



Submission to the

# Royal Commission

into Misconduct in the Banking, Superannuation  
and Financial Services Industry:

A proposal for the industry levy to fund community  
financial counselling and consumer legal services

Joint Submission from the  
National Association of Community Legal Centres  
& Financial Counselling Australia

26 October 2018

# Overview

1. The Royal Commission into Banking, Superannuation and Financial Services Industry (the **Royal Commission**) has revealed evidence of misconduct and conduct falling below community standards across Australia's finance sector, including lending, investments and insurance. Given the findings to date, and noting the impact on people experience disadvantage, it is time to better resource financial counselling and community legal services to help people in need.
2. The Commission has found that financial services institutions have not complied with their own codes of practice, lent irresponsibly and pushed unnecessary products, such as add-on insurance, onto consumers. The practices uncovered by the Royal Commission have adversely affected hundreds of thousands - if not millions - of people across Australia. This has resulted in significant demand for financial counselling and legal help across Australia, but the current service system is struggling to meet demand.
3. Financial Counselling Australia (FCA) and the National Association of Community Legal Centres (NACLC) are calling for funding of **\$157 million per annum** to create a properly funded network of community financial counselling and community legal services. This is composed of **\$1 million for the National Debt Helpline, \$130 million for 1,000 financial counsellors, and \$26 million for an additional 200 community financial service lawyers** located across Australia.
4. We estimate that this expanded network will **triple the number of people – increasing from around 250,000 to 800,000 people a year** - who are able to access information, self-help resources, phone financial counselling services, face-to-face financial counsellors, legal advice, or other legal support to help them resolve disputes, structure their debts, and negotiate with financial services.
5. It is proposed that the expanded network be funded either through **an increase in the Major Bank Levy or by expanding the existing ASIC industry funding levy** on financial services institutions. This funding model has been canvassed before, and is currently operating effectively in the UK. Its time has now come in Australia.
6. Increasing access to free, community-based services will mean vulnerable and disadvantaged people will be able to benefit from any changes the Commission recommends to improve consumers' experience of the financial services industry.
7. Increased funding for financial counselling and legal services will also strengthen the integrity of financial services across several domains. For example:
  - improving the National Debt Helpline will ensure there is a one-stop-shop for people in financial stress, with people able to access simple, easy-to-understand resources and talk to advisors without getting an engaged signal.
  - Expanded financial counselling services will support more people to address unmanageable debt, avoid financial hardship and avoid legal action.
  - Improved access to legal assistance will head off matters from unnecessary court action
  - Legal assistance will also have a beneficial impact far beyond the individuals directly receiving assistance, by establishing much needed accountability in the finance sector: a credible and well-funded consumer-led environment of accountability will provide a powerful deterrent for irresponsible lending and other misconduct.

- Coordinated planning and referral between financial counselling and legal services through the proposed Network would also facilitate provision of more effective and efficient services to consumers.
8. An expansion in the availability of financial counsellors and financial service lawyers will also **benefit the financial sector**. Financial institutions themselves routinely refer customers with financial hardship issues to community based financial counsellors. While the assistance provided by the financial counsellor in many cases also assists the institution (for example, supporting repayment of debt where it is owed), the financial institutions do not currently contribute to the cost of these services.
  9. The proposal will also **enhance the effectiveness of the Australian Financial Complaints Authority (AFCA)** and other regulators such as ASIC. Financial counsellors and community lawyers are skilled at provide early resolution and heading off matters before they need to be taken to AFCA. They can also support more vulnerable consumers to actively pursue their disputes through AFCA and can provide invaluable feedback to AFCA as it works through its new processes, to ensure continuous improvement and accountability to consumers. A well-resourced network of financial counsellors and community lawyers is also better able to provide feedback on emerging and systemic issues to ASIC and other regulators.
  10. Finally, funding and support for financial counsellors and community legal centres also has demonstrable benefit to governments and the community as a whole, generating broader savings. For example, the Productivity Commission has noted that “legal assistance services can prevent or reduce the escalation of legal problems, which in turn can mean reduced costs to the justice system and lower costs to other taxpayer funded services (in areas such as health, housing and social security payments).”<sup>i</sup>

# About FCA and NACLCL

**Financial Counselling Australia (FCA)** is the peak body for financial counsellors in Australia. Our members are the seven State and Territory financial counselling associations. We provide support, training and resources to help financial counsellors in their jobs and a voice for the profession. We also advocate for the clients of financial counsellors for a fairer marketplace.

Financial counsellors provide advice and support to people experiencing problems with money and debt. Financial counsellors work in community organisations and their services are free, independent and confidential.

The **National Association of Community Legal Centres (NACLCL)** is the national peak body for the community legal sector. Our members are the eight State and Territory Community Legal Centre Associations.

Community legal centres provide free legal help to hundreds of thousands of everyday people as well as people experiencing discrimination and disadvantage every year. Community legal centres are imbedded in local communities, working in a holistic, client-centred and multidisciplinary way. Centres play a crucial and effective role in assisting people to resolve their legal problems at an early stage, and in meeting rising demand for legal assistance as well as contributing to systemic reform.

For more information about this proposal please contact:

**Financial Counselling Australia (FCA)**

Fiona Guthrie, CEO, [fiona.guthrie@financialcounselingaustralia.org.au](mailto:fiona.guthrie@financialcounselingaustralia.org.au), ph. 03 8554 6979

**National Association of Community Legal Centres (NACLCL)**

Nassim Arrage, CEO, [nassim.arrage@naclc.org.au](mailto:nassim.arrage@naclc.org.au), 02 9264 9595

# The problem

## A. Conduct of financial services

The Royal Commission into Banking, Superannuation and Financial Services Industry (the **Royal Commission**) has revealed evidence of misconduct and conduct falling below community standards across Australia's finance sector, including lending, investments and insurance. The Commission has found that financial services institutions have not complied with their own codes of practice, lent irresponsibly and pushed unnecessary products, such as add-on insurance, onto consumers. The practices uncovered by the Royal Commission have adversely affected hundreds of thousands - if not millions - of people across Australia. The increased publicity generated by the Commission's findings is leading to increased pressure on Australia's existing financial counselling and legal services.

## B. Increased levels of financial stress

The Commission's hearings are taking place against a backdrop of increasing financial stress for people across Australia. Interest bearing credit card debt is at \$31.7 billion,<sup>ii</sup> and ASIC recently identified that as at June 2017 there were over 1.9 million people who were either making repeated low payments towards their debts, had persistent debt on at least one card or were in serious or severe delinquency on at least one card account.<sup>iii</sup> A 2015 report by Digital Finance Analytics indicated that growing numbers of Australian households were experiencing financial hardship, with approximately 21% of households in financial distress.<sup>iv</sup> Since 2015 the ratio of household debt to income in Australia has continued to climb, and at 190% is high by historical and international standards<sup>v</sup> while the household savings to income ratio has dramatically reduced.<sup>vi</sup> Recent reports have found that some parts of Australia, for example Western Australia, have shown increasing levels of financial stress even in traditionally less disadvantaged communities.<sup>vii</sup> This is causing significant demand for financial counselling and legal help across Australia.

## C. High levels of demand for financial counselling

There is substantial demand for financial counselling amongst Australian consumers.

Financial counsellors help people understand their options in addressing money and debt problems. This might involve prioritising debts, negotiating with banks for hardship arrangements such as reduced repayments, moratoriums or debt write-offs, lodging disputes with external dispute resolution bodies, accessing concessions, providing advice about bankruptcy, and making referrals to other appropriate services.

Community based financial counsellors assist approximately 120,000 clients a year, and the National Debt Helpline receives 170,000 calls a year, and struggles to keep pace with this demand. Waiting times for financial counselling are frequently up to four weeks, and many services have full waiting lists.<sup>viii</sup> This delay in getting an appointment with a financial counsellor can lead to an escalation in the seriousness of the problem. This demand will only rise as more and more people struggling to meet their consumer credit obligations.

## D. High levels of demand for legal services

While financial counselling can assist many people with credit and debt problems - and obtaining timely counselling will often avert the need for legal advice - it is often the case that a financial counsellor will

identify potential legal issues and then refer a client to a specialist community legal centre. This can prevent the issue escalating and promote early resolution. Matters that frequently require legal support include where legal debt recovery action has been initiated, where contracts are unusual or complex, or where there are multiple parties (e.g. co-borrowers, guarantors). Legal assistance is also required where particular business models or contractual arrangements give rise to potential unconscionable conduct, or where legal avoidance strategies are adopted. There are also a range of more complex financial services that require legal assistance in the event of a complaint or a dispute, for example, insurance, financial advice or even investments.

It is estimated that in 2018, at least 6.4% of the population (aged 15 or over), around 1.2 million people, will have experienced a credit or debt legal issue in a 12 month period.<sup>ix</sup> (These figures would be higher if they included insurance matters.<sup>x</sup>) A conservative estimate would suggest at least 20% of the group that experienced a credit or debt legal issue - 240,000 people a year - would be financially disadvantaged and therefore need access to free legal information and/or advice.<sup>xi</sup>

Royal Commission hearings have demonstrated that a proportion of people with credit issues will likely have a right of redress in relation to their financial services issue which, without assistance, would remain unenforced.<sup>xii</sup>

The current demand on free community legal services means that even people who are currently being assisted would benefit from the ability to obtain greater assistance. For example, people who currently receive simple information and are referred to self-help resources are likely to benefit from face-to-face financial counselling and access to legal advice. Because of resource constraints, this is simply not possible.

## E. Priority groups who face particular barriers to services

In addition to rising demand reflecting financial stress across the wider Australian population, there are a number of population groups who face particular barriers to accessing financial counselling and legal assistance services, including people experiencing domestic and family violence, small business people, farmers, elderly individuals, those in remote, regional and rural areas, culturally and linguistically diverse individuals and people who have been given poor financial advice.

There are particular groups of people who have been disproportionately affected by consumer lending misconduct, with some lenders exploiting the knowledge and power imbalance to their own advantage. Individuals who are disadvantaged when negotiating credit also typically face barriers in access to justice. Improving access to independent, community-based lawyers in Australia's most disadvantaged communities will improve equity, fairness and access to justice.

### Aboriginal and Torres Strait Islander people

As outlined in the Royal Commission Interim Report:

“Some Aboriginal and Torres Strait Islander people who live in remote or very remote areas encounter particular difficulties in their dealings with banks. Some, for whom English is a second or third language, encounter language difficulties. Some encounter difficulties in satisfying some forms of identification requirements. Some may have a low level of literacy, particularly financial literacy, and may have only a limited understanding of how credit, insurance and superannuation products work. And all who live in remote or very remote areas face the difficulties of geography.”<sup>xiii</sup>

Unfortunately, it has become clear in recent years there are several financial service providers that have been using problematic sales practices to target vulnerable communities such as remote Aboriginal and Torres Strait Islander communities. For instance, certain insurers have been exploiting the importance of funeral ceremonies in Aboriginal and Torres Strait Islander culture to sell unsuitable funeral insurance plans.<sup>xiv</sup> Other examples involve remote Aboriginal communities being targeted by payday lending and consumer lease companies, the latter through the use of Centrelink's Centrepay system.<sup>xv</sup>

The Royal Commission Interim Report identified several issues faced particularly by Aboriginal and Torres Strait Islander people in their interactions with financial services. These included Aboriginal and Torres Strait Islander people who should have fee-free accounts instead paying bank fees because they had the wrong sort of account, unauthorised overdrafts resulting in financial hardship, difficulties in cancelling direct debits and difficulties in identification.

Financial counselling and community legal services prioritise Aboriginal and Torres Strait Islander communities in their credit and debt work, with an increasing number of Aboriginal financial counsellors and community legal centre Aboriginal Access workers. Community legal centres also partner with local Aboriginal health workers and financial counsellors on the ground.

An expansion of Aboriginal financial counsellors and community legal centre staff would complement the efforts of ASIC's Indigenous Outreach Program to identify and provide early notice of "scams" and inappropriate financial services targeting Aboriginal and Torres Strait Islander people.

### People experiencing domestic and family violence

People experiencing domestic and family violence are often subjected to financial abuse.<sup>xvi</sup> This includes having debts and fines run up in their name, being left with financial responsibility for joint debts, and being coerced into signing contracts and loan agreements. These forms of financial abuse can cause a victim to feel compelled to return to an abuser, ruin credit ratings and seriously impinge on a survivor's capacity to rebuild their life after leaving an abuser.

Timely financial counselling and legal assistance is of enormous benefit to victims of domestic and family violence. Community legal centres have expertise in assisting people experiencing family violence, for example, by the provision of advice on how to protect assets and through negotiating on a person's behalf with other agencies. Financial counsellors and community lawyers can also help survivors restore their credit rating and negotiate with credit providers, for example to have unjust loans (such as those entered into through coercion) set aside.

With additional funding specifically for specialist financial service and other debt matters, community legal centres will be far better placed to provide wrap-around legal support to people, so they do not have to go to a range of different services for legal advice and support.

### People with disability

People with disability are particularly vulnerable with respect to their interactions with the financial services sector. The Royal Commission has heard direct evidence of this, particularly the impact of cold calling and pressure selling.

There is a tension between the rights of people with disability to access and control their own financial affairs, and a need to protect people from financial abuse and exploitation when conducting their financial activities. There is also a need to ensure that all transactions are legally valid. Due to many people's inability to work, people with disability's vulnerabilities are exacerbated by financial hardship

and stress. The provision of appropriate supported decision-making can help to alleviate these tensions and support and empower people with disability to control their own financial affairs and resolve financial issues.

Access to free financial counselling and legal services is an important first step to ensure that people with disability can understand and exercise their legal rights. There are a number of specialist disability community legal centres across Australia who work closely with people with disability, providing community legal education, Easy English resources, facilitating access to supported decision-making, as well as one-on-one legal advice and support. These centres are well-placed to expand their services, if only additional resources were available.

### People with low English literacy

Language barriers to financial inclusion in Australia are significant. Recent research shows a significant growth in the rates of payday loans taken out by first or second generation migrants to Australia with English as a second language.<sup>xvii</sup> People with low English literacy are vulnerable to exploitation, and to entering into contracts they may not fully understand. Financial counselling and community legal centres across Australia are already working closely with CALD communities, and can expand their work into vulnerable communities to ensure they are not exploited.

### Older people

The Royal Commission has revealed that the practices of lenders when obtaining guarantees from older people are far from adequate to protect the interests of vulnerable older people. Financial counsellors and community legal centres provide vital legal and non-legal support and assistance to older people, their families and support services where elder abuse is occurring or suspected. Access to legal assistance can mean older people are protected from elder abuse, are often able to resolve their financial issues, ensure they can remain in their home, and have access to adequate resources to support their needs. A number of community legal centres already specialise in assisting older people in relation to elder abuse, but with expanded resources, could work more closely to combat this growing problem.

## F. Other groups with limited access to legal assistance

There are a range of other people facing particular issues who would benefit from financial counselling and consumer legal advice but fall through the cracks. These include people who as a result of poor financial advice are left with very little money and at risk of losing their homes; small business and farmers; and people trying to access dispute resolution.

### People who receive poor financial advice

Current community legal centre government funding is targeted at low income and/or disadvantaged people, who by definition have no money to invest because they have barely enough money to meet their day to day living expenses. There is no specific state or federal government funding for CLCs that provide legal advice to people who have received poor investment advice from financial planners.

However, as the Royal Commission has revealed, people who are affected by poor and unethical financial planning advice end up facing the loss of their only asset, usually their home, perhaps a small business, or the family farm. In some cases, people who were reasonably well off may lose everything, leaving them with inadequate provision for their retirement, possibly homeless and dependent on income support. For example, in WA a lot of consumers who were on high incomes suffered because of the mining boom/bust and the downturn in the economy and some, despite their income, were victims of irresponsible lending



or poor financial advice. With the timely intervention of quality, free legal services, some of these people could retain their home, their farm, or their business; or at least access some form of redress.

Advice and assistance should be made available to people in the aftermath of poor financial advice – particularly where people have lost all their assets or are facing repossession of their home as a result. The provision of this type of assistance would not only assist individuals but would address a gap in accountability. Consumer organisations regularly provide information to ASIC to assist in its oversight of financial service providers. This type of flow of information does not exist in relation to financial planning and investment scams due to the gap in funding for legal assistance to consumers who have received poor financial planning advice.<sup>xviii</sup>

### Small business and farmers

Recent research<sup>xix</sup> has identified significant unmet legal need among farmers and small business owners in areas affected by drought. The experience of the National Debt Helpline suggests that there is unmet legal need among other small businesses, especially those experiencing financial problems. There is no affordable legal service to take referrals for small businesses in financial difficulty, as existing community legal centres and other services cannot provide even initial support to clients with small business legal issues.

The Final Report from the Treasury's *Review of the financial system external dispute resolution and complaints framework* report supported the Joint Consumer Group's argument that there is a need to ensure that small businesses have access to affordable dispute resolution. Small businesses can face many of the same issues as consumers in dealing with disputes and seeking redress, such as language and cultural barriers of the owner of the small business, power imbalances with larger businesses, and a lack of time and money. The Treasury report further highlighted:

“Additionally, the impact of a lack of access to justice can be particularly acute for a small business. Where a business is faced with a dispute, this can impact on its financial viability and can result in an inability to pay employees and suppliers, the threat of bankruptcy, and personal stress and family breakdown. In the case of financial facilities, the small business owner will have often provided a mortgage over assets, such as the family home, and there may be guarantees from other family members”<sup>xx</sup>

Funding for specialist small business legal assistance and financial counselling would respond to research evidence<sup>xxi</sup> of the need for timely and integrated legal assistance services that are targeted to vulnerable small businesses in order to reduce the impact on the business, the economy and on families.

### Accessing dispute resolution

The existing dispute resolution framework heavily relies on financial counselling and community legal services to assist people through a process that is at times complex and overwhelming.

Financial counselling and community legal services play a key supporting role in the dispute resolution framework through:

- Providing advice and assistance to consumers experiencing financial hardship who have found the service themselves, as well as consumers referred on from financial institutions due to defaults or other forms of financial hardship
- Advice and support in helping consumers navigate complaints through internal dispute resolution and hardship systems
- Advice and support to help consumers lodge the external dispute resolution services, including drafting submissions assisting the consumer to identify and present evidence, again either in

response to a request for assistance from a consumer or after referral on by an ombudsman service, financial institution or regulator<sup>xxii</sup>

- Court representation in those rare cases where this is appropriate, and
- Identifying and reporting on systemic issues and complaints to ombudsmen, code compliance bodies, and regulators such as ASIC.<sup>xxiii</sup>

Without this work, the dispute resolution framework would be inaccessible to a range of consumers. Access to free and independent legal and financial counselling advice is essential for an effective and efficient dispute resolution and complaints framework in the financial system.

## G. How are people currently accessing help?

There are limitations to the current services available to people who have debts or facing action from financial institutions. It consists of the National Debt Helpline (a phone financial counseling service and website); face-to-face financial counselling services; and legal assistance from five specialist consumer legal centres plus a range of generalist community legal centres.

### National Debt Helpline

This helpline, coordinated by Financial Counselling Australia, is staffed by different community organisations in each state and territory, two of which are community legal centres. The helpline received 170,000 phone calls in 2017, an increase of 12%. Call volumes have continued to increase in 2018 with the Royal Commission shining a light on improper practices.

The helpline involves:

- Assessment and triage
- The provision of information and/or referral, including to face to face financial counselling services or consumer credit legal services, and
- The provision of financial counselling advice so that callers can make an informed choice about their options, and in some cases access to further casework and advocacy.

Helpline staff may be financial counsellors, but in some cases may also be lawyers. About two thirds of callers will receive advice or information that allows them to self-help, with the remaining one third referred to other community-based services as their matters are complex; for example, callers who are in a complicated financial situation, who have mental health issues, or are experiencing family violence.

There is also a website for the National Debt Helpline ([www.ndh.org.au](http://www.ndh.org.au)) which provides information and resources for people in financial stress.

### Face-to-face financial counselling services

Face to face financial counselling is provided by various community and charitable organisations around Australia. Financial Counselling Australia estimates that there 185 organisations providing face to face financial counselling and that they assist around 125,000 people per year.

Financial counsellors help people prioritise debts, negotiate with banks, lodge disputes with external dispute resolution bodies, access concessions and provide advice or referrals to legal centres in relation to bankruptcy and other issues. Clients often report a sense of relief after talking to a financial counsellor. It may be that a client is able to save their homes or afford their rent and other bills. There is often positive flow on effects for people including reduced stress as well as the reducing the strains on

health and relationships that so often accompany financial difficulty. A RMIT study showed for example showed that:

- 66% said their financial difficulties had been resolved
- 75% said they were better able to prioritise debt
- 74% said the advice had helped them avoid legal action
- 53% had avoided bankruptcy
- 74% were better able to budget
- 73% were able to access creditors' hardship programs.<sup>xxiv</sup>

## Community legal centres

Community legal centres are independent non-government organisations that provide free legal services to people and communities at times when that help is needed most – particularly to people facing economic hardship and discrimination. Community legal centres help people with a range of legal problems, which means they don't spiral out of control or create other legal problems.

Community legal centres also provide an 'early warning system' for systemic issues, which the Royal Commission has also highlighted in its hearings. Legal centres uniquely engage in law reform which addresses systemic problems and advocate to resolve those, as well as the community education and individual casework. This then deals provides a more timely and cost-effective way of preventing the need for another Royal Commission in the future as CLCs can be the early "alrterers" to more deep-seated problems – the canaries in the bird-cage.

In 2017-18, community legal centres helped over 200,000 people across Australia. Credit / debt issues are among the top 5 legal problems dealt with by community legal centres, alongside family/domestic violence, family law and housing/tenancy.<sup>xxv</sup> In 2017-18, it is estimated that:

- At least 30,000 individual people<sup>xxvi</sup> were assisted with information services, legal advices, legal tasks, or representation services
- Around 20,000 discrete legal services were provided (i.e. legal advices or related tasks)
- At least 2,500 legal representation services provided, that is, lawyers acting for a client, e.g. in a dispute with a bank
- Thousands of additional non-legal support services – primarily financial counselling - were also provided by CLCs, but this data is not included here as it is counted in the financial counselling statistics.<sup>xxvii</sup>

Community legal centres are either generalist legal centres – providing legal assistance to people living in a specific geographic community on a wide range of legal issues – or specialist legal centres, that service a specific group of people or people who are affected by a particular area of law. There are five specialist community legal centres with a focus on the rights of consumers, and who also provide legal support and training to financial counsellors:

- Financial Rights Legal Centre
- Consumer Action Law Centre
- Consumer Credit Law Centre South Australia
- Consumer Credit Legal Service (WA)
- Consumer Law Centre (ACT).

Financial Rights and Consumer Action also provide the National Debt Helpline in their respective states. CARE Financial Counselling in the ACT provides the National Debt Helpline service for the territory, and auspices the Consumer Law Centre (ACT).

About a third of the total number of credit/debt legal services provided by community legal centre in 2017-18 were provided by the five specialist consumer legal centres, with the rest spread out across the rest of the community legal centre network.<sup>xxviii</sup>

Many generalist community legal centres provide legal advice and support in relation to credit and debt issues. Some engage a specialist credit and debt lawyer – for example, Hobart Community Legal Centre operates a Consumer Credit Hotline for the state of Tasmania (separate to the National Debt Helpline). Some other specialist legal centres, for example some Women’s Legal Services and Seniors Rights Services, also provide legal services in relation to credit issues where for example it arises from issues affecting their client groups such as family violence or elder abuse. Some generalist legal centres also employ financial counsellors who work closely with solicitors in helping clients in a holistic way.

Other legal centres use volunteer solicitors to provide initial legal advice in credit and debt, then either refer people to the state-wide specialist consumer legal service, or seek the support of the specialist lawyer as a back-up while the local legal centre works on the ground with the particular client. For example, a recent pilot project in Victoria brought together Consumer Action Law Centre with two generalist community legal centres in a partnership to identify and address consumer, credit and insurance legal needs in regional Victoria.<sup>xxix</sup>

Although many community legal centres leverage volunteer programs and pro bono assistance to maximise the total hours, dollar value and range of services they provide, the fact remains that community legal centres continue to face significant funding challenges. Current levels of funding to the sector are insufficient to ensure people can access the help they need. There is an urgent need for certain, predictable and increased funding. For example, the Productivity Commission’s 2014 Report on Access to Justice recommended significant additional investment in legal assistance services<sup>xxx</sup>. Similarly, the Law Council of Australia’s recent Justice Report echoed these concerns and recommended additional funding.<sup>xxxi</sup>

Further details and data relating to the work undertaken by community legal centres in relation to financial legal services are available on the National Association of Community Legal Centres website [http://www.naclc.org.au/about\\_clcs.php](http://www.naclc.org.au/about_clcs.php).

# The solution: an extended National Network of Finance Counselling and Legal Services

We propose funding be allocated from the industry levy to expand the National Debt Helpline and increase access to face-to-face financial counsellors and community lawyers.

An integrated network of financial counsellors and community lawyers would ensure that people contacting the National Debt Helpline can be assisted on the phone or effectively triaged to legal services or to financial counsellors in the network. The model draws on principles for a service delivery model developed in the 'Consumer Credit Legal Services in Australia' unpublished ASIC report,<sup>xxxii</sup> in essence: to build on the strengths and address the weaknesses of current service delivery arrangements, target vulnerable and disadvantaged consumers, and maximise coordination between service delivery agencies. The model also proposes expanding service provision to play a preventative role where a person is at risk of losing their home, their only business, or their family farm.

## Service model

### Component 1. National Debt Helpline

The National Debt Helpline and website currently are funded through the general federal government grant provided to Financial Counselling Australia. This funding is not adequate to support the website's core functions or to analyse the work of the Helpline. It is proposed that \$1m per annum be provided to fund FCA for staff and technology to:

- Continually update the website
- Developing new content including videos
- Implement search optimisation so that people in need of help are prompted to contact the National Debt Helpline
- Other promotional material for the service, including providing flyers and posters to community organisations, government services such as Centrelink, and MP electorate offices
- Respond to requests from government, media and other stakeholders
- Collate and analyse Helpline data to inform policy development
- Continue to innovate and increase accessibility, for example through developing new tools such as chat bots and letter generators for people who can self-help.

With sustainable staffing and funding, the NDH phone line and website can scale up to be a one-stop-shop for all people in financial stress who need to know where to get help.

### Component 2. Integrated teams – financial counsellors and lawyers

An integrated team model in which lawyers and financial counsellors work together provides efficiency and specialisation. An integrated team model encompasses either lawyers and financial counselors working together in situ, or strong and established referral pathways between financial counsellors and lawyers with a specialisation in financial services.

#### ***Financial counsellors:***

The Network would involve the funding of 1,000 FTE financial counsellors, which is a doubling of the current number of counsellors. The financial counsellors would be trained in screening for legal issues, and either working in situ with lawyers or with strong referral processes to specialist lawyers.

***Specialist community lawyers:***

The Network would expand the community legal centre workforce with funding for 200 new lawyers, specializing in financial legal issues, located across both the existing specialist consumer credit legal services and the broader network of community legal centres. Key issues and particularly vulnerable communities would be prioritised – for example the mis-selling of funeral insurance in Aboriginal and Torres Strait Islander communities. The determination of appropriate location for lawyers and appropriate service models would be further developed by NACLC working with the sector.

## Funding source

The model would most appropriately be funded by the financial services industry. A similar funding mechanism has been effectively established in the UK, and in Australia there have been calls for greater funding for financial counsellors to be sourced from an industry levy.<sup>xxxiii</sup>

Two possible mechanisms for funding the model are:

- A. ASIC fee model: Extending the ASIC industry cost recovery model to include funding for financial counselling and consumer finance legal services; or
- B. Major Bank Tax: This tax could be increased to cover the proposed funding. The tax is levied on banks with liabilities of more than \$100 billion, which grasps the big four banks and Macquarie. The tax is 0.06% of liabilities.

Details of the funding proposal are set out on the next page.

## Funding proposal and modelling of people helped

Component	Number of people currently assisted	Estimation of current staffing and funding	Proposal	Funding sought from the Levy per annum (excl GST)	Total number of people assisted under this proposal
<b>National Debt Helpline and website</b> <a href="http://www.ndh.org.au">www.ndh.org.au</a> <b>-information, referral and phone financial counselling</b>	Helpline currently receives 170,000 calls a year, with an estimated 100,000 individual people provided with information and advice by financial counsellors and lawyers.  Website receives approx 100,000 unique visitors.	Helpline and the website are run by FCA from their recurrent government funding – no dedicated grant.	Dedicated staff, funds for content-writing and legal review, website development, IT tools eg chat-bots / form generators, self-help kits, , videos, search-engine optimization and promotion.	\$1 million	200,000 people to receive information and advice through the Helpline (an increase of 100,000) At least 500,000 unique visitors expected to the website and access the self-help resources (increase of 400,000)
<b>Financial counsellors: intensive face-to-face and ongoing support</b>	125,000 people currently receive intensive face-to-face financial counselling.	There are 500 FTE financial counsellors across 185 organisations. Current government funding for financial counselling is estimated at around \$50m: Commonwealth financial counselling \$21m, state/territory funding estimated at \$30m.	500 additional FTE financial counsellors bringing total to 1000.	\$130 million* This assumes all 1000 FTE are funded through the Industry Levy.	250,000 people will receive intensive, ongoing face-to-face financial counselling support (an increase of 125,000)
<b>Community financial service lawyers</b>	Approximately 30,000 people (legal information, advice, tasks and representation services) a year receive services in relation to credit and debt from CLCs.	Estimated there are 40 FTE lawyers in CLCs providing credit and debt advice: - Approximately 30 FTE lawyers located across the 5 specialist CLCs - An estimated combined 10 FTE lawyers working across 176 other CLCs.  Some CLCs use volunteer lawyers to provide credit and debt advice. This voluntary workforce is not counted in staff headcount. Estimated cost is \$5m**, the funding drawn by CLCs from the Commonwealth National Partnership Agreement on Legal Assistance Services and/or State CLC Funding Programs.	200 additional FTE community lawyers	\$26 million* It is assumed that the existing \$5m** remains in the system from NPA / State CLC Program funding.	180,000** people will receive legal information, legal advice, tasks and representation services in relation to financial services - an increase of 150,000** people
<b>TOTAL per annum</b>	360,000 people currently assisted through all modes, but as some may receive more than one type of service discount by 70% = estimated 250,000 unique people.	Estimated at \$60 million	Improved website In total, 1000 FTE financial counsellors and 230 FTE community lawyers	<b>\$157 million</b>	1.13 million people assisted through all modes, but as some may receive more than one type of service discount by 70%. <b>Approximately 800,000 people will be assisted.</b>

Notes: \* Each FTE position is calculated at \$130,000 which includes salary, on-costs (super, workers comp), and administration overheads / program management

\*\* These figures were slightly revised on 21/02/2019.

Further details of the modelling behind this proposal can be sought from FCA and NACLCL.

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- <sup>i</sup> Productivity Commission of Australia, Access to Justice Arrangements Inquiry Report No 72 (September 2014) 666.
- <sup>ii</sup> ASIC, *Credit Card Lending in Australia*, Report 580, 2018.
- <sup>iii</sup> ASIC, *Credit Card Lending in Australia*, Report 580, 2018, 7.
- <sup>iv</sup> Digital Finance Analytics and the Monash University Centre for Commercial Law and Regulatory Studies, *The Stressed Household Finance Landscape Report 2015*.
- <sup>v</sup> Michele Bullock, Assistant Governor, Financial System, “The Evolution of Household Sector Risks”, Speech to Ai Group, 10 September 2018, available at <https://www.rba.gov.au/speeches/2018/sp-ag-2018-09-10.html>
- <sup>vi</sup> Australian Household Saving Ratio graph published based on ABS statistics by Tiding Economics available at <https://tradingeconomics.com/australia/personal-savings>
- <sup>vii</sup> <https://thewest.com.au/news/wa/welcome-to-perths-mortgage-stress-hotspot-ng-ya-121208>  
<https://www.abc.net.au/news/2017-01-09/wealthiest-suburbs-among-most-vulnerable-postcodes-for-mortgage/8170338>
- <sup>viii</sup> Financial Counselling Australia, Pre Budget Submission to the Federal Budget (2018-19 Budget), <https://www.financialcounsellingaustralia.org.au/getattachment/Corporate/Publications/Submissions/FCA-Pre-Budget-Submission-to-the-Federal-Government-2018.pdf>
- <sup>ix</sup> As modelled on the 6.4% of respondents (aged 15+) to the Legal Australia Wide (LAW) survey who had a legal credit/debt problem they had experienced in the last 12 months. “credit and debt” covered credit - problems or disputes relating to loans, hire purchase, investment income, superannuation companies, shares, credit rating, bankruptcy - but also debts that might be owed to the respondent (i.e. private debts). Christine Coumarelos et al. *Legal Australia-Wide Survey: Legal Need in Australia* Access to Justice and Legal Needs vol 7. 2012, Law and Justice Foundation, 60.
- <sup>x</sup> The LAW survey found that an additional 16.8% of the people surveyed had a legal problem relating to “consumer services” in the last 12 months. “Consumer services” includes bank services and insurance. Christine Coumarelos et al. *Legal Australia-Wide Survey: Legal Need in Australia* Access to Justice and Legal Needs vol 7. 2012, Law and Justice Foundation, 297.
- <sup>xi</sup> Of the 1.2 million individuals with credit debt legal problems, 20%, or 240,000 are likely to be in the lowest income quintile, and all these people are likely to need at least some legal information to help them resolve the issue. Christine Coumarelos et al. *Legal Australia-Wide Survey: Legal Need in Australia* Access to Justice and Legal Needs vol 7. 2012, Law and Justice Foundation, 60. Also see Renouf, G & Porteous, P. *Consumer Credit Legal Services in Australia*, unpublished report to ASIC, 2011, Document 18 on ASIC FOI Disclosure Log 2011-2017: <https://asic.gov.au/about-asic/freedom-of-information-foi/foi-disclosure-log/freedom-of-information-asic-disclosure-log-archive-2011-2017/>
- <sup>xii</sup> Consumer Action Law Centre submission to the Royal Commission.
- <sup>xiii</sup> Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Interim Report*. 28 September 2018, 257.
- <sup>xiv</sup> “Babies among thousands of Aboriginal children signed up to 'shocking' funeral insurance schemes” ABC, consumer affairs reporter Josie Taylor, 21 Nov 2015, available at: <http://www.abc.net.au/news/2015-11-21/aboriginal-babies-being-signed-up-to-shocking-insurance-schemes/6958342>
- <sup>xv</sup> “Radio Rentals made \$90 million from Centrelink payments last year” ABC, Consumer affairs reporter Josie Taylor, 20 Mar 2015. at: [http://www.abc.net.au/news/2015-03-20/radio-rentals-reaps-\\$90-million-in-centrelink-payments/6333690](http://www.abc.net.au/news/2015-03-20/radio-rentals-reaps-$90-million-in-centrelink-payments/6333690); “Ongoing probe into appliance rental market” Appliance Retailer, 14 September 2015, available at: <https://www.applianceretailer.com.au/2015/09/ongoing-investigation-into-appliance-rental-market/>
- <sup>xvi</sup> Kutin, J., Russell, R, Reid, M. (2017) Economic abuse between intimate partners in Australia: prevalence, health status, disability and financial stress. *Australian and New Zealand Journal of Public Health* 41(3), 269-274.
- <sup>xvii</sup> Digital Financial Analysis (2015), *The Stressed Finance Landscape Data Analysis*, <http://goodshepherdmicrofinance.org.au/sites/default/files/The%20Stressed%20Financial%20Landscape%20Data%20Analysis%20-%20DFA.pdf>
- <sup>xviii</sup> Financial Rights Legal Centre, ‘Financial Advice Assistance Service Pilot Proposal’, Financial Rights Legal Centre
- <sup>xix</sup> Consumer Action Law Centre, Drought Legal Assistance Scoping Project – Final Report, March 2018, available at: <https://policy.consumeraction.org.au/2018/02/16/drought-legal-assistance-scoping-project-final-report/>.
- <sup>xx</sup> The Treasury, *Review of the financial system external dispute resolution and complaints framework: Final Report*. 3 April 2017, The Australian Government, 160.
- <sup>xxi</sup> Law and Justice Foundation of NSW, *Legal Australia Wide Survey*, available at: <http://www.lawfoundation.net.au/publications>.
- <sup>xxii</sup> FOS and CIO refer a large and increasing number of consumers to community legal centres and legal aid commissions for advice regarding making complaints. Financial Rights, for example, received 4,024 client referrals from FOS alone in the 2017/18 financial year, and a further 91 from the CIO. EDR schemes are intended to be accessible, free and fair. In theory, consumers should not need an advocate assisting with their dispute. In practice, however, some financial disputes are



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technically and legally complex. Independent legal advice is critical for consumers faced with complex matters. Many consumers are simply overwhelmed by the process, compounding the stress arising from the substantive issues in dispute.

<sup>xxiii</sup> The Interim Report of the Royal Commission closely examined the capability and effectiveness of regulators to identify and address misconduct. Community legal services as well as financial counsellors regularly identify misconduct in their client work, and refer these matters to the regulators. Community legal centres (particularly specialist legal centres) provide ASIC and the government with valuable information about unfair practices, whether illegal or not, in relation to consumer credit, insurance, banking services and debt collection practices. A number of consumer organisations sit on ASIC's Consumer Advisory Panel, assist consumers to complain to ASIC, and respond to Notices issued by ASIC requiring the production of information. For example, ASIC recently sought several thousand anonymized records from the Financial Rights client database to aid them in their review of Comminsure and the life insurance industry more broadly.

<sup>xxiv</sup> Nicola Brackertz, *"I Wish I'd Known Sooner" The Impact of Financial Counselling on Debt Resolution and Personal Wellbeing*, Swinburne University, 2012.

<sup>xxv</sup> NACLCL prepared these statistics from: CLASS Database Report on Top Legal Issues 2017-18, noting that this database does not include data from Consumer Action Law Centre or Consumer Law Centre ACT.

<sup>xxvi</sup> The Community Legal Assistance Service System (CLASS) database does not currently make available a national report on the number of *people* assisted in relation to a particular legal subject matter type (currently available reports are based on the number and type of *services* provided, or the number of people assisted across all legal subject matter types). However NACLCL has estimated the figure of 30,000 people helped by extrapolating from centre-level data provided by some of the specialist legal centres. Note that the estimate of people helped includes those who received information-only services, eg referred to self-help kits.

<sup>xxvii</sup> NACLCL prepared these statistics from unpublished CLASS Database Report, Top Legal Issues 2017-18, and Consumer Action Law Centre data 2017-18. The statistics do not include Consumer Law ACT data.

<sup>xxviii</sup> See notes above: data calculated from CLASS and from CALC data 2017-18.

<sup>xxix</sup> Federation of Community Legal Centres (Vic), *Collaboration Works: FCLC Generalist-Specialist Project*, 2018, [https://d3n8a8pro7vhmx.cloudfront.net/fclc/pages/279/attachments/original/1534984019/FCLC\\_CollaborationWorks\\_Aug2018.pdf?1534984019](https://d3n8a8pro7vhmx.cloudfront.net/fclc/pages/279/attachments/original/1534984019/FCLC_CollaborationWorks_Aug2018.pdf?1534984019)

<sup>xxx</sup> Productivity Commission, *Access to Justice Arrangements - Inquiry Report*, 2014, <https://www.pc.gov.au/inquiries/completed/access-justice/report>

<sup>xxxi</sup> Law Council of Australia, *Justice Project Final Report* (2018), rec 2.1: <https://www.lawcouncil.asn.au/justice-project/final-report>

<sup>xxxii</sup> Renouf, G & Porteous, P. *Consumer Credit Legal Services in Australia*, unpublished report to ASIC, 2011, Document 18 on ASIC FOI Disclosure Log 2011-2017: <https://asic.gov.au/about-asic/freedom-of-information-foi/foi-disclosure-log/freedom-of-information-asic-disclosure-log-archive-2011-2017/>

<sup>xxxiii</sup> Financial Counselling Australia, *Pre-Budget Submission to the Federal Government* (2018-19 Budget), <https://www.financialcounsellingaustralia.org.au/getattachment/Corporate/Publications/Submissions/FCA-Pre-Budget-Submission-to-the-Federal-Government-2018.pdf>