About Financial Counselling

A companion to the
FCA Diploma of Financial Counselling Learning Guides

financial
counselling
australia

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Contents

This document is a companion guide to the FCA learning guides for the Diploma of Financial Counselling and covers what a financial counsellor is, what they do, and the context of financial counselling. We will also look at the laws and standards that apply to working as a financial counsellor.

By the end of this guide, you will know about:

- financial counselling and the role of financial counsellors
- the context of financial counselling
- accreditation and accreditation standards
- professional indemnity insurance
- ethical conduct and the Australian Financial Counselling Code of Ethical Practice
- the legal regulation of financial counselling
- financial counsellor expertise in financial difficulty
- the role of financial counsellors as advocates for reform

1 Role of a Financial Counsellor

1.1 Overview of the Role

The definition of the role of a financial counsellor, as described by Financial Counselling Australia, is as follows:

Financial counsellors provide advice to people in financial difficulty. Working in community organisations, their services are free, independent and confidential. Financial counsellors have an extensive knowledge of a range of areas of law and policy, including consumer credit law, debt enforcement practices, the bankruptcy regime, industry hardship policies and government concession frameworks.

Financial counsellors are experts in financial difficulty. This expertise is the foundation of the profession.

The role of financial counsellors is to provide information, advice and/or representation for clients experiencing financial difficulty.

The role of financial counsellors in working with individual clients is:

- **Giving information and/or advice to their clients** – This will include tailored information, advice and/or referrals that responds to the client's individual circumstances.
- **Acting on behalf of their clients (representing their clients)** - Financial counsellors regularly represent clients. This is casework and involves extra obligations for the financial counsellor including explaining representation, keeping the client informed, obtaining ongoing instructions, and resolving the matter/dispute. The diagram below summarises this.

Information	Advice	Representation and casework
Examples: › National Debt Helpline website, › Self-help resources › Generic information such as fact sheets	› Tailoring information to the client's actual circumstances. › Advice must be in the client's best interests.	› Acting on the client's behalf (based on the client's instructions)

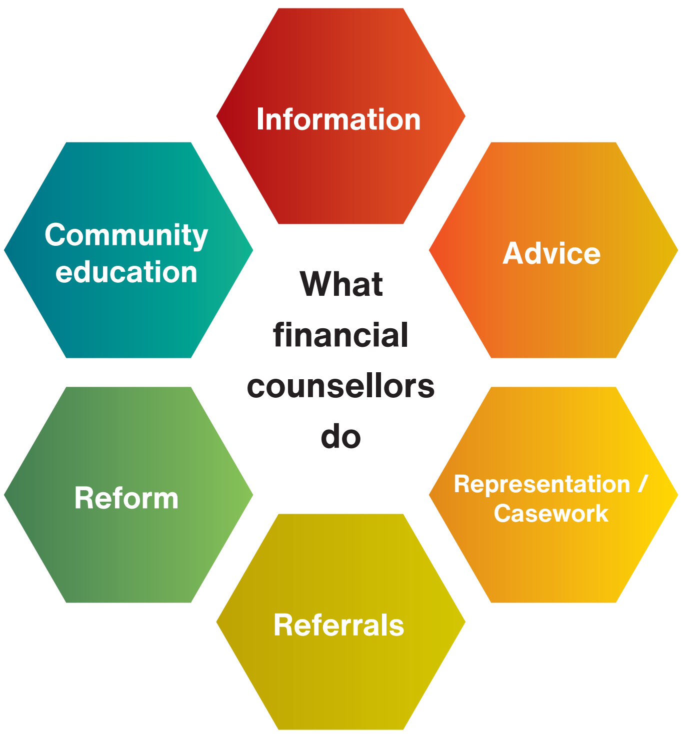
Giving advice is a process. The best advice is formulated between the financial counsellor and the client. The financial counsellor brings their knowledge and expertise and the client brings their expert knowledge of their situation and needs. The advice might involve setting out and considering different options. The client always has a choice about whether to accept the advice or not. It will always important for the financial counsellor to write good case notes to document the advice provided.

1.2 Other elements of the role

Financial counsellors:

- **Have ethical obligations** (including as set out in the Australian Financial Counselling Code of Ethical Practice) – Financial counsellors must comply with the Code of Ethical Practice. Financial counsellors must be ethical. This is discussed further in Section 4 below.
- **Are free and independent** – Financial counselling is a free service. Financial counsellors cannot and must not accept money for service in any way. Financial counsellors are independent of industry and Government.
- **Are involved in reform** – Financial counsellors are strong advocates for reform to protect people from harm related to debt, credit, and social security. Financial counsellors identify systemic issues and advocate for reform (including law reform).
- **Provide community education** – Depending on the agency, financial counsellors may provide community education to the public, including community groups and schools, on a range of information related to financial difficulty.

In summary, what financial counsellors do (as experts in financial difficulty) is set out in the diagram below.



1.3 What financial counsellors don’t do

Financial counsellors are not:

- financial planners or accountants
- providers of emergency relief and/or material aid
- finance or mortgage brokers
- legal advisors or solicitors
- therapeutic counsellors
- business advisors.

1.4 Specialist financial counselling or specialist expertise

Over time a number of specialist financial counselling roles have evolved in response to community need. These are:

- Rural financial counselling – rural financial counsellors work with farmers and rural small businesses. The units they undertake in the Diploma are slightly different to reflect the different knowledge they require
- Gambling financial counsellor – these specialist roles are often funded separately. There is a specific skill set for gambling financial counsellors
- Family violence financial counsellor – there are number of specialist family violence financial counsellors in Victoria and more recently, there are also specialist family violence financial counsellors in other states
- Small business financial counsellor – there are now small business financial counsellors in some states. In the longer term, there may be a specialist skill set developed in the training package for financial counsellors working in this area.

1.5 Reading

The further reading below are links to information on the FCA website.

- History of financial counselling
- About financial counselling
- Financial counselling in a nutshell

2 The context for financial counselling

While financial counsellors work with individuals, they do so within a social justice framework. This recognises that some of the issues people are grappling with occur because of broader forces, such as a lack of adequate housing, income or health care. On the basis of fairness, social justice means that everyone has equal access to the same benefits and privileges as others in the community. This section discusses two aspects of social justice: structural inequality and vulnerability.

2.1 Structural inequality

Financial counsellors play a vital role in helping people that have been impacted by structural inequality.

Structural inequality occurs when the fabric of businesses, institutions, governments or social networks contains an embedded bias which provides advantages for some people and marginalises or produces disadvantages for others.

Structural inequality manifests in many aspects of our society and may affect many financial counselling clients. Combating structural inequality requires structural change.

There are many examples of structural inequality. For financial matters, some of them are that:

- the poor pay more for goods and services
- women earn less than men on average
- people of colour earn less and may have fewer employment opportunities than white people
- there is age discrimination for employment (both younger people and older people)
- being on Centrelink may make it harder to get a job

2.2 Vulnerability

There are varying definitions of vulnerability. In its broad sense it is being more susceptible to harm because of your circumstances. In a financial services context, it is when a person cannot effectively engage with the market and is at high risk of getting a poor deal. Vulnerability can be ongoing or for a specific period of time, for example, only when a person is signing the contract (because of the circumstances under which this is taking place).

Financial counsellors will see vulnerable clients regularly. Some common examples of people who may be vulnerable are:

- Older people who rely on a carer, and have a limited understanding of financial services
- Women experiencing, escaping or surviving domestic violence
- People with a disability with difficulty accessing financial services
- A parent with a high-needs disabled child
- People on Centrelink JobSeeker that are caught in a poverty trap

There are many examples and financial counsellors must be aware that their client may be vulnerable. There is an increasing recognition of the impact of vulnerability from financial firms, industry associations and in codes of practice.

Financial counsellors should be using a **trauma informed approach** with their clients. This means understanding the way people behave and think may be a response to past trauma they have experienced. While traumatic events happen to all of us, the extent and type of trauma and its impact will differ. For example, child sexual abuse has had a detrimental impact on many people. A trauma-informed counselling approach recognises the existence of these factors and that they contribute to vulnerabiity. The common element of trauma is that the people affected were in a situation over which they had no control. We need to make sure that the way we provide our servcies does not replicate those experiences or inadvertently means that people relive them.

A related concept is vicarious trauma, whereby the "helper" is affected in a negative way by the work they are doing. The existence of vicarious trauma is something financial counsellors need to be aware of and it is why there is an emphasis in the workplace on self-care.

2.3 Special groups

Financial counsellors need to be aware that some groups of people are more likely to be impacted by structural inequality and vulnerability. These can include:

- Aboriginal and Torres Strait Islander people
- Women
- People of colour
- People from a Non-English Speaking Background (particularly those with limited English skills)
- People with a disability
- People experiencing or surviving family violence (including elder abuse)
- People on low incomes or no income – particularly for longer periods of time
- People who are experiencing homelessness

Clients from these groups may need intensive and coordinated advice, representation and assistance.

3 Accreditation and professional standards

Financial counsellors agree to abide by the rules of the relevant State or Territory Association (of which they are a member). These associations have put in place two national standards, described below.

- Membership and Accreditation Standards
- Supervision Standards.

3.1 Membership and Accreditation Standards

The Membership and Accreditation Standards set out three categories of membership:

- **Affiliate (non-voting):** An individual working in the financial counselling sector in a related role **OR** actively studying for the Diploma of Financial Counselling or has completed the Diploma, but is not working as a financial counsellor.
- **Associate:** Working as a financial counsellor **AND** actively studying for the Diploma of Financial Counselling **OR** Holds the Diploma of Financial Counselling and has not yet had 24 months full-time experience, however, meets the requirements for continuing professional development and supervision.
- **Accredited or Full Member:** 24 months full-time experience or 36 months part time experience working as a financial counsellor (including while studying if relevant) **AND** Holds the Diploma of Financial Counselling **AND** if working as a financial counsellor, meets requirements for continuing professional development and supervision **OR** if not working as a financial counsellor, meets requirements for continuing professional development.

These standards also require financial counsellors wishing to retain accredited/full membership to complete 20 points of CPD each year.

3.2 Supervision Standards

There is a requirement for associate and full members to undertake supervision. The requirements are:

- Employed 0.5 FTE or more – 10 hours per membership year
- Employed less than 0.5 FTE – 6 hours per membership year

3.3 Reading

The links below are to information on the FCA website.

National Standards for Membership and Accreditation

National Supervision Policy

4 Ethical Practice

Financial counsellors are required to comply with the Australian Financial Counselling Code of Ethical Practice (Code). The Code is a condition of membership. The Code is public, and anyone can read it. It is a public commitment by all financial counsellors to ethical conduct. It comprises two parts: a relatively short Code of Ethics setting out the values of the profession and a longer Code of Practice, providing guidance about day-to-day financial counselling practice.

Set out below are four specific areas of ethical conduct relevant to financial counsellors: acting in the best interests of the client, professionalism, confidentiality and avoiding conflicts of interest. These are not direct extracts from the Code. It is currently being reviewed and the information below reflects current practice.[1]

Australian Financial Counselling Code of Ethical Practice (PDF)
Summary of the Code of Ethical Practice (PDF)

4.1 Best interests of the client

Financial counsellors have a duty to act in the best interests of their client. This requirement is to ensure that each client receives advice that meets their needs, objectives, and financial situation.

The duty to act in the best interests of the client means:

- Avoiding conflicts of interest
- Providing appropriate and accurate advice
- Acting honestly
- Avoiding any compromises that may disadvantage the client
- Maintaining confidentiality
- Providing advice that is in the client's best interests
- Not putting the financial counsellor's interests or any third-party interests before those of the client
- Loyalty to the client

1 The following sections in particular will be updated: section 2.1 requiring financial counsellors to act on the instructions of the client, regardless of whether this is in their best interests, the definition of advocacy, section 2.7.1 identifying options would be replaced with advice, section 2.7.2 client authority - A financial counsellor acting in a professional capacity undertakes actions that may not be specified by the client. An example is the process of negotiation, as a client does not specifically consent to every part of a negotiation. Instead, there is implied consent for the financial counsellor to negotiate (which may involve a series of actions). A financial counsellor however would always seek instructions on significant decisions from the client.

4.2 Professionalism

Professional conduct involves:

- always acting in a professional manner
- complying with the law
- being respectful
- not acting in a manner that might be viewed as demeaning, abusive or discriminatory
- being honest and transparent
- providing transparent reasons for any action to clients

4.3 Confidentiality

Financial counsellors have a duty of confidentiality to their client. This is a professional and ethical obligation.

This duty is a key part of the relationship of trust with the financial counsellor and their client.

Financial counsellors also have obligations of confidentiality arising:

- As an ethical duty arising from the Australian Financial Counselling Code of Ethical Practice
- As a Statutory duty (the Privacy Act 1988 (Cth))
- Contractually through the service/client engagement (the contract confirms this responsibility)
- As a fiduciary duty that arises from the financial counsellor/client relationship (which involves providing advice)

The financial counsellor may also sign a personal agreement that covers confidentiality as part of their employment

Part of the trust that is built in a financial counselling relationship is that the matters discussed will be kept confidential. There are however some exceptions to confidentiality. The client must be notified of those exceptions. The exceptions include:

- Your client gives consent for the information to be disclosed. For example, consent to disclose the client's information is provided when an authority is signed to interact with a creditor on behalf of the client;
- The financial counsellor is compelled by law to disclose. For example, this would be the case after receiving a subpoena from a court;
- To prevent imminent serious physical harm to the client or another person; and
- To the insurer of the financial counselling agency (in the event of a claim or to discuss a claim).

4.4 Conflicts of Interest

4.4.1 Conflict of interest defined

A conflict of interest is where someone in a position of trust, in this case a financial counsellor is in a position of trust with their client, has competing professional or personal interests. It is where the financial counsellor's duties conflict.

A conflict of interest can exist even if no unethical or improper behaviour results from it.

4.4.2 Duty to avoid conflicts of interest

Financial counsellors have a duty to act in the best interests of their client. They owe a duty of loyalty and confidentiality to their client. These duties mean that financial counsellors must identify and avoid conflicts of interest. In other words, the financial counsellor's loyalty to their client cannot be divided.

4.4.3 Types of conflict of interest

There are broadly three types of conflict of interest:

- Where the financial counsellor acts for two parties and the needs of each client conflicts with the other client. For example, the case of one client would be enhanced with confidential information from the other client, or where one client's interests would conflict with the other client's interests. The parties have different needs and versions of events
- Where the financial counsellor may act for a new client and that client's needs and interests conflict with a former client. The key issue here is whether there is confidential information from the former client that is relevant to the possible new client.
- The financial counsellor's own interests are involved. For example, the financial counsellor has a personal and/or financial interest in the matter in which they are assisting the client. That personal and/or financial interest also applies to close friends and family of the financial counsellor.

The most common types of conflicts of interest are conflicts between former clients and current clients.

4.5 Reading

The link below is to the FCA website.

Australian Financial Counselling Code of Ethical Practice

5 Professional Indemnity Insurance

Professional indemnity insurance (PII) is specialist insurance for professionals who provide advice or another service for clients. It protects the agency and the financial counsellor from paying compensation, legal or other costs claimed for damage by third parties (for example the client) that arise out of an act, omission, or breach of professional duty.

Like all insurance, there is a duty of utmost good faith and a duty to disclose to the insurer. This means that the agency (and sometimes the financial counsellor) has a duty to disclose relevant information. An example could be a complaint about the financial counsellor.

All financial counselling agencies must have professional indemnity insurance. Financial counsellors should also receive training from their agency on how PII works and the process to notify the insurer of a potential claim.

6 Legal regulation of financial counselling

Financial counsellors must comply with the law. This includes complying with the law generally, as well as the specific laws that apply to financial counsellors.

Financial counsellors provide advice to their clients. Advice is not regulated in some areas where financial counsellors assist their clients, such as with telco debts, fines, social security debts or advice about bankruptcy. Providing advice about financial products or credit however is regulated and is subject to various licensing regimes, operated by the Australian Securities and Investments Commission (ASIC). Financial counsellors ***sometimes*** provide advice about financial products, and ***often*** provide credit assistance.

Financial counselling agencies however have been exempted from these licensing regimes, because any advice that financial counsellors provide about financial products or credit activities is part of a free, confidential and independent counselling and advocacy service that helps people in financial difficulty.

The two licensing exemptions that apply to the work that financial counsellors undertake are described below. The exemptions will automatically apply as long as the agency complies with the conditions in the exemptions.

6.1 Australian financials services licensing exemption

The Australian Financial Services Licence (AFSL) exemption is required to give advice about financial products (bank accounts, superannuation, insurance) or to assist with insurance claims.[2] This exemption means that financial counsellors can give financial product advice as part of a financial counselling service without a licence, if the financial counselling agency:

- doesn't charge any fees or receive any remuneration arising from the financial counselling service
- doesn't run, and isn't associated with, a financial services business
- ensures its staff don't provide any financial product advice outside the terms of the exemption
- ensures its financial counsellors are a member of, or eligible for membership of, a financial counselling association; and
- ensures its financial counsellors have appropriate training and adequate skills and knowledge.

2 The AFSL licensing scheme is imposed by the Corporations Act 2001. The exemption for financial counselling agencies is in ASIC Corporations (Financial Counselling Agencies) Instrument 2017/792.

Examples of advice about financial products include bank accounts, superannuation, and insurance.

Financial counselling agencies also hold an exemption from the need to obtain an AFSL if they help with insurance claims. Section 71.04CAA (9) of the Corporations Regulations 2001 provides this exemption for financial counsellors that are members of a relevant State or Territory Financial Counselling Association.

Note: Rural financial counselling agencies are not covered by the AFSL exemption.

6.2 Credit licensing exemption

- Imposed by the *National Consumer Credit Protection Act 2009*.

Financial counselling agencies that engage in credit activity as part of a financial counselling service are exempt from the requirement to hold a credit licence.[3] An example of credit activity would be negotiating reduced payments on a credit card or home loan.

Financial counsellors can provide advice about credit without a licence if the agency:

- doesn't charge any fees or receive any remuneration arising from the financial counselling service
- ensures that the agency and its staff don't provide any other credit activity outside the terms of the exemption
- ensures its financial counsellors are a member of, or eligible for membership of, a financial counselling association; and
- ensures its financial counsellors have appropriate training and adequate skills and knowledge.

6.3 Reading

AFSL exemption

- ASIC Corporations (Financial Counselling Agencies) Instrument 2017/792
- Section 71.04CAA (9) of the Corporations Regulations 2001

Australian Credit Licence exemption

ASIC website: https://asic.gov.au/for-finance-professionals/credit-licensees/do-you-need-a-credit-licence/guidance-for-financial-counsellors/

ASIC Credit (Financial Counselling Agencies) Instrument 2017/793

Subregulation 20(5) of the National Consumer Credit Protection Regulations 2010

3 The credit licensing scheme is imposed by the National Consumer Credit Protection Act 2009. The exemption for financial counselling agencies is in sub-regulation 20(5) of the National Consumer Credit Protection Regulations 2010 and ASIC Credit (Financial Counselling Agencies) Instrument 2017/793.

7 About the Financial Counselling Sector

7.1 Structure of the Sector

The financial counselling sector has a federated structure as shown in the diagram below. There are seven State and Territory financial counselling associations (the South Australian Financial Counsellors Association includes members from the NT). Each of these associations are independent bodies. They are members of the national peak body, Financial Counselling Australia (FCA). Individual financial counsellors are members of their State/Territory Association.

FCA's role is to:

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

FCA's governance structure includes a board of directors and a representative council, made up of the presidents and another member of each state sssociation.

Each state association is the peak body and professional association for financial counsellors in that state or territory. They:

- Provide support to their members
- Manage and regulate membership of financial counsellors in their state or territory
- Arrange and deliver professional development
- Oversee compliance with national standards
- Facilitate professional networks for their members
- Build working relationships between essential service providers and financial counsellors
- Advocate on behalf of consumers facing financial and consumer issues
- Represent the sector to industry and state governments
- Undertake projects to meet specific needs with state based stakeholders
- Undertake policy and advocacy work on state-based issues
- Coordinate working groups of financial counsellors
- To address issues and improve hardship processes
- Run annual or biannual State conferences for their members and industry

7.2 Tools, Resources and Networks

There are a number of helpful tools, resources and networks available to support financial counsellors to assist them in their roles.

- **National Debt Helpline (1800 007 007):** www.ndh.org.au – The National Debt Helpline website is the public facing website to accompany the National Debt Helpline (NDH), the national financial counselling telephone service. The website provides information and self-help guides for the public.
- **Small Business Debt Helpline (1800 413 828):** – www.sbdh.org.au - This service was set up to assist small businesses experiencing financial hardship in response to the 2020 Black Summer bushfires. The service can provide secondary consultations to financial counsellors or take referrals.
- **ASIC Moneysmart website:** www.moneysmart.gov.au – This contains many useful financial literacy tools and calculators. The website has a financial counselling page with a map listing financial counselling outlets across Australia. This map is also hosted on the National Debt Helpline website.

- **Toolkit website:** www.toolkit.org.au – The Toolkit website is a members only resource website for financial counsellors, financial capability workers and financial counselling agency managers. It is managed and maintained by FCA on behalf of the sector as a whole. It is only accessible to financial counsellors who are members of their state/territory association.
- **National Registration Number:** When a financial counsellor who is an associate member or full member of their state association joins the Toolkit, a National Registration Number is generated. This number is found on the profile page and should be listed on email signatures and quoted on all correspondence with creditors. The Toolkit has a directory that creditors can access to look up financial counsellors to check that they are accredited. This prevents others, such as for profit services, from passing themselves off as financial counsellors.