



To: Treasury

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**JOINT SUBMISSION FROM THE FINANCIAL COUNSELLING SECTOR
MODERNISING REGISTRY FEES CONSULTATION PAPER**

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This submission supports the removal of digital retail search fees. If the Government does not decide to do this, it recommends that registered financial counsellors are made exempt from having to pay for the costs of accessing current and historical company extracts.

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About Financial Counselling and the Financial Counselling Sector

Financial counsellors provide advice and support to people experiencing financial stress. Working in community organisations, financial counselling services are free, confidential and independent.

This is a joint submission from the peak bodies in the financial counselling sector.

- Financial Counselling Australia
- Financial Counsellors ACT
- Financial Counsellors Association of NSW
- Financial Counsellors Association of Queensland
- Financial Counsellors Association of Tasmania
- Financial Counsellors Association of Western Australia
- Financial Counselling Victoria
- South Australian Financial Counsellors Association (also covering the NT)

About Financial Counselling

Financial counsellors provide free, independent, and non-judgemental support and advice to people who are struggling with their finances and debt. Financial counsellors are based in not-for-profit community organisations, including charities, universities, and neighbourhood centres.

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

Financial counsellors are required to be registered in their State/Territory with the relevant peak financial counselling body. Financial counsellors must complete a Diploma of Financial Counselling and undertake a minimum amount of continuing professional development each year.

Financial counsellors have specific knowledge about the credit, bankruptcy and debt collection laws, concession frameworks and industry hardship practices. They are trained in negotiation and counselling and offer emotional support and a listening ear when people really need it. They are not financial advisors or planners. They do not earn commissions or provide investment advice. Today, there are around 700 FTE financial counsellors operating in 192 agencies across 674 sites.

Financial counselling agencies are exempted from holding both an Australian Financial Services Licence and an Australian Credit Licence. These exemptions are administered by ASIC and are subject to strict conditions, including that services are free.

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1 Background

1.1 Overview

Financial counsellors provide free and confidential advice and support to individuals, families and small businesses experiencing financial difficulty. Financial counsellors work in community-based, not for profit services and are largely government funded.¹

When assisting small businesses, financial counsellors sometimes need to access the information available through current and historical company extracts. Financial counselling agencies however are unable to afford the cost of paying for these extracts, and clients in severe financial distress can rarely afford to pay for them.

On public policy grounds, this submission:

- supports the removal of digital retail search fees;
- in the alternative, if the Government does not decide to remove these fees, we recommend that registered financial counsellors are made exempt from having to pay for the costs of accessing current and historical company extracts.

1.2 Financial Counselling and Small Business

Financial counselling agencies are exempt from holding both an Australian Financial Services Licence (AFSL) as well as an Australian Credit Licence. These exemptions, which are administered by ASIC, recognise the community benefits of the free, confidential and independent support and advice provided by financial counsellors.

While financial counsellors have always been able to assist small business owners, the focus has historically been on assisting individuals in financial difficulty. In August 2020 however, the AFSL exemption was amended by ASIC to make it clear that financial counsellors were able to assist small business owners, where the small business employed has fewer than 100 employees.²

The catalyst for this change was the impact of the 2019-20 bushfires on many small businesses and their owners, and the establishment of a dedicated financial counselling helpline for small business, the Small Business Debt Helpline.³ As well, through 2020 and 2021 the impact of Covid 19 on small businesses resulted in financial counsellors increasingly assisting small business owners in financial difficulty.

The financial counselling sector has provided extensive training to financial counsellors over the past two years to upskill them to adequately assist small business owners. Some financial counsellors now focus entirely on small business owners, while others assist small business clients from time to time, as part of their day to day work. Rural financial counsellors already assist farmers and small

¹ Some community organisations self-fund financial counselling through their own fund raising efforts. Some agencies are funded through philanthropic trusts.

² The ASIC credit licensing exemption is not relevant as small business lending is not covered by the National Credit Code.

³ www.sbdh.org.au The Helpline was originally called the Small Business Bushfire Financial Counselling Support Line.

businesses. The financial counselling sector has also developed a broad range of resources on small business, accessible to all financial counsellors.

2 Why Financial Counsellors Access Company Extracts

Many small business clients of financial counsellors are not aware of the structure of their business. Financial counsellors regularly use the free online search facilities provided by ASIC to obtain details of a business, via ABN Lookup and the free current Company Extract (where the client’s business is a company).

However, both the **Paid Current Company Extract** and the **Paid Current and Historical Company (CHC) Extract** contain important information that financial counsellors may require to fully understand their client’s situation. The CHC Extract contains all the information in the Current Company Extract, as well as additional information on past directors and shareholders. Financial counselling agencies are unable to afford the cost of paying for these extracts, and clients in severe financial distress can rarely afford to pay for them.

The need for this information also arises where the client has been subjected to financial abuse by a partner, and under coercion and/or without their understanding, has been registered as a director of the partner’s company. Unfortunately, this is not an uncommon occurrence. Access to the information in paid company extracts can be the only way to actually understand the actual situation.

The following table shows the additional information available from these extracts compared with the free online information, and why this information is important for financial counsellors to obtain.

Additional information	Why this information is useful for financial counsellors
<p>Current Company Extract</p> <ul style="list-style-type: none"> • Registered office; • Directors • Office holders; • External Administrator details • Share structure 	<p>Registered office: can indicate if a third party (eg accountant) is involved in the company.</p> <p>Directors: financial counsellors often have clients who are not aware if they are directors or not.</p> <p>External administrator details: can be useful to verify and obtain contact details if client is unsure.</p> <p>Share structure indicates whether shares are held beneficially or not.</p>
<p>Current and Historical Company Extract</p> <p>The above information plus:</p> <ul style="list-style-type: none"> • Previous directors • Previous shareholders 	<p>Previous directors: enables financial counsellors to track any changes to company directors. Dates when added /removed can impact a client’s liabilities for example, for outstanding company taxes or debts.</p>

3 Consultation Question 1 - Search Fees

3.1 Digital Retail Search Fees Should be Removed

We support the removal of digital retail search fees for the following reasons:

- the cost of a digital search of a database is minimal;
- there would be commercial benefits for businesses and individuals in being certain about the directors involved in companies they may be transacting with;
- there are broader benefits for the community who can have confidence in our company registration system because of its transparency.

As noted above, in the experience of financial counsellors there are reasonably large numbers of people who are not sure of the structure of their business, or if they are a director of a company. Being able to find this out quickly and costlessly is of obvious benefit.

3.2 If Search Fees Remain Generally, Financial Counsellors should be Exempted

We recognise that the Government may not decide to remove search fees as we suggest in Section 3.1 above. In the alternative, we recommend on public policy grounds that financial counselling agencies should be exempted from having to pay search fees for company extracts.

Financial counselling services are funded by State/Territory and Commonwealth governments and provide a valuable role in assisting individuals and small business owners facing severe financial difficulty.

Financial counsellors assist individuals both with their financial situation and their personal/mental wellbeing situation. They can refer clients to other professionals based on the client's needs. The assistance provided by financial counsellors reduces the financial and mental health difficulties faced by clients, reducing overall costs associated with financial difficulty to both the client and society more generally.

In 2014, research undertaken by the Australian Workplace Innovation and Social Research Centre at Adelaide University, found that every \$1 invested in financial counselling provides a \$5 return. Four in five clients had experienced at least one financial crisis. The researchers noted that the cost-benefit analysis did not include other benefits that are more difficult to quantify, such as improvements in financial literacy, stabilised housing, or avoidance of legal action. In other words, the 1:5 cost benefit is an understated and conservative measure of the true economic benefit of financial counselling.⁴

Financial counsellors assisting small business owners of companies, or clients who are unclear or unaware they are exposed to liability of a partner's or other person's company, often cannot obtain all the information they need to fully assist the client if they cannot access the abovementioned Extracts. Appendix 1 includes two case studies provided by financial counsellors illustrating the need

⁴ Paying it forward: Cost benefit analysis of The Wyatt Trust funded financial counselling services, Adelaide: Australian Workplace Innovation and Social Research Centre, The University of Adelaide, 2014

to access this type of information. Appendix 2 includes a case study illustrating how small business financial counselling helped a client to make an informed decision about their business debt.

We understand the obligation of ASIC to cover the costs of its services through fees and charges. However, we also note that the current registry fees regulations were recently amended to exempt journalists, the ABC, SBS, holders of licences for commercial broadcasting, and proprietors of non-subscription-based newspapers, from paying any fees for ASIC registry information. There are substantial public benefits in enabling registered financial counsellors, working in not for profit agencies largely funded by governments, to access the CHC Extract so they can do their job properly.

The volume of requests by financial counsellors seeking such information will be many times less than that likely to come from the numerous bodies/agencies listed above. This is because:

- the recommendation only relates to the exemption for paying for the CHC Extract
- the vast majority of financial counsellors in the sector will continue to assist individuals (not small business owners) predominantly as clients;
- not all small business clients will have businesses that are companies;
- some small business clients will be able to provide this information to the financial counsellor.

Accordingly, the revenue foregone by providing free access to the CHC Extract is likely to be much smaller than that associated with the broader exemption for journalists, etc.

As a registered profession, extending an exemption to registered financial counsellors would establish a clear boundary for the application of the exemption.

Appendix 1: Case studies demonstrating the need for access to company extracts

Case study 1

- The client is a victim survivor of family violence, including financial abuse. The perpetrator made the client a director of numerous companies – some she was coerced to become director of, others she had no knowledge of. The perpetrator subsequently removed her as director when an intervention order was registered against him.
- We were unable to conduct an ASIC search to determine which companies she was a director of and the time periods involved.
- The perpetrator forged her signature on loan documents as a director. She was also forced to sign loan guarantees and did not understand what she was signing.
- Information as to when the client was a director, and when the perpetrator was a director, were needed to resolve the financial abuse. The client has no access to this information, the perpetrator is now in jail and the client has no access to the financial and company documents.
- Due to the ASIC charges, we were unable to access the director information, to assist in resolving the financial abuse. This impacts on both the client and the financial counsellor in the additional time and energy required to source this information through alternative means or having to get the client to pay for this information.
- As a Small Business and a Family Violence financial Counsellor, I regularly have examples of similar cases, where a perpetrator has made their partner a director of a company without their knowledge. The ASIC check-up tool should be a free check we can undertake with all our clients, especially where they have limited or no knowledge if they are director of their partner's company, to resolve their financial situation. To continue charging, is to continue the impact and perpetration of financial abuse.

Case Study 2

- A small business client established a Pty Ltd company in 2018 in order to purchase and operate a small business. The client arrived in Australia in 2016 with English as their second language, and had limited English skills. The company was set up with the assistance of a tax agent, also from the client's original country.
- Upon presentation to the financial counselling service, the small business had ceased trading and amassed a large amount of debt through various lenders and other creditors. During consultations, the client several times stated that she was the sole director of the company, however the lawyer representing the landlord of the leased premises stated two directors were involved in the company. Some weeks later, the client and her then partner separated, and the client suffered a mental breakdown and could not recall any business operations or provide information relative to loan applications. All loans were in default, and the partner has since stated that he owns half of all assets and will be retrieving assets through a debt recovery process (forced sale of the home). In response, the client is now stating that the partner is also a director of the company, along with the tax agent.
- In summary, throughout a very complex case, accessing the ASIC portal would ensure contact could be made with relevant director/s and ascertain the structure of the company. Additionally, accordingly to the lawyer representing the landlord, neither the company or the trust is

registered for GST, and tax returns have not been submitted for 5 years (client as an individual), and 3 years (as the company). Given the client has “misplaced” and is “unable to recall” all relevant company documents, access to the ASIC portal would enable efficiencies and clarification on responsibilities and legal obligations of the client, director/s, lenders, and tax agent.

Appendix 2: Example of how Financial Counsellors Help Small Businesses

Fred called the Small Business Debt Helpline after receiving a Director Penalty Notice from the ATO, for approximately \$60k. Prior to calling the Helpline Fred had contacted the ATO and was told they were unable to reverse the DPN.

Fred's previously successful business had failed as he had been unwell and was unable to run it. The business was then impacted by Covid.

After talking to the ATO, Fred decided that bankruptcy was his best option. He had no personal assets and he thought bankruptcy would make his ATO debt go away. He and his wife had built a new family home together. The home and the loan was in Fred's wife's name.

During the call, the financial counsellor identified there were also questions regarding the closure of Fred's failed company. It was deregistered, but had not been liquidated as he was not in a position to pay insolvency fees.

The financial counsellor organised a pro bono consultation with an insolvency practitioner. The financial counsellor also attended the consultation to support Fred. During that consultation it was discovered that Fred had contributed a significant deposit when the new family home was financed and he was making regular payments into his wife's bank account. Both of these things alerted the insolvency practitioner to the family home being exposed in bankruptcy. Fred thought everything was OK because none of this was in his name and his accountant had not flagged any issues.

Following the consultation, the small business financial counsellor worked with Fred to recommend he enter into a payment arrangement with the ATO. This outcome enabled:

- Fred to keep his home
- The ATO to be paid without incurring legal and other costs