



**FCVic**

Financial Counselling  
Victoria Inc.

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**OPEN**

# Financial Counselling Victoria Small Business Scope of Practice

Version 2 (April 2024)

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## ACKNOWLEDGEMENT OF COUNTRY

FCVic acknowledges the Wurundjeri Woi-wurrung people as the Traditional Owners of the lands on which our organisation is based. We pay our respects to their Elders, past and present, and to the Elders of other Aboriginal and Torres Strait Islander communities throughout Victoria and Australia.

We acknowledge that sovereignty was never ceded.

# 1 BACKGROUND

This document updates the initial Small Business Scope of Practice endorsed by the FCVic Board in September 2022, following approval by the FCVic Board Professional Standards Committee, to assist those financial counsellors working with small business owners. The September 2022 document proposed a review 12 months after Board endorsement.

An Interim Small Business Guidance Note applied from 2020 to September 2022.

The need for a Small Business Scope of Practice reflects substantial changes since 2020 to the environment in which financial counsellors in Victoria work – in particular the increased likelihood and expectation that financial counsellors can assist small business owners in financial difficulty. This changed environment resulted from:

- new Victorian Government funding triggered by natural disasters (COVID, storms, flood) for financial counselling positions to specifically work in support of small business owners in Victoria
- the establishment of the national Small Business Debt Helpline (originally the Small Business Bushfire Helpline) by Financial Counselling Australia (FCA)
- the amendment to the ASIC Legislative Instrument in August 2020 specifically recognising small business financial counselling as a financial counselling service activity
- the longstanding and increasing need for financial counsellors (including rural financial counsellor members of FCVic) to work with clients who work under an ABN or own a small business and whose personal debts and hardship are intertwined with their business finances
- the inclusion of a Small Business Unit in the Diploma of Financial Counselling.

## 1.1 Formal qualifications for Small Business Financial Counselling needed

The Small Business Unit in the Diploma of Financial Counselling focuses primarily on sole trader or business partnerships – the simplest forms of business structure. Of itself, the Unit does not equip a financial counsellor to assist small business owners in more complex business structures, or with more complex needs. There is currently no formal qualification for financial counsellors seeking to assist more complex small business clients.

In the absence of such formal qualifications, and needing to build the capability of financial counsellors assisting small business clients, FCVic developed initial Small Business eLearning content in 2020, and then updated the eLearning in 2023 to better train and support financial counsellors assisting small business owners. The training comprises a number of modules, all of which have Learning Assessments, and a certificate is issued to the trainee on successful completion. This eLearning has been made available to other State peak bodies.

A range of materials relating to small business support has been made available to financial counsellors on the FCVic CPD library. Further relevant content is provided by FCA in its Small Business Handbook and on the FCA Toolkit.

Since 2020, FCVic has participated with other State peak bodies on FCA's Small Business Working Group, to optimize collaboration on resource development, minimize duplication, and identify and address issues relating to small business financial counselling.

This Scope refers to the training and resources offered by FCVic (and FCA) to provide guidance to financial counsellors assisting small business owners (Refer Section 6). A strategic goal for the sector nationally is the establishment of formal qualifications for small business financial counsellors assisting small business owners with more complex needs, or in more complex structures, than those covered in the recently introduced Diploma Small Business Unit.

## 2 ABOUT THE SMALL BUSINESS SCOPE

The Small Business Scope provides financial counsellors with a guide to working with individuals who have a small business and are in financial difficulty. It should be read in conjunction with other policies, such as the *FCVic Financial Counselling Scope of Practice*, *Australian Financial Counselling Code of Ethical Practice* and agency practice standards<sup>1</sup>.

The Small Business Scope defines the role of financial counsellors with consideration that there may be other factors that impact on practice including:

- funding arrangements (for example, establishing stricter definitions for eligibility to access the service)
- presence of complementary professionals in the agency – (e.g. integrating practice with business/financial advisers, accountants or lawyers may impact on the role)
- relevant knowledge/skills and/or experience of the employed financial counsellors (individually or as a group)
- agency insurance requirements
- access/intake criteria or volume controls (e.g. wait time settings).

In some cases, agencies may limit engagement with a small business owner to predominantly ‘information only and/or task assistance’ rather than active case management. Others may limit the service settings to business owners in ‘simpler’ structures such as sole traders only.

This Small Business Scope will be reviewed no later than 24 months after formal FCVic Board endorsement. It may, in time, be superseded by the adoption of an equivalent National Standard approved through the FCA Representative Council.

The diagram (Figure 1) overleaf illustrates the relationship between the Small Business Scope, agency policy and agency procedures.

## 3 APPLICATION

The Small Business Scope applies to financial counsellors who are members of FCVic working with small business owners.

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<sup>1</sup> While there are certain aspects of this document which include references to conventional practice, these are only for context or emphasis.

## 4 SMALL BUSINESS DEFINITION

There are numerous definitions of small business in the regulatory, commercial, and service sectors.

The definition used in the initial FCVic Small Business Scope of Practice was a small business with less than 20 employees, and with no more than 2 partners, directors or trustees unless a family owned business. This definition aimed to limit the complexity of small business cases handled by financial counsellors.

FCVic recognises that the definition of small business used by FCA (including the Small Business Debt Helpline), ASIC and the Australian Financial Complaints Authority (AFCA) is simply: less than 100 employees. This inconsistency, particularly with the national financial counselling body, and with the Small Business Debt Helpline which employs a number of Victorian financial counsellors, is confusing and undesirable. **Therefore, on Board endorsement of this document, FCVic proposes to adopt the definition of small business used by the abovementioned bodies: a business with less than 100 employees**, noting that:

- tighter eligibility criteria to assist small business owners may be imposed by funders. For example, many Victorian Government programs define a small business as one with less than 20 employees;
- 97% of small businesses in Australia employ less than 20 employees, with 27% employing 1-4 employees and 61% self-employed<sup>2</sup>. These are overwhelmingly the small business owners who seek financial counselling support.
- the complexity of a case is not necessarily dependent on the number of directors/trustees/partners in the business, or the number of employees. Financial counsellors use their professional judgement to determine, for any client, whether they have the knowledge, skills, qualifications and experience to assist, considering the details and complexity of the situation. If not, they look to refer appropriately. (Refer Section 8). Further, there is no simple definition of a 'family owned business'.

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<sup>2</sup> 2023 data sourced from the [ASBFEO portal](#).

*Figure 1 – Relationship between the FCVic Small Business Scope of Practice, Agency Policy and Agency Procedure*





## 5 FINANCIAL COUNSELLOR DEFINITIONS AND ROLE

Any qualified financial counsellor may find themselves in a position where they need to assist clients who are sole traders or partners in a small business as part of their regular casework. Financial counsellors must have undertaken education (see section 6) in order to do this work.

A small business financial counsellor works with a wider range of small business structures, including sole traders, partnerships, companies and trusts. Small business financial counsellors must have undertaken education (see section 6) to ensure that they have relevant skills and experience, noting that there is currently no formal qualification for financial counsellors assisting more complex small business cases.

All financial counsellors working with small business (as defined in section 4) must practice in accordance with the Small Business Scope.

### 5.1 RURAL FINANCIAL COUNSELLOR

A **rural financial counsellor** is a practitioner engaged by a service funded to provide rural financial counselling services to primary producers and small rural businesses in financial difficulty or at risk of financial hardship and without alternative sources of impartial support.

Rural financial counselling agencies are exempted from the requirement to hold a credit license under National Consumer Protection regulations – [sub-regulation 20\(5\)](#) (previously exempted under [ASIC Credit \(Financial Counselling Agencies\) Instrument 2017/793](#).)

Rural financial counsellors undertake the Diploma of Financial Counselling with required specialist elective units for rural specialisation.

Some rural financial counsellors may be directed by their agency to provide small business financial counselling as part of their role when an agency is funded to do so.

### 5.2 THE FINANCIAL COUNSELLOR ROLE WHEN APPLIED TO SMALL BUSINESS

#### 5.2.1 What financial counsellors do

When working with small business clients, the financial counsellor places the person at the centre of the engagement to empower them to make informed choices. Financial counsellors work with the small business owner to identify and assess options to mitigate their financial difficulty, ensuring the client has control over the process, decisions, and actions.

The debts owed by the small business client remain the focus – these debts may be business and/or personal. The small business may be active or have ceased trading.

The financial counsellor will explore whether any given debt is legally owed. It is the client's responsibility to identify and acknowledge their debts and provide documentary information for this purpose.

Options may include challenging the debt, pursuing alternative dispute resolution pathways, or assisting with referral for legal or other advice for more complex situations (e.g. contracts, disputes with other business owners, or family breakdown).

Section 8 provides a detailed table of the assistance that may be provided by financial counsellors or small business



financial counsellors. The table assists in clarifying with clients or other parties the scope of financial counsellors' practice and when referrals are appropriate.

## 5.2.2 What financial counsellors don't do

Financial counsellors **do not** provide:

- Business advice or prepare business plans or business strategies
- Accounting and provision of assessments of business profitability/viability, etc.
- Tax strategy advice and preparation of tax returns
- Bookkeeping and management of the business cash flow or accounts
- Legal work and legal advice
- Financial planning and investment advice
- Therapeutic counselling
- Promises or activities that indicate they are acting as agents or quasi employees of the business by directly undertaking activities related to business operational matters.

## 6 SKILLS AND TRAINING

### 6.1 Financial counsellors who assist sole traders and individuals in business partnerships

Financial counsellors assisting these small business owners with their debts and finances, subject to their employing financial counselling agency policy, must:

- i. Be qualified and current members of FCVic; and
- ii. Satisfy one of the following education requirements:
  - a. Complete the Diploma of Financial Counselling unit *CHCFIN010 Apply basic concepts of small business to financial counselling* or gain recognition of prior learning through a Registered Training Organisation for this unit; or
  - b. Complete the FCVic e-Learning series '*Foundations of Small Business Financial Counselling*' (evidenced by the completion certificate) or the updated FCVic e-Learning '*Foundations*' modules (which provides similar content to CHCFIN010); or
  - c. For Accredited members of FCVic only, have completed relevant formal qualifications as approved by the FCVic Professional Standards Committee<sup>3</sup>; and
- iii. Attend at least one annual CPD session on small business financial counselling<sup>4</sup>.

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<sup>3</sup> Anyone who is a practising rural financial counsellor at the commencement date of the initial Small Business Scope (that is, September 2022) is deemed to have satisfied 6.1.ii.c.

<sup>4</sup> Additional resources can be accessed from the FCVic CPD Library and FCA Toolkit.

## 6.2 Financial counsellors assisting small business owners in more complex structures or with more complex needs

As noted in Section 1, there is currently no formal qualification for financial counsellors seeking to assist more complex small business clients. Establishment of such a national formal qualification is a strategic goal for the sector.

In the absence of such qualifications, FCVic has created content to help build the capability of financial counsellors assisting more complex cases. Small business financial counsellors providing more advanced financial counselling support to small businesses owners, including sole traders, partners in a partnership, company directors, or trustees, within the FCVic definition (see Section 4) must, **in addition to the requirements in Section 6.1** above:

- i. Complete the FCVic e-Learning series '*Foundations of Small Business Financial Counselling*' (evidenced by the completion certificate) or the updated FCVic e-Learning '*Advanced*' modules<sup>5</sup>; and
- ii. Attend at least two annual CPD sessions in the category '*Small Business In-Depth*' including recordings available from the FCVic CPD Library.

All financial counsellors working with small business owners are encouraged to participate in the FCVic Small Business Network.

All financial counsellors should note that secondary consult is available from the Small Business Debt Helpline if required. The Helpline is staffed by experienced small business financial counsellors.

## 7 ADDITIONAL GUIDANCE

### 7.1 Referrals

It is important to remember that all financial counsellors should provide informed referral for matters beyond their professional scope of practice.

Financial counsellors frequently refer to other funded or subsidised services. When applying financial counselling practice to small business, referrals to fee for service businesses may be required. Various resources can assist, including:

- The FCVic Small Business Resources Index, available from the FCVic CPD Library.
- Lists of local services held by agencies
- Directories of accountants who are members of CPA Australia, CA ANZ and Institute of Public Accountants
- ASIC list of registered insolvency practitioners which can be sorted by locality
- FCVic's '*Insolvency practitioner checklist*' can assist clients with 'Tips and questions to ask when choosing an advisor' and 'Things to be wary of'.

Financial counsellors who act outside of their professional scope of practice are at risk of being sued for financial and non-financial loss.

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<sup>5</sup>For full members of FCVic only, this requirement may be satisfied if they have completed equivalent formal qualifications or training as approved by the FCVic Professional Standards Committee. Anyone who is a practising rural financial counsellor at the commencement date of the initial Small Business Scope (that is, September 2022) is deemed to have satisfied 6.2.

## 7.2 Conflicts and Risks

A conflict of interest occurs when the concerns, aims or interests of two different parties are incompatible. Financial counselling agencies must take appropriate steps through policy and application of procedures to ensure that potential conflicts of interest are both identified and managed.

Conflict may occur but is not limited to:

- Another party of the small business seeks advice from the same agency
- Two directors or business partners come for assistance from the same agency
- Directors or business owners are a couple
- Issues between business owners – e.g. gambling, family violence, substance abuse, financial elder abuse, etc.
- Legal risk arising from any of these situations.

When a conflict is identified the financial counsellor must apply the policies and procedures adopted by their agency for managing the conflict. This may include:

- referring the prospective client, or the other party, to another service provider
- requiring written acknowledgement between the two parties that the financial counsellor will only act for them as long as their interests remain in the best interest of both parties. Written acknowledgement can include a signed case plan or client notes outlining the discussion between the clients and agreed outcomes.

## 8 WHERE ASSISTANCE CAN BE OFFERED AND WHERE REFERRALS SHOULD BE MADE

The following table provides guidance on:

- Core subject matter a financial counsellor needs to understand in order to offer assistance to a small business owner
- Circumstances where referrals should be made.

In any situation, if a financial counsellor in their professional judgement does not consider they have the necessary knowledge, skills and qualifications to assist, they should refer the client to another more qualified financial counsellor, a small business financial counsellor and/or to relevant professional(s). Financial counsellors should not risk acting outside of their professional scope of practice.

A financial counsellor also needs to use their professional judgement to determine their client's level of engagement as a guide to the level of service delivery that can be reasonably undertaken.

Topic	All Qualified Financial Counsellors	Small Business Financial Counsellors	When/where referrals should be made
See Sections 4 and 6 for definitions			
<b>General</b>			
Client engagement	Assistance includes: <ul style="list-style-type: none"> <li>• Providing emotional support, listening, reflecting, operating at 'client speed', being non-judgemental, empowering the client</li> <li>• Where English is an additional language (or another language) – engaging an interpreter service</li> <li>• Identifying issues with capacity to give instructions – the client may need a support worker/enduring power of attorney (this may be via the public trustee).</li> </ul>		Therapeutic support – <b>GP, Mental health practitioner</b>
Small business grants/supports	Assistance includes: <ul style="list-style-type: none"> <li>• Researching and identifying potential grants / concessions</li> <li>• Providing information about the range of business assistance and support services available</li> <li>• Making a referral to and/or providing links to these supports (or assisting with access).</li> </ul>		Completing and lodging the forms - <b>Client, Accountant and/or Support Worker</b>
Small business services	A range of services, templates, and supports exist and it may be relevant to provide: <ul style="list-style-type: none"> <li>• Information about the types of business assistance and support services available</li> <li>• A referral and/or links to those that are most relevant</li> <li>• Information about relevant free training from providers identified by Business Victoria, local chambers of commerce and the ATO may be appropriate for some clients.</li> </ul>		Business advice, business management, strategy, planning, operational activities – <b>Accountant, Business Adviser, Lawyer</b>
Obligations to staff	It may be relevant to provide small business client with: <ul style="list-style-type: none"> <li>• Information on implications where payments are outstanding for wages, super etc. – note Victoria has passed the Wage Theft legislation which has criminal sanctions</li> <li>• Information/links explaining the role of the Fair Work Ombudsman.</li> </ul>		Staff or HR disputes - <b>Fair Work Commission, Lawyer, HR Specialist</b>

Topic	All Qualified Financial Counsellors	Small Business Financial Counsellors	When/where referrals should be made
<b>See Sections 4 and 6 for definitions</b>			
Business structures	<p>Clarify the business structure with the client and identify implications:</p> <ul style="list-style-type: none"> <li>▪ Sole trader</li> <li>▪ Partnership</li> <li>▪ Company</li> <li>▪ Trust (may be incorporated or individual trustee(s)).</li> </ul> <p>Sole traders and partners of a partnership can be assisted with both personal and business debts.</p> <p>Provide general information on potential grants and where to find these, information on ombudsmen / dispute resolution services, or personal debt.</p> <p>Identify the need to refer to a small business financial counsellor.</p>	<p>Requires a broader understanding and skills to:</p> <ul style="list-style-type: none"> <li>▪ Seek more detailed information about the debts owed and debt liabilities</li> <li>▪ Identify personal liabilities for directors of companies or for those who are individual trustees of a trust</li> <li>▪ Explain the risks of insolvent trading</li> <li>▪ Identify which entity (the individual, company/ trust, or both) has liability for debts incurred in relation to the business</li> <li>▪ Identify and explain the key circumstances in which liability may be 'transferred' from the company/trustee to the individual</li> <li>▪ Identify options (including priorities) for debts based on which entity is liable and status of debt.</li> </ul>	<p>Advice about the most appropriate business structure – <b>Accountant/ Lawyer/Business Advisor</b></p> <p>Advice on business planning, viability strategies or performance metrics – <b>Small Business Advisor, Accountant</b></p> <p>Advice to close or liquidate business – <b>Accountant / Insolvency Practitioner</b></p>
Franchise agreements	<ul style="list-style-type: none"> <li>▪ Franchises are essentially a licensing arrangement and can apply to any of the above noted business structures</li> <li>▪ Assistance can be provided to small business owners in the structures as noted above</li> <li>▪ Assistance may also involve referral to, and/or identifying whether provisions of the Franchising Code of Conduct may offer options or remedies.</li> </ul>		<p>Detailed analysis and advice about the nature of the franchise and enforcement of terms* – <b>Lawyer</b></p> <p>Advice /mediation of legal disputes between the franchisor and franchisee – <b>Lawyer, VSBC, ASBFEO</b></p>

Topic	All Qualified Financial Counsellors	Small Business Financial Counsellors	When/where referrals should be made
See Sections 4 and 6 for definitions			
<b>Financials</b>			
<p>Work with client to understand financial position for options development (subject to level of engagement in agency policy)</p>	<ul style="list-style-type: none"> <li>• Work with the client to assess and understand the current financial position related to the following:               <ul style="list-style-type: none"> <li>• business and personal</li> <li>• health of the business</li> <li>• contribution of the business to household income (are they getting a 'living income'? are they paying themselves enough?)</li> <li>• intentions to continue, or respectful exit options</li> </ul> </li> <li>• For sole traders and partnerships with debts entwined, identify key benefits of separating business and personal finances.</li> </ul>	<ul style="list-style-type: none"> <li>• If relevant, undertake more detailed work with the client to:               <ul style="list-style-type: none"> <li>• analyse business financial information to assess current financial position</li> <li>• identify where liabilities for debts most likely reside</li> <li>• determine assets at risk</li> <li>• identify and assess potential options for management of debt</li> </ul> </li> <li>• If relevant, and sufficient input/data, based on client information work with the client on options, such as a cash flow projection, to help inform affordable payment arrangements</li> <li>• If relevant, provide information about, for example:               <ul style="list-style-type: none"> <li>• the risks of trading insolvent</li> <li>• the risks of preferential payments</li> <li>• the risk of unpaid tax/employee entitlements</li> </ul> </li> <li>• Discuss and provide information on potential personal and business insolvency options and consequences.</li> </ul>	<p>Complex business trust structures and financial flows, tax assessment/returns – <b>Accountant, Lawyer, Business Adviser</b></p> <p>Cashflow<sup>#</sup> creation, business planning, business strategy, target markets, product/service refinement, business performance ratios, pricing for profit – <b>Business Adviser</b></p> <p>Advice or actions on operational matters/mechanics – <b>Accountant, Business Adviser, Client</b></p> <p>Constructing/reconstructing financial statements, tax returns – <b>Accountant/Bookkeeper</b></p> <p><small># May guide client through a cash flow projection template (and use prompts/questions to have client consider income/expense options)</small></p>

Topic	All Qualified Financial Counsellors	Small Business Financial Counsellors	When/where referrals should be made
<b>See Sections 4 and 6 for definitions</b>			
<p>Types of financial information that can be used to assess a client's financial situation</p>	<p>Work with client on options for determining financial position:</p> <ul style="list-style-type: none"> <li>▪ [FCA] Statement of Financial Position (SOFPP) – personal and business*</li> <li>▪ Liability and debt statements</li> <li>▪ Legal documents and contracts (including letters of demand) involving finances – for a general understanding of the arrangements and obligations. Complaint/termination/exit options may assist with options/negotiation</li> <li>▪ Income sources including wages, business earnings (net estimate), superannuation, insurance, Centrelink, child support, compensation, inheritance, grants</li> <li>▪ Bank/financial statements (including superannuation)</li> <li>▪ BAS statements if applicable (and maybe income tax returns).</li> </ul> <p>• Sole traders and partnerships may use bookkeeper/accountant or software that produces financial statements. Check if this is the case as these can provide relevant information. If no other option, the SOFP could be modified to separately document the business position. The client could also be encouraged to do a cash flow projection for the business.</p>	<p>May identify and request additional sources of information:</p> <ul style="list-style-type: none"> <li>▪ Balance Sheet (also known as Statement of Financial Position)</li> <li>▪ Profit and Loss Statement (also known as an Income Statement)</li> <li>▪ Cash Flow Statement</li> </ul> <p>If financial records are out of date or compromised, the financial counsellor can work with the client to assist the client with (based on the client's information)</p> <ul style="list-style-type: none"> <li>▪ <b>A general outline</b> of a balance sheet that sets out the business assets and liabilities</li> <li>▪ A cash flow projection.</li> </ul>	<p>Accounting, business, or tax advice for small business clients – <b>Accountant</b></p> <p>Detailed interpretation and advice on contracts/ contract terms* including advice on whether terms are unfair, unconscionable, or misleading – <b>Lawyer, CAV, VCAT, Court</b></p> <p>Business planning, sales or expense forecasting, benchmarking, market/customer metric# – <b>Business Adviser</b></p> <p># May guide client through a cash flow projection template (and use prompts/questions to have client consider income/expense options)</p>

Topic	All Qualified Financial Counsellors	Small Business Financial Counsellors	When/where referrals should be made
<b>See Sections 4 and 6 for definitions</b>			
Debts general	<p>Regulatory solutions are limited for credit/debts incurred primarily for business purposes. Key assistance involves:</p> <ul style="list-style-type: none"> <li>▪ Identifying with the client the types of debt owed and features</li> <li>▪ Checking with the client whether they agree the debt is owed (in whole or part) or whether there may be issues that may warrant challenging the debt (taking care not to acknowledge it, particularly if it may be statute barred)</li> <li>▪ Identifying, checking and, with the client, prioritising debts particularly if legal demands/action involved</li> <li>▪ Reviewing, with the client, relevant documentation such as contracts and potentially identifying applicable regulatory provisions that may assist (taking care not to be perceived as providing legal advice)</li> <li>▪ Negotiation and advocacy approaches including referral to and/or assistance with dispute pathways. This may involve: <ul style="list-style-type: none"> <li>▪ checking the client’s understanding of the arrangement</li> <li>▪ how the product was sold/acquired</li> <li>▪ if the client indicates unfair treatment/process, exploring whether and what they found unfair</li> <li>▪ whether there were issues with disclosure etc.</li> </ul> </li> <li>▪ Clarifying and discussing options for managing debt</li> <li>▪ Checking Personal Property Securities Register (PPSR) for security interest related to client’s assets.</li> </ul>	<p>May, particularly for companies or trusts, need to:</p> <ul style="list-style-type: none"> <li>▪ Work more comprehensively with the client to establish which entity may be liable for business debts and what encumbrances or creditor rights may apply in the event of default</li> <li>▪ Identify and provide information to assist clients to understand how creditors/ suppliers may enforce a debt or recover amounts owed</li> <li>▪ Support the client to obtain and check documentation to determine whether and what security rights (e.g. guarantee, charge, caveat etc) may have been granted.</li> </ul>	<p>Advice on business operational matters, business planning/strategy, improving viability etc – <b>Business Adviser, Accountant</b></p> <p>Detailed interpretation and advice on contracts/ contract terms* including advice on whether terms are unfair, unconscionable, or misleading – <b>Lawyer, CAV, VCAT, Courts</b></p> <p>Note: Generally, financial counsellors do not support a client with a dispute between small businesses (unless it is simple to resolve e.g. an apparent misunderstanding) – for these disputes – <b>VSBC, ASBFEO, Professional Mediator, Lawyer, VCAT, Court</b></p> <p>Advice on improving cash inflows and reducing cash outflows – <b>Business Adviser, Accountant</b></p>



Topic	All Qualified Financial Counsellors	Small Business Financial Counsellors	When/where referrals should be made
<b>See Sections 4 and 6 for definitions</b>			
<i>The sections on debts below cover particular aspects that can be relevant depending on the creditor type/source of debt but do not replace the information in 'Debt General' above.</i>			
Debts with banks, finance companies	<p>Work with the client to:</p> <ul style="list-style-type: none"> <li>▪ Identify options and develop advocacy approaches for negotiating affordable repayment arrangements, waivers, moratoriums and/or restructuring of debt for business and/or personal debt</li> <li>▪ Identify areas of dispute. Provide pathways for dispute management including internal complaints options and, if needed, external ombudsman options (such as AFCA for AFCA members)</li> <li>▪ Identifying whether there may be remedies under formal industry codes, particularly any hardship provisions, and assisting the client with information and/or engagement in pursuing these</li> <li>▪ Identifying and leveraging relevant industry body standards or membership rules to potentially improve the client's position/outcome in negotiations</li> <li>▪ When pursuing relief or a dispute pathway, assisting the client to explain/document their issue(s) in a clear, sequential (and dispassionate) way.</li> </ul>		<p>Detailed interpretation and advice on contracts/contract terms* including advice on whether terms are unfair, unconscionable, or misleading – <b>Lawyer, CAV, VCAT, Court</b></p> <p>Dispute mediation/arbitration including terms, amounts owed etc – <b>Ombudsman, VSBC, Lawyer, Professional Mediator, VCAT, Court</b></p>
Utilities/telcos	<p>There are similarities to conventional practices when assisting small business clients with utility and telco debts and queries</p> <ul style="list-style-type: none"> <li>▪ Small business financial counsellors can assist their clients by arranging payment plans and hardship arrangements taking into account their capacity to pay and ensuring customers are on the tariff most likely to minimise their energy cost</li> <li>▪ The small business financial counsellor can help their client escalate unresolved disputes to relevant ombudsman services.</li> </ul>		<p>Detailed interpretation and advice on contracts/contract terms* including advice on whether terms are unfair, unconscionable, or misleading – <b>Lawyer, CAV, VCAT, court</b></p> <p>Dispute mediation/arbitration – <b>EWOV, TIO, Lawyer, Court</b></p> <p>Energy advice (for small businesses 6-20 employees) – <b>Business Energy Advice Program (BEAP)</b></p>

Topic	All Qualified Financial Counsellors	Small Business Financial Counsellors	When/where referrals should be made
<b>See Sections 4 and 6 for definitions</b>			
Equipment (including vehicle) lease debts	<p>Equipment/vehicle leases (chattel leases) involve the supply of an asset, owned by the lessor, for an agreed period.</p> <p>Assistance may include:</p> <ul style="list-style-type: none"> <li>• Identifying whether a product is leased or owned</li> <li>• Identify with the client if there is a third party financier of the lease equipment</li> <li>• Identifying options for, and advocacy approaches in, negotiating affordable payment arrangements, waivers, moratoriums and/or options allowing the business to retain the equipment</li> <li>• Identifying appropriate dispute pathways in particular CAV, VSBC, ASBFEO and/or potentially AFCA if finance is involved and the provider is a member of AFCA.</li> </ul>		<p>Detailed interpretation and advice on contracts/contract terms* including advice on whether terms are unfair, unconscionable, or misleading – <b>Lawyer, CAV, VCAT, Court</b></p> <p>Dispute mediation/arbitration including over terms – <b>Ombudsman services (VSBC, ASBFEO, AFCA), CAV, Lawyer, Professional Mediator, VCAT, Court</b></p>
Guarantees	<p>Guarantees may be provided by the small business owner or a third party.</p> <p>A person will be liable for debts for which they have provided a personal guarantee.</p> <p>Assistance may include:</p> <ul style="list-style-type: none"> <li>• Providing general information on how guarantees operate. There are less protections for debts and related guarantees which have been issued primarily for (small) business purposes than are available in relation to consumer-debts under the law</li> <li>• Working with the client to obtain and review documentation to determine whether/what guarantees may have been given and by whom</li> <li>• Checking whether the Codes of Banking Practice (from ABA and COBA) and of other finance bodies (such as AFIA) may offer some pathways for relief where the finance providers are members of the relevant body.</li> </ul>		<p>Detailed interpretation and advice on contracts/contract terms* including advice on whether terms are unfair, unconscionable, or misleading – <b>Lawyer, CAV, VCAT, Court</b></p> <p>Dispute mediation/arbitration including terms, amounts owed etc – <b>Ombudsman, VSBC, AFCA, lawyer, professional mediator, VCAT, Court</b></p>

Topic	All Qualified Financial Counsellors	Small Business Financial Counsellors	When/where referrals should be made
<b>See Sections 4 and 6 for definitions</b>			
Commercial tenancy / leases debts	<p>Commercial (or retail) leases differ significantly from residential leases, including fewer regulatory protections. Assistance may include:</p> <ul style="list-style-type: none"> <li>• Identifying possible rent reliefs/subsidies or, grants</li> <li>• Identifying options for, and advocacy approaches in negotiating, affordable payment arrangements (or waivers/part waivers)</li> <li>• Referral for mediation/arbitration (particularly through VSBC) and assist the client to prepare.</li> </ul>		<p>Dispute mediation/arbitration – <b>VSBC, ASBFEO, VCAT</b></p> <p>Detailed interpretation and advice on lease contracts/ contract terms* including advice on whether terms are unfair, unconscionable, or misleading – <b>Lawyer, CAV, VCAT, Court</b></p>
Debts with other businesses (including suppliers)	<ul style="list-style-type: none"> <li>• Identify options for, and advocacy approaches for negotiating, affordable payment arrangements, waivers, moratoriums or other debt options where possible</li> <li>• Ascertaining dispute pathways including relevant ombudsman services (e.g. VSBC, ASBFEO, CAV) and/or representative organisations where the creditor/supplier may be subject to Codes or standards</li> <li>• Assisting the client to prepare to lodge a dispute, including explain/document their issue(s) in a clear, sequential way.</li> </ul>		<p>If there is a dispute between businesses – <b>VSBC, ASBFEO, Professional Mediator, VCAT, Court</b></p> <p>Detailed interpretation and advice on contracts/contract terms* including advice on whether terms are unfair, unconscionable, or misleading – <b>Lawyer, CAV, VCAT, Court</b></p> <p>If a financier is involved – <b>AFCA, CAV, or ASBFEO</b> may assist.</p>
Debt recovery processes impacting the client	<ul style="list-style-type: none"> <li>• Explaining key steps and timeframes in the debt collection process</li> <li>• Identifying priority debts and actions</li> <li>• Providing information and links to relevant information on VCAT and/or magistrate court processes including critical timeframes and consequences of not being prepared/attending hearings, etc.</li> </ul>		<p>Debt recovery from customers of small business owner – <b>Business Victoria has material including templates</b></p>

Topic	All Qualified Financial Counsellors	Small Business Financial Counsellors	When/where referrals should be made
<b>See Sections 4 and 6 for definitions</b>			
Insolvency including personal bankruptcy	<p>Small business owners may be at risk of bankruptcy due to financial stress so assistance may include:</p> <ul style="list-style-type: none"> <li>• Using available financial data to determine if the individual (including sole trader or partner in a partnership) is at risk of being unable to pay debts or meet obligations when due and advise key implications</li> <li>• Explaining the processes and consequences of bankruptcy including a debtor's petition and creditor's petition</li> <li>• Providing basic insolvency information or links to information for small business owners with a company/trust structure, as this has implications for asset protection and/or refer to a small business financial counsellor.</li> </ul>	<p>Work with clients particularly those in company or trust structures to assess key financial information to identify whether the business is at risk of trading insolvent.</p> <p>Provide key information on:</p> <ul style="list-style-type: none"> <li>• Common implications of trading insolvent for director(s)/trustees</li> <li>• Types of risks with activities that may defeat creditors, for example, preferential payments</li> <li>• Potential for director penalties</li> <li>• Insolvency pathway options</li> <li>• Issues and options where paying a registered insolvency practitioner/ liquidator is not affordable.</li> </ul>	<p>Advice or assistance on liquidating a company and/or winding up a trust – <b>Insolvency practitioner, lawyer</b></p> <p>Detailed or forensic analysis of financial data – <b>Insolvency practitioner, accountant</b></p> <p>Legal advice including in relation to trading insolvent, creditor defeating actions – <b>Lawyer</b></p>
Closing a business (voluntary or involuntary)	<p>Assistance may include:</p> <ul style="list-style-type: none"> <li>• Inviting the client to consider the future of the business in relation to their personal and family needs</li> <li>• Assisting the client to consider their alternatives, e.g. retirement, further study, employment</li> <li>• Identifying the steps, including referrals, involved should the client decide to close the business (see insolvency including personal bankruptcy above).</li> </ul>		<p>Advice or assistance on business viability and sale potential, including assets – <b>Business adviser, accountant</b></p>

Topic	All Qualified Financial Counsellors	Small Business Financial Counsellors	When/where referrals should be made
See Sections 4 and 6 for definitions			
<b>Tax</b>			
Types of [regular] taxes that small businesses pay and how they are collected	<p>There are a range of taxes which (small) businesses must pay (which also have important reporting and lodgement requirements).</p> <p>Financial counsellors can assist the client to:</p> <ul style="list-style-type: none"> <li>• Check compliance (whether up to date) with relevant key tax registrations, lodgements, and payments (which can depend on structure)</li> <li>• Determine how non-compliance may impact the overall financial position,</li> <li>• Provide information about impact on options and decisions.</li> </ul>		Tax advice, capital gains/loss calculations, tax calculations and returns – <b>Accountant, Tax Clinic</b>
Debt with the ATO	<p>Assistance may include:</p> <ul style="list-style-type: none"> <li>• Working with the client to ascertain and document tax issues – e.g. outstanding lodgements/payments and the respective time period(s)</li> <li>• Identifying options for negotiating affordable repayment arrangements, waivers, moratoriums</li> <li>• If the client is unable to complete relevant lodgements/returns, referral to an accountant or the National Tax Clinic may be options</li> <li>• Where an adverse ATO decision has been made, referral to and support in approaching the ASBFEO Tax Concierge</li> <li>• Consider secondary consultation with small business financial counsellor.</li> </ul>	<p>For incorporated entities, provide information on:</p> <ul style="list-style-type: none"> <li>• Director obligations</li> <li>• Situations where directors may become personally liable for business tax debt - director penalty notices</li> <li>• Other business taxes which may be payable.</li> </ul>	<p>Preparing and/or submitting tax returns/statements – <b>Accountant, Bookkeeper, Tax Clinic</b></p> <p>Legal advice on tax debts and/or legal actions – <b>Lawyer, AAT, ASBFEO</b></p>

Topic	All Qualified Financial Counsellors	Small Business Financial Counsellors	When/where referrals should be made
See Sections 4 and 6 for definitions			
<b>Insurance</b>			
Various types of insurance relevant to small business	Assistance may include: <ul style="list-style-type: none"> <li>▪ Investigating if the client holds any relevant insurance</li> <li>▪ Working with the client to understand whether a claim is possible. This may include determining whether insurance premiums are up to date, key cover provided under the policy, potential exclusions etc.</li> <li>▪ Assistance with identifying and accessing dispute resolutions options e.g. IDR, EDR, AFCA or other ombudsman schemes</li> <li>▪ Referral to, and identifying whether, codes of conduct may offer options or remedies e.g. the Insurance Council of Australia Code of Practice.</li> </ul>		Detailed interpretation and advice on contracts/contract terms* including advice on whether terms are unfair, unconscionable, or misleading – <b>Lawyer, VCAT, Courts</b>  If there is a dispute – <b>AFCA, CAV, Lawyer, VCAT, Court</b>

\* Financial counsellors are not lawyers. With appropriate warnings to the client, they may work with the client to review documentation including contracts to get an understanding of the arrangement and also assess what the client understood/understands about the arrangement, identify whether there are areas to explore around potential rights or protections which may assist in negotiations and/or lead to legal referrals.