



# FCVic Interim Small Business Guidance Note



Financial Counselling  
Victoria Inc.

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## ACKNOWLEDGEMENT OF COUNTRY

Financial Counselling Victoria acknowledges the Aboriginal and Torres Strait Islander peoples as the Traditional Custodians of the lands on which we work and live, and recognise their continuing connection to land, water and culture. We acknowledge that sovereignty was never ceded.

We pay respect to ancestors and Elders, past, present and emerging.

## 1. INTRODUCTION

The FCVic Small Business Guidance Note is an interim document developed by the FCVic Board Professional Standards Committee to define the scope of practice for generalist financial counsellors in relation to working with small business owners. This Guidance Note also provides some tentative scope guidance for a specialist small business financial counsellor role. It is intended that as skills and knowledge develop in a practice context that the guide will evolve and develop to fit the needs of the sector and of small business clients.

Victorian financial counsellors working with a small business owner as a client should provide support, assistance and advice to the client within the framework specified in this document. If the financial counsellor is unable to provide support, they should refer the matter to a more experienced or specialist small business financial counsellor or other relevant professionals.

NB: This scope document has been prepared in the context of the initiation of a small business financial counselling service as part of the Victorian Government Small Business Wellbeing (SBW) project. The document is being developed initially to help provide guidance to the sector in Victoria, and specifically to provide guidance to the SBW financial counsellors. It is intended that the document evolve from the practice insights provided by SBW financial counsellors, [see \*Small Business Wellbeing Project\*](#). Financial Counselling Australia is currently consulting with FCVic and other State Associations around the preparation of a small business scope of practice with national application for financial counselling.

## 2. APPLICATION

All generalist financial counsellors in Victoria, including those who may be working in a small business specialist capacity, are members of FCVic and are required to work in accordance with the professional standards set by the Board of FCVic. FCVic members working with small business clients in accordance with this Guidance Note will be taken to be satisfying relevant professional standards in the areas covered by this Guidance Note.

### 3. DEFINITIONS

**Generalist Financial Counsellor** is a qualified professional – a Full or Associate member of FCVic (required to hold the Diploma of Financial Counselling and meet professional standards). Generalist financial counsellors are employed by a financial counselling agency to provide assistance, advocacy and information to people experiencing financial difficulty or who have problems with debt. They work under the terms of ASIC legislative instrument 2017/792 which, along with professional body standards, require their service to be free of charge, independent (free from conflicts), non-judgemental, and confidential.

**Rural Financial Counsellor** is a practitioner engaged by a rural financial counselling service to provide free support services to primary producers and rural small businesses in financial difficulty. They work under the terms of ASIC legislative instrument 2017/793, which differs from the legislative instrument that applies to generalist financial counsellors. Rural financial counsellors do not engage in specific financial product advice.

Rural financial counsellors have generally undertaken the Diploma of Financial Counselling with the alternative elective units for rural specialisation drawn from the Business Training package. The units cover: monitoring financial reports; business profit and loss; reading financial statements; developing and reviewing a business plan; developing climatic risk strategies; and farm succession planning.

Rural financial counselling services have received specific funding to provide small business financial counselling to eligible regional small businesses. Small Business Financial Counselling (Regional) is a limited-time, specialist support service for small businesses – located in a regional area (i.e. not in a metropolitan area) – that are experiencing, or at risk of, financial hardship due to the impacts of drought, bushfire or COVID-19, and are ineligible to access services under the existing Rural Financial Counselling Service Program. The service aims to assist regional small businesses to understand their financial position and identify options and implement plans to improve the viability of their enterprise over the long term.

**Specialist Small Business Financial Counsellor** is a financial counsellor who has relevant skills, experience and specialist training, to enable them to provide support, advice and advocacy in relation to debt issues for small business owners and sole traders, consistent with the relevant provisions of this Guidance Note.

**Small Business Bushfire Financial Counselling Support Line (AKA Small Business Debt Helpline)** is a specialist small business financial counselling telephone support service established to assist small business owners with fewer than 100 employees, providing initial advice, support and referral (not extended casework support).

**Small Business** is defined, for the purposes of this document, as a business operating with fewer than 20 employees, including sole traders, partnerships, and incorporated (Pty Ltd) entities or trust structures each with a maximum of 2 directors or, if applicable, 2 individual trustees.

## 4. TYPES OF SMALL BUSINESS STRUCTURES

**Sole trader:** This is usually an individual owning and operating a business in their own name. There may also be a separate registered trading name. [Read more about Sole traders](#)

**Partnership:** A partnership is made up of two or more people who distribute income or losses between themselves. [Read more about Partnerships](#)

**Company (Pty Ltd):** A company is classed as a separate legal entity which can act in its own right and is separately liable for taxes in relation to the income of the business operation. A company is owned by shareholders and run by its directors. [Read more about Companies](#)

**Trust:** Trusts are usually established for tax and/or asset protection reasons with the involvement of an accountant or solicitor. A trust is operated for the benefit of its beneficiaries by an appointed trustee (which may be a company or individual/s). [Read more about Trusts](#)

**Franchise:** Franchises are businesses where the business owners (franchisors) grant others (franchisees) the right to provide or distribute services/products under the business brand and model of the franchisor. [Read more about Franchises](#)

## 5. WHEN CAN A FINANCIAL COUNSELLOR ASSIST?

**Generalist financial counsellors** have a primary focus on assisting individuals and families with personal debts and finances. Subject to their employing financial counselling agency policy, generalist financial counsellors may also assist sole traders and partnerships with their debts and finances. Individuals who own, or have previously owned, other types of small business, may be assisted with their personal debts and finances, but should be referred to a **specialist small business financial counsellor** for business issues.

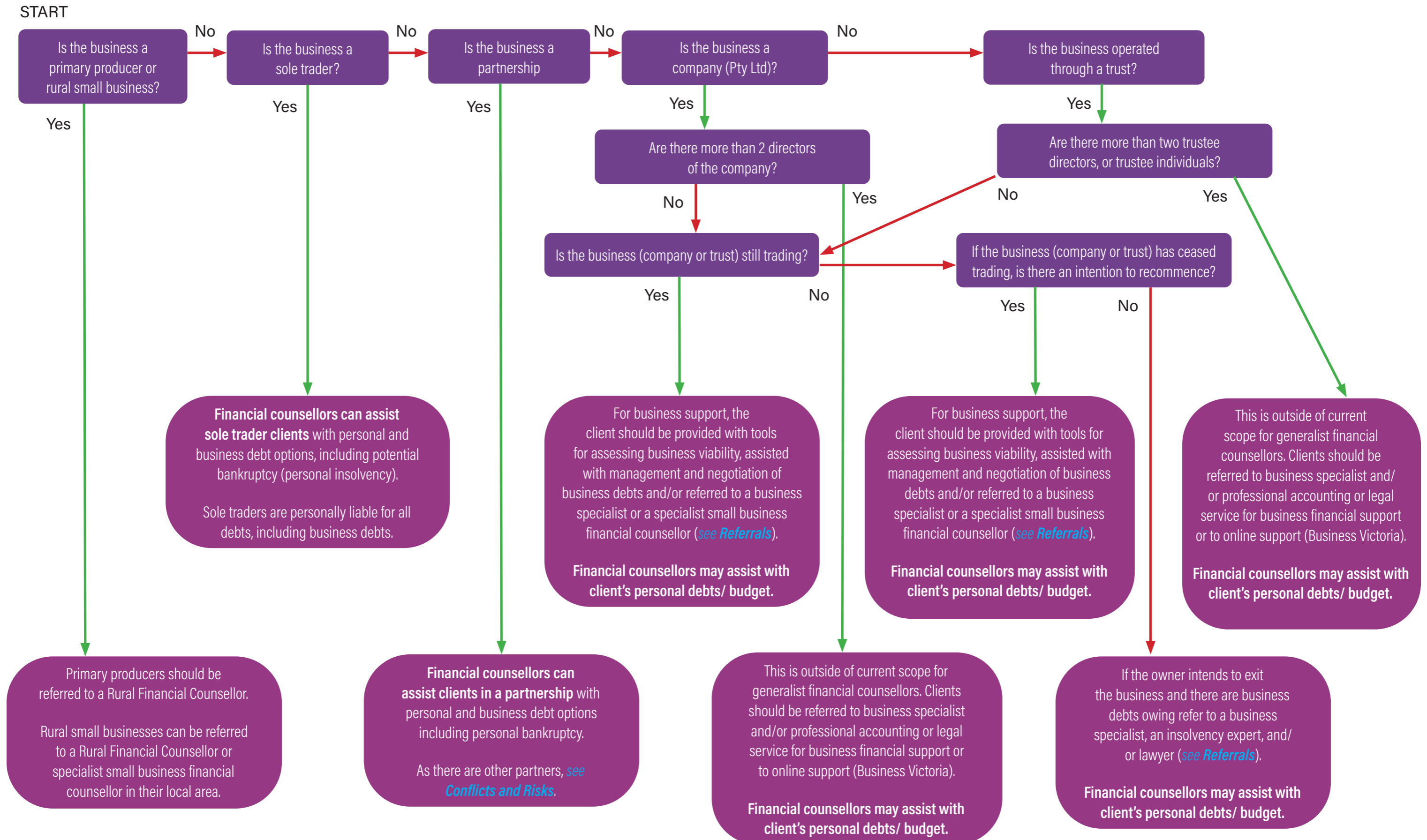
**Small Business Bushfire Financial Counselling Support Line** provides access to specialist small business financial counsellors by phone or online chat for owners of small businesses impacted by disasters. They can assess the situation and provide advice on options or, if the issues are more complex or if advocacy support is required, provide referrals to a place-based service or other professionals. The Support Line also provides secondary consultation on small business matters for financial counsellors.

**Rural Financial Counsellors** are focused on providing support to primary producers and owners of small businesses in rural and regional areas. Rural financial counsellors can assist rural small business owners to understand their financial position and the viability of their business. Rural financial counsellors can also assist with succession planning.

Rural financial counselling services have received specific, limited-time funding to provide **small business financial counselling (regional)** to eligible small businesses affected by drought, bushfires or COVID-19. The service provides regional small businesses with targeted assistance to manage adjustment pressures and remain viable in the long term.

## 6. DECISION TREE

The decision tree provides generalist financial counsellors with guidance around when they can assist a small business owner, and what matters should be referred on. [Read more about Referrals for Generalist financial counsellors.](#)



## 7. REFERRALS AND SCOPE OF PRACTICE: Generalist financial counsellors working with sole traders or partnerships

Where a financial counsellor can assist:	Where a financial counsellor will refer on:
Emotional support	Therapeutic counselling – <b>Mental health practitioner/counsellor</b>
Information and options on business and personal debts	Advice on business planning and performance – <b>Small business advisor</b>
Negotiating a hardship arrangement for a lease, or utility or with a supplier	Advice on the structure of the business, Trusts – <b>Lawyer</b>
Negotiating with a credit provider to make a repayment arrangement, full and final offer, or waiver on a business, or personal, debt	Advice on operational issues, e.g. cashflow analysis, planning; tax returns – <b>Accountant</b>
Negotiating a repayment arrangement on a tax debt (business or personal)	Complex tax disputes – <b>Lawyer or Accountant</b>
Accessing dispute resolution schemes over contract or business debt issues, provided the creditor is a member of such a scheme	Disputes between directors or partners of a business; disputes between small businesses; litigation – <b>Lawyer</b>
Bankruptcy (personal)	Advice and/or assistance on liquidating a company – <b>Insolvency advisor</b>
Assistance in sourcing grants, and information on grant eligibility, entitlements and concessions.	Complex company and trust disputes; contract disputes, big businesses; self-managed superannuation funds (SMSFs) – <b>Lawyer</b>
Personal Budget / Statement of financial position	Advice on closing a business; on trusts – <b>Accountant or Lawyer</b>
Early release of superannuation	Investment, legal, tax advice – <b>Financial Planner/ Advisor, Lawyer, Accountant</b>
	Advice on rural trusts/ primary producer businesses – <b>Rural Financial Counsellor</b>

## 8. SMALL BUSINESS STRUCTURES IN DETAIL

### Sole trader:

This is usually an individual owning and operating a business. The business may be in their own name or may have a separate registered trading name. Sole traders are legally responsible for all aspects of the business including any debts and losses - basically, the individual has unlimited liability for the debts/losses. Tax returns are lodged under the individual's Tax File Number. A sole trader can employ workers but can't employ themselves. A main difference is that superannuation (along with wages) must be paid for employees by law, but the sole trader has the option of whether to contribute to super for themselves or not.

### Partnership:

A partnership is made up of two or more people who distribute income or losses between themselves. Partnerships can be general or limited. A written partnership agreement is not essential. Any written partnership agreement should outline how income or losses will be distributed to the partners and how the business will be controlled<sup>1</sup>.

- › **General partnership** – all partners are equally responsible for the management of the business, and are joint and severally liable for the debts / losses of the business. This is the most common structure for small businesses seeking financial counselling assistance.
- › **Limited partnership** – one or more of the partners' liability is limited either: to the amount of money they have contributed to the partnership; or in respect of the debts incurred. Limited partners are usually passive investors who don't have obligations in the day to day running of the business. There must be **at least one general partner with unlimited liability**. If the business cannot meet its obligations, the general partner (or partners) become personally liable.

An **incorporated limited partnership** is a special type of limited partnership, primarily used by businesses engaged in high-risk venture capital projects. As with limited partnerships, partners in an incorporated limited partnership can have limited liability for business debts. There must be **at least one general partner with unlimited liability**. If the business cannot meet its obligations, the general partner (or partners) become personally liable for the shortfall.

### Company (Pty Ltd):

A company is classed as a separate legal entity which acts in its own right. It is established under the Corporations Code and controlled by ASIC. The Company is separately liable for taxes in relation to the income of the business operation.

A company is owned by shareholders and run by its directors. Generally, it is the company that is responsible for the activities and risks of the business including its debts.

Establishing a company (incorporation) is designed to limit the personal liability of the shareholders and directors (with some exceptions) for the repayment of debts or losses incurred by the business. That is, debts and losses are to be recovered from the assets/income of the business and not the personal assets/income of the owners.

However, there are some specific exceptions where directors may be personally liable with regard to tax debts and superannuation.

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1 [www.ato.gov.au/Business](http://www.ato.gov.au/Business)



Personal guarantees, liens over, or use of, personal assets as security for business purposes may expose individual directors to personal liability for repayment. This is common in small business companies seeking credit to operate their business (or obtain product/materials). This erodes the asset protection benefits of the company structure of these collateral arrangements. The driver is often tax based given different company tax rates and deduction rules.

### **Trust:**

Trusts are the most complex of these structures. A trust is set up for beneficiaries and it is run by a trustee. The trustee (not the trust) is the legal entity owning the assets and operating the business' assets (although the trustee may employ people to run the business day to day). A formal deed is required outlining how the trust will operate<sup>2</sup>

There are two types of trusts:

- › Family (or discretionary) trust where the trustee determines how 'income/profits' from the trust (including the trading business) are distributed to the trust beneficiaries (who are then liable for tax on those distributions personally). This is the most common type of trust.
- › Unit trusts with beneficiaries having an assigned unit holding (i.e. a share of the trust) where income and profits are distributed based on the respective unit holdings (again, beneficiaries are personally liable for tax).

The trustee of the trust may be individual(s) or an incorporated trustee (company). Generally, small businesses adopting the trust structure adopt an incorporated trustee model to limit liability for business debts/losses.

Usually the deed specifies that the trustee may use assets of the trust (or be reimbursed) in meeting debts of the trust. For trustees, it is very important to separate personal individual assets / debts from the assets / debts of the trust.

### **Franchises:**

Franchises are businesses where the business owners (franchisors) grant others (franchisees) the right to provide or distribute services/products under the business brand and model of the franchisor. The business structure of the franchisee could be any of the 'standard' business structures (i.e. sole trader, partnership, company, etc.) subject to any conditions in the franchising agreement.

The arrangement is contractual and documented in a 'franchise agreement'. In return for providing the franchisee with the business model, brand, structure etc the franchisee will pay a fee – this can be upfront, ongoing (as a flat fee or percentage of sales) and/or through the sale by the franchisor to the franchisee of core items (which may be a contractual requirement) or a combination. There can be strict rules about the operation of the franchise in the franchise agreement.

**Can a financial counsellor assist a franchisee?** If the issues are related to the nature of the franchise and enforcement of terms, referral for legal support may be required.

For business support, the client should be provided with tools for assessing business viability, assisted with management and negotiation of business debts and/or referred to a business specialist (see Referrals) or a specialist small business financial counsellor. Generalist financial counsellors may assist with client's personal debts/finances/budget.

### **Primary producers:**

A primary producer is an individual, trust or company carrying on a business undertaking: plant and/or animal cultivation; fishing and/or pearling; and tree farming and/or felling.

Primary producers have access to additional entitlements and concessions.

**Can a financial counsellor assist a primary producer small business?** Rural financial counsellors specialise in providing support to primary producers and can assist them to understand their financial position and the viability of their business.

## **9. INSOLVENCIES**

Generalist financial counsellors can assist individuals including sole traders and partners entering into bankruptcy.

Generalist financial counsellors will not advise a small business owner on whether to close their business; however, they can provide information on how to close a small business. They are able to provide potential exit options to a small business owner, including: retraining (e.g. free TAFE); relocating; selling; referral to business advisor or accountant for options of recommencing or winding up the small business; referral to an insolvency practitioner; or bringing in a partner or selling assets to raise capital.

## **10. 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 to ensure that potential conflicts of interest can be managed.

Where a financial counsellor acts for a small business owner, a conflict of interest may arise when another party associated with the small business seeks service from the same agency – this could be a partner or another director in the business, or an employee of the small business. The service cannot act for both parties individually. It is important for the financial counsellor to follow the policies and procedures adopted by their agency for managing conflicts, such as referring the prospective client to another service provider, or a signed agreement between the two parties that the financial counsellor will only act for them as long as their interests remain one and the same.

External to the financial counselling service, a small business owner may be involved in a conflict or dispute with another party, and appropriate referrals should be used to manage legal risks arising from these situations.

Company directors who underpay their employees are at risk of being personally liable if they have breached duties or contravened the Fair Work Act. Appropriate legal referrals should be made in such cases.

## 11. REFERRALS AND SCOPE OF PRACTICE: Specialist Small Business Financial Counsellors working with small business owners

Where a small business financial counsellor can assist:	Where a small business financial counsellor will refer on:
Emotional support	Therapeutic counselling – <b>Mental health practitioner/counsellor</b>
Negotiating with a credit provider to make a hardship arrangement on a business or personal debt	Advice on operational issues, e.g. cashflow analysis, planning; tax returns – <b>Accountant</b>
Information on, and options for, business and personal debts	Advice on business planning and performance – <b>Small business advisor</b>
Business viability tests and assessment	
Negotiating a hardship arrangement for a lease, utility or with a supplier (business or personal)	Advice on the structure of the business, Trusts – <b>Lawyer</b>
<b>General</b> information on tax issues	Detailed tax advice; tax effective strategies; or assistance with employer obligations to employees – <b>Accountant, employment lawyer</b>
Negotiating a repayment arrangement on a tax debt (company or individual)	
Accessing dispute resolution schemes over contract or business and/or personal debt issues (where the creditor is a member of such scheme)	Disputes between directors or partners of a business; disputes between small businesses; litigation – <b>Lawyer, Australian Small Business and Family Enterprise Ombudsman (ASBFEO), Victorian Small Business Commissioner (VSBC)</b>
Information and options for directors who have guaranteed a business loan or other service/supply (with legal support as needed)	Complex company and trust disputes; contract disputes, big businesses; self-managed superannuation funds (SMSFs) – <b>Lawyer</b>
Bankruptcy (personal)	Complex tax disputes – <b>Lawyer or Accountant</b>
<b>General information</b> on [corporate] insolvency including risks with unfair preferences /activities that may defeat creditors; potential director penalties.	Advice and/or assistance on liquidating a company, entering into voluntary administration or receivership – <b>Registered Insolvency Practitioner</b>
<b>General information</b> on closing a small business	Advice on closing a business – <b>Accountant or Lawyer</b>
Access to grants, entitlements and support options for small business.	Advice on rural trusts/ primary producer businesses – <b>Rural Financial Counsellor</b>
General information regarding superannuation guarantee obligations; Early release of superannuation	Legal advice – <b>Lawyer</b>
Personal Budget / Statement of financial position	Investment advice – <b>Financial Planner/Advisor, Lawyer, Accountant</b>

## 12. SMALL BUSINESS WELLBEING PROJECT

The Small Business Wellbeing project is a limited-time service for small business owners who have been impacted by COVID-19. Funded by the Victorian Government<sup>3</sup>, Small Business Wellbeing provides an integrated service encompassing mental health and wellbeing, financial counselling and business advice.

For the purpose of this service, the funder has defined a small business owner as:

“Typically, a sole trader, partner or owner of a business with fewer than 20 employees. Categories of small businesses include:

- > Non-employing businesses (sole proprietorships and partnerships without employees)
- > Micro-businesses (businesses employing between 1 and 4 people including nonemploying businesses)
- > Other small businesses (businesses that employ between 5 and 19 employees).”

The knowledge gained from the operation of the service and related project activities, will inform the further development of the scope of practice of specialist small business financial counsellors.

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<sup>3</sup> Funding to support small business is directed by Department of Jobs, Precincts and Regions (DJPR), and in relation to wellbeing, channelled through Department of Health and Human Services (DHHS).