

Tuesday 13 February 2024

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Dear Vivek and Jacqui,

Thank you again to the Australian Tax Office (ATO) for holding a series of listening webinars with the financial counselling sector last year.

Now that we are well into the new year, we are writing to seek an update from the ATO on the progress of the concerns and issues raised during these webinars. These issues are summarised below, and include our recommendations on how these may be addressed.

**1. Recognition of the role of Financial Counsellors**

Many financial counsellors raised concerns about the ATO's identity verification processes for financial counsellors in order to satisfy the ATO's Proof of Record Ownership (PORO) requirements. Financial counsellors are carrying out a professional role on behalf of their clients but the ATO requires financial counsellors to provide their own personal identification rather than professional identification. Financial counsellors are very uncomfortable about the privacy implications of these requirements.

These requests appear to be the result of a lack of understanding by the ATO of the essential role of a financial counsellor as a helping professional.

We recommend that:

- 1) the ATO change their identification protocols to require professional identification by financial counsellors, rather than personal identification. A model that can be adopted is the *Banking Code of Practice* and its accompanying *Industry Guideline: Banks' financial difficulty programs* with the model guideline as follows – "where a financial counsellor has been appointed by a customer, the bank should accept the agreed industry standardised forms."
- 2) the ATO work with the financial counselling sector to co-design training for all ATO frontline workers on the role of a financial counsellor and the authority they have to carry out their professional role
- 3) the ATO establish a dedicated direct phone and email line for financial counsellors working on behalf of their clients

- 4) the ATO to ensure that any referrals to financial counsellors to clients who are experiencing financial hardship work effectively by providing better provisions for the financial counsellors to work with the ATO (see recommendation 3 above)

## **2. Client vulnerability and hardship arrangements**

Case studies were provided during the webinars where clients with poor mental health, experiences of family violence, and low-level English skills were treated extremely poorly by the ATO, including lengthy delays on responses and requests for unreasonable repayment schedules. These ATO responses all impacted on clients, with a Victorian financial counsellor providing an example of a client having to seek medical advice from their GP for suicide ideation. The client subsequently relapsed into gambling in the hope of winning enough to repay the ATO.

There were many examples of the ATO requiring unrealistic repayment options from financial counselling clients, including ATO staffers telling clients to sell their home to repay debts despite the risk of homelessness for a young family where income levels were impacted by ongoing illness, and a family violence victim-survivor on the Disability Support Pension who was told to pay \$50 per fortnight for essentially the rest of her life while interest continued to accumulate on her debt.

We recommend that:

- 1) the ATO work with the financial counselling sector to co-design training for all ATO frontline staff on client vulnerability and trauma-informed practice to better equip them with the skills they need to work with these clients
- 2) The *Practice Statement Law Administration PS LA 2011/17* is reviewed to include GST, PAYG withholding and SGC debts as tax debts that may be released upon proof of financial hardship
- 3) Additional hardship indicators are added to the ATO's assessment process including experience of family violence, poor mental health, and that appropriate consideration is given to the client's engagement with a financial counsellor
- 4) ATO guidelines are amended to:
  - a. Standardise the waiving of penalty interest in cases where financial hardship has been established
  - b. Ensure that repayment arrangements requested by the ATO are realistic and affordable. In amending the ATO's processes, the financial counselling sector would welcome the opportunity to work with the ATO on developing guidance in this critical area.

## **3. Establishment of a case management model**

Financial counsellors provided feedback on the difficulty of speaking to numerous ATO areas on a single issue, and the conflicting information that was provided by different ATO frontline staff. Additionally in some cases, multiple attempts to contact the ATO through general lines have resulted in no response.

We recommend that the ATO establish a case management model whereby dedicated case managers are assigned to work with financial counsellors on client matters, acting as

a liaison point between financial counsellors and different ATO areas to ensure quick resolution of matters.

#### 4. GST scams

Financial counsellors provided evidence of an alarming increase in GST fraud cases (the ATO refers to this category of people as Operation Protego), where vulnerable Australians with lower levels of financial literacy are being scammed by third parties who assist them to file inaccurate Business Activity Statements or tax returns to receive funds from the ATO. The third party then claims a portion of the funds as their fee, and the client is left with ATO debts due to the inaccurately filed documents. In some cases, these scams were perpetrated as part of systemic financial abuse in family violence situations.

To date, there is little clarity from the ATO about whether these debts, which the ATO views as purposely fraudulent despite evidence of the client's vulnerability and extenuating circumstances, will still apply in the case of bankruptcy. In addition, the ATO needs to take the client's vulnerability and circumstances into account in relation to repayment arrangements. There are some cases where debts should be waived because of these.

We recommend that:

- 1) Consistent with the recommendation above, that ATO guidelines be amended so that penalty interest be waived where culpability in these 'fraudulent' transactions cannot be established and where financial hardship is evident
- 2) The *Practice Statement Law Administration PS LA 2011/17* be amended to include **"where the debt owed is the result of a 'scam'"** as a consideration under which a debt may not be economical to pursue or otherwise effectively extinguished.

Further to the issues above which were raised during the listening webinars, Financial Counselling Victoria also raised the 'Debt to Government' legislation that has been developed in New Zealand as a model that can be adopted in Australia. We believe that this model may provide a pathway to mitigating a number of the issues raised by financial counsellors in the listening webinars, and would welcome the opportunity to discuss this further.

We would be happy to meet to discuss further if that would be useful.

Yours sincerely,



Zyl Hovenga-Wauchope  
Executive Officer  
Financial Counselling Victoria

**On behalf of:**

- Fiona Guthrie, Chief Executive Officer, Financial Counselling Australia
- Kate Fox, Executive Officer, South Australian Financial Counsellors Association (including the NT)
- Danielle Slade, Chair, Financial Counselling Association of Tasmania
- Leanne Berard, Acting Executive Officer, Financial Counselling Association of WA
- Jon O'Mally, Executive Officer, Financial Counsellors' Association of Queensland
- Financial Counsellors ACT
- Jo Parker, Executive Officer, Financial Counsellors Association of NSW

