with other disciplines when recruiting new professional staff?

### Need support?

Service integration can be complex. In planning your approach, seek out a legal service which appears to be doing this effectively, and ask for their advice. This is new for many legal services, and we must share our experiences to ensure clients receive the most benefit.

### The Authors:

**Carolyn Bond** contributed to the development of financial counselling in Victoria, working as one of the first financial counsellors in the early 1980s and helping develop the first financial counselling diploma course. She was Director of Consumer Credit Legal Service Vic and co-CEO of Consumer Action Law Centre, which provides financial counselling as well as legal services. She has continued to work in consumer advocacy roles, primarily within the community legal sector. She is a board member of the Financial Counselling Foundation.

**Denis Nelthorpe** has worked in community legal services for 40 years, focusing primarily on consumer, finance and debt law. Denis, a lawyer, was most recently CEO of WEstjustice, a community legal centre in the Western suburbs of Melbourne which provides a range of services, including financial counselling where financial counsellors and lawyers work alongside each other in its economic abuse service and mortgage stress service.

# Appendix 1

## What is Financial Counselling

Financial counsellors are qualified professionals who provide information, advice and advocacy to people in financial difficulty. Their services are non-judgmental, free, independent and confidential.

Financial counsellors have specific knowledge about the credit, bankruptcy and debt collection laws, concession frameworks and industry hardship practices. They're also trained in negotiation and counselling. Financial counsellors help people to:

- understand which debts are priorities
- develop budgets and money plans
- understand the pros and cons of different options to manage financial issues
- access grants or concessions
- negotiate with creditors
- access dispute resolution services
- understand their rights and access legal help.<sup>3</sup>

## Areas/problems where a financial counsellor may be able to help:

- Consumer debt such as mortgages, loans, credit cards, leases, buy-now-pay-later (inability to pay and/or disputes)
- Utility bills
- Other debts such as ambulance, medical etc
- Debt collection harassment
- Fines
- Credit files (credit rating)
- Centrelink issues
- Tax debts
- Financial abuse (dealing with creditors if debts incurred due to family violence etc)
- Small business debt – some may be able to assist but others are not funded to assist with business debt.

## Regulatory framework

Unlike financial planners and financial advisors, who provide investment advice, financial counsellors don't need a licence to offer financial counselling because they operate under a licensing exemption from the Australian Securities and Investments Commission. Only people who meet the following criteria are legally allowed to call themselves a "financial counsellor":

- don't charge fees to clients
- don't receive any payments or commissions from third parties for their services
- must have appropriate qualifications and training, and
- must be eligible for membership of a [financial counselling association](#).

See more <https://www.financialcounsellingaustralia.org.au/about-financial-counselling/>

# Appendix 2

## Resources

Eastern Community Legal Centre, Integrated Practice – Better Practice Principles, <https://eclc.org.au/wp-content/uploads/ECLC-Better-Practice-Principles-Integrated-Practice-Report.pdf> (ECLC is undertaking a 3 year project ‘Integrated Legal Practice – Impact and Influence’ )

Donovan, Jennifer Ann. “Socio-legal collaborations in Australia - models of service provision and the influence on practice”. 2019. <https://minerva-access.unimelb.edu.au/items/0f10cb85-5fa2-56a2-8ad2-6af88c7ea01f>

Centre for Innovative Justice, 2020, Financial Counselling Practice Guidance - Integrating financial counselling in a legal setting for effective collaborative practice <https://cij.org.au/cms/wp-content/uploads/2018/11/financial-counselling-practice-guidance-cij-september-2020.pdf>

Financial Counselling Australia (2015) Standards for Agencies Employing Financial Counsellors (These are currently under review in 2023) <https://www.financialcounsellingaustralia.org.au/docs/standards-for-agencies-employing-financial-counsellors/>

Health Justice Australia – various guides and resources <https://healthjustice.org.au>