

# Devil's Advocate

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## Get Behind Proposed Changes to Freecalls and 13 Numbers

In a big win for consumers and vulnerable Victorians, the Australian Communications and Media Authority has proposed changes to the costs of 13- and 1800-numbers.

Under the *Numbering: Calls to freephone and local rate numbers—The way forward* report, ACMA have proposed that mobile users no longer face the unduly high charges currently imposed on non-standard calls. 1800 numbers would become free for all callers, whilst 13 numbers will be charged at the same rate as land line users.

Clearly these reforms have considerable potential to assist financial counselling clients, particularly those reliant upon mobile phones. The proposals also reflect the increasing number of people who do not have access to land lines.

This announcement follows on from an official complaint lodged by Financial

Counselling Australia, the Australian Communications Consumer Action Network and the Australian Council of Social Services earlier in the year. The complaint was bolstered by the *Fair Calls for All* campaign, featuring Number Woman!

Pushback from industry is expected, so it is paramount that the financial counselling sector joins the fight for fair calls. ACMA has called for comments and submissions by November 20.

Further details are available at [http://www.acma.gov.au/WEB/STANDARD/pc=PC\\_312339](http://www.acma.gov.au/WEB/STANDARD/pc=PC_312339) and FCRC urges all members are stakeholders to express their support for these important proposals. ACCAN will be developing a toolkit to assist in the advocacy process.

*Got something to say?*

The Devil's Advocate accepts contributions from financial counsellors, lawyers, related community sector organisations, government departments and industry bodies.

The deadline for the next edition is December 4. Submissions can be directed to [admin@fcrc.org.au](mailto:admin@fcrc.org.au).

Remember that more urgent articles can be submitted to the DA's sister publication, the FCRC gazette.

All submissions are subject to the oversight of the DA editorial board.

## *Chair's Report - Cheryl Buttigieg*

Following the FCRC governance review and the implementation of the Governance framework and its policies, 2011 was always looking like a year of significant change for our organization. So it has proved.

The recent AGM saw the departure of a number of board members and I would like to take this opportunity to officially thank them for their hard work and contributions to the board and FCRC. Maria Turnbull, Miles Turnbull, Damian Horan, Martin Stevens in the role as Treasurer who served on the Board for a number of years, Pam Mutton as Secretary. I would also like to acknowledge Bernadette Douglas in her role as Chair of FCRC until early this year, pioneering the way for the Governance Review and the change that followed.

I also would like to welcome our new board members. Under the constitutional amendments the board has contracted eight new positions. I congratulate Ben Weinstock (Treasurer), Annette Loughan, Vivian Rea, and Brian Harvey.

Welcome back re-elected members Lisa Garlick (Secretary), Tony Naughton (St Luke's) and Colin Handreck (CAFS). I truly feel that the foundations that have been put in place will

ensure FCRC's future as strong and secure.

I must congratulate the membership also, on embracing the push toward professionalising our sector. It is no easy task to adopt a new constitution that demands more of financial counsellors, and it speaks highly of the commitment of the membership in the support of raising our profile and professional standards.

Clearly now FCRC bears an obligation to continue with the task of implementing the criteria for membership, supervision and CPD standards in accordance with the new constitution. Over the coming months the board will be working in collaboration with Peter and staff of FCRC to ensure access to quality professional development for all members, not just those in the city; in offering casework supervision from experienced FC's; to determine the minimum standards of supervision and CPD to align with ASIC licensing exemption and the nationwide approach and in continuing to strengthen the relationship with Victoria University, guaranteeing Victorian financial counsellors have the opportunity to complete the Diploma.

## Executive Officer's Report: Peter Gartlan

Over the course of the last 12 months the Board and staff of FCRC have:

- Undertaken an organisational **governance review**
- Rewritten our **mission statement** and **strategic plan**
- Successfully reintroduced the **Financial Counselling Diploma** through Victoria University
- Proposed a **new constitution** overwhelmingly endorsed by members at the AGM

As FCs are aware, new membership criteria was introduced as part of the new constitution, which states that full membership criteria will require qualification, participation in PD and ongoing casework supervision. At its November meeting the board of FCRC will consider policies and procedures for Professional Development and Casework supervision in 2012 and of course we will be in conversation with you following the outcomes of this meeting.

### Staffing

**Chris Montgomery** will soon be leaving FCRC having been offered a graduate position with the Federal Public Service. Chris has been responsible for FCRC communications, policy submissions and the main contact between members and the office. Whilst his skill, expertise and healthy sense of cynicism will be missed around the office, we thank him for his work and wish him all the very best.

**Danielle Archer** continues as the **Project Coordinator - Flood Relief Initiative** with those FCs dealing with consumers affected by the Victorian floods. Danielle is currently travelling throughout regional and rural Victoria as part of this important work. Danielle will also be increasing her hours with to assume responsibility for FCRC communications, which will include the Devil's Advocate and member communications.

### Bernadette Douglas

Having successfully organised the delivery of the Diploma from 2012, Bernadette has changed roles somewhat; her official title is now Training Consultant. She is responsible for (1) a FaHCSIA project delivering Certificate III Units in Financial Literacy to emergency relief workers; (2) ongoing support of the 2011 Diploma at VU and students at Lifeline Qld. Importantly this means that questions about the Diploma for 2012 onward should be directed to VU or the FCRC office.

Finally and importantly **Ron Rowley** continues as our numbers man paying the bills and balancing the books

Thanks for your support

### Board Members:

**Chair:**  
Cheryl Buttigieg

**Treasurer:**  
Ben Weinstock

**Secretary:**  
Lisa Garlick

**Board Members:**  
Colin Handreck  
Brian Harvey  
Annette Loughnan  
Tony Naughton  
Vivian Rea

## *Centrelink Debts & Bankruptcy*

### *Malcolm Buchanan - Family Mediation Centre*

In the December 2010 edition of the Devil's Advocate I wrote an article regarding the way Centrelink was making decisions to reinstate Centrelink debt that clients had bankrupted on once they had been discharged from bankruptcy without first proving fraud. My article advised that the Public Interest Law Clearing House (PILCH) felt that this particular issue needed to be addressed and arranged for a well known Melbourne law firm who specialise in bankruptcy matters to provide advice with the view to making representation to the Attorney General regarding Centrelink's interpretation of section 153(2)(b) of the *Bankruptcy Act* to reinstate the debt upon discharge.

The normal process for Centrelink is to write to clients who have bankrupted on debts to advise them that:

*After the bankruptcy is discharged, you will need to repay this amount as bankruptcy does not cover money obtained by breach of trust or fraudulent action.*

*Centrelink does not need to take this matter to court to make this decision. We do however, need to have reasonable evidence that the*

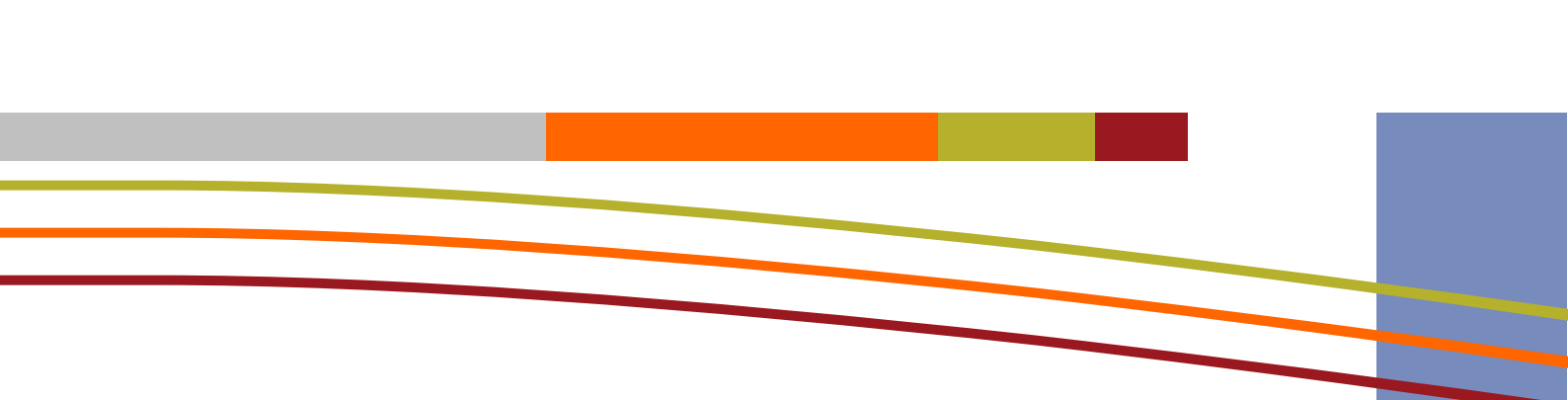
*money was obtained by deliberate incorrect information or deliberate failure to provide required information.*

This letter then goes on to advise that if you are not happy with this decision you can lodge an appeal through the Area Review Officer (ARO) for this decision to be reviewed.

In our argument to the Attorney General we provided him with detailed case law which demonstrated that not all debt incurred was due to breach of trust or fraudulent action. We also advised him that notwithstanding the absence of an express requirement for a fraud claim to be made out before section 153 (2) of the Act will apply, we provided findings in other cases which suggest that a creditor cannot simply allege fraud to trigger the section, and that a finding must first be made.

Unfortunately, the Attorney General rejected these arguments and advised that:

*The determination by Centrelink that the debt was incurred by*



*means of fraud is an administrative decision and is subject to the review processes prescribed by the social security law. The matters taken into account in arriving at this decision turn on the facts of each case. The test is subjective and to be found on the balance of probabilities."*

*It is Centrelinks's view that the existence of fraud is a matter of fact to be determined by the relevant decision maker and does not require or should not rely on the finding of a third party (including a court or tribunal).*

Essentially Centrelink is saying "you are guilty of fraud and we do not have to prove it." I am not sure which country they live in but it has always been the accepted principle in western democratic countries that you are innocent until proven guilty.

We feel that this interpretation is incorrect and are currently looking at ways to get this interpretation overturned which may include conducting a test case. I will keep you all posted as things develop.

In the meantime, I have prepared a template letter that can be used to assist your client to challenge Centrelink's decision to reinstate debt upon discharge. The template letter has been added to the resources on the FCRC website.

If any financial counsellors have clients affected by Centrelink's current practice of reinstating the debt upon discharge and wish to discuss their clients situation with me please feel free to contact me on 51 75 9306 or email:  
[malcolm.buchanan@mediation.com.au](mailto:malcolm.buchanan@mediation.com.au)

## *Financial Counselling Drop In: Exploring Different Models of Service Delivery*

*Anna Dooland*

*Good Shepherd Youth and Family Services St Albans*

I have a very vivid memory from early last year of being hunched over a long waiting list of forty plus names, calling entry after entry to apologise about the long wait. Often by then numbers would be disconnected, prospective clients' needs have changed or referrals were simply inappropriate in the first place. It seemed ridiculous to me that a client should have to wait three or more months to have assistance to fill in (or request!) an URG, hardship forms or to complete any number of other short tasks that require face-to-face contact.

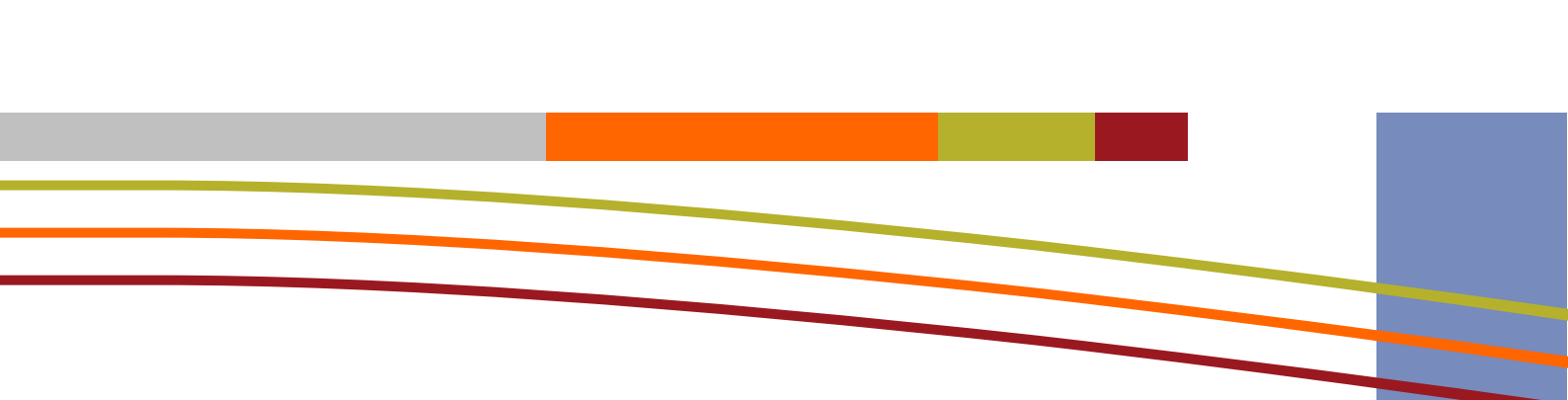
In St Albans we were also regularly work with Horn of Africa communities for who, despite our best efforts, there were very high non-attendance rates, exacerbating our waiting list. At one point I had just completed a financial literacy group for Sudanese women, and I discussed my frustration with a figurehead of their community in St Albans. She laughed and acknowledged that many sectors experience these problems with new Horn of Africa migrants. She explained that in many parts of Africa, if you need a service, you simply go to the place that offers the service and wait until you are able to be seen. The 'appointment culture' simply does not exist in many parts of the area. She then offered the Night Legal Service in Footscray as an

example of a service that works for the community. She explained this works because people in the community know that on Tuesday and Thursday nights you can go and speak to a lawyer – this model of service is familiar to them.

That started me thinking. Would it be possible to run a financial counselling drop in service similar to FCLC's legal service? And, if so, would we restrict it to Horn of Africa communities or should we make it an open program?

When I canvassed other financial counsellors' opinions, I received a wide variety of responses that ranged from, "It will never work – it will be chaos," to, "Sounds great! Let us know how it goes, we might consider it at our location." As far as I am aware there isn't a service that runs this way in Victoria at the moment, so it was very difficult to know how to run the program and if it would be successful. It was also difficult to predict what the challenges and pitfalls were likely to be.

After discussions with management and other staff at the location, we came up with a model that we decided to trial, and resolved to address



problems as they arose rather than to try and eliminate every possible problem by tweaking the structure beforehand.

We started running the program every Wednesday afternoon from 1:30pm, and seeing the first 8 people who attended (not restricted to Horn of Africa migrants). Two financial counsellors would see clients, and we would try and keep appointments to thirty minutes. We also hired a Dinka interpreter to be available during these sessions in case he was needed.

Initially, the program worked very well. It was heavily attended by the target group – Horn of Africa communities, especially the Sudanese – and it was clear that the community embraced this model and that it worked well for them. Additionally, our waiting list almost completely cleared after the first three months. We also discovered that Drop In was an excellent intake tool, because we would see clients and be able to know what sort of service they needed before they were put on the waiting list.

However, problems slowly surfaced. First of all, when interpreters get involved, it is to be expected that appointments would run much longer than

usual, especially when phone interpreters are needed for more localized dialects. We would often be waiting up to twenty minutes simply to get an interpreter! This was clearly an issue when multiple calls would need to be made – to utility companies, for example.

Secondly, people would come to the office from as early as ten o'clock in the morning to make sure they got an appointment. This meant that the waiting room was full of financial counselling clients hours before Drop In started and posed problems for the many other programs that run at the St Albans office.

Finally, the financial counsellors who worked part-time found that losing half a day to Drop In every week meant they were behind on their paperwork and other commitments. Additionally, Drop Ins tend to be busy and quite stressful as there is an ever-present pressure to not have people waiting too long. Over time this pressure became a problem for everyone.

During our first review, we decided to change the Drop In to once every two weeks and only see six clients. We also shut the office from one to one-thirty to stop people 'camping out' and filling the

*continued page 8.....*

office before sessions. This model had not been working well for us as there is only marginally improved access and the sparser session times meant that when sessions ran they would be very busy because of high demand. This high demand cumulated in an event where there were in excess of twenty people and their partners and children in reception, many of them arguing with each other and also having a go at management who was trying to pacify them.

In the lead-up to an annual review of the program, we decided that the safest way to run the program until we'd had a chance to discuss the issues was to take appointments for 6 people over the phone prior to the day and promise anyone else who called they would receive a call-back. This model does not work either as it faces the same problem as appointments always posed in the first place: people simply do not show up, and we are left with a list of 20+ people to call afterward.

At our annual Drop In review we are making some big changes that are yet to be implemented: we are moving the session to a morning timeslot, and people will be taking numbers. Green numbers indicate the recipient will be able to see a counsellor during that session, blue numbers indicate a phone call will be made in a window of time so that the same information can be provided.

Some suggested changes that will not be implemented are holding the Drop In at an alternate location (our office has a range of social services and Drop In also serves as a great way to link struggling families in with other programs that may assist), and using volunteer financial counsellors from other organizations to service Drop In during peak periods (please contact us if you are interested in volunteering!).

The challenges associated with running a program such as a financial counselling drop in tend to be complex and difficult to solve, however the huge turnout in the program indicates that it is a model that fits our community. There are also many benefits to the program that we weren't able to predict; for example, we can see trending issues as they arise without delay.

Good Shepherd St Albans has been flexible enough (and patient enough) to help the financial counsellors develop and manipulate this program as we continue to try and find the optimum way to run it.

As always, we continue to be open to suggestions and if you have any we encourage you to contact us!

*Anna Dooland*

*Good Shepherd Youth and Family Services St Albans*



A coalition of consumer and financial counselling organisations has launched a new website to ensure the hard truths are heard in the debate about the future of short term high cost loans - [www.debttrap.org.au](http://www.debttrap.org.au). The new website delivers the confronting facts about payday loans, busts myths currently being spread by payday lenders, and outlines safer credit options available to low income earners.

## *TPD and Part-time Work? The Manglicmot Decision* *Briohny Coglin - Maurice Blackburn*

### ***Can a client who is capable of part-time work claim a TPD benefit?***

The NSW Court of Appeal recently handed down a decision in *Manglicmot v The Commonwealth Bank Officers' Superannuation Corporation Limited*, which addressed the “part time/full time question” – that is, whether Mr Manglicmot was “totally and permanently disabled” for the purpose of a TPD benefit, given that he was able to work part-time. The decision has made significant changes to the law regarding TPD claims.

The case concerned a trustee of a superannuation fund switching from a Hannover life insurance policy to a Commlnsure policy, and whether the latter was less advantageous to the members of the fund and in particular to Mr Manglicmot. Whereas the Hannover policy did not specifically address the impact of a part time work capacity on a TPD entitlement, the Commlnsure policy expressly required an insured person to be unable to perform either full time or part time work in order to satisfy its definition of TPD.

Mr Manglicmot was not eligible for a TPD benefit under the Commlnsure policy due to the fact that he had a capacity for part time work. In order to succeed, he needed to prove that he would have been entitled to a TPD benefit under the Hannover policy.

The definition of TPD in the Hannover life insurance


policy read:

*Total and Permanent Disablement* means:

- (a) suffering the loss of two limbs or
- (b) having been absent from work through injury or illness for an initial period of six (6) consecutive months and in our opinion being incapacitated to such an extent as to render the Insured Person unable ever to engage in or work for reward in any occupation or work which he or she is reasonably capable of performing by reason of education, training or experience.

Mr Manglicmot argued that under this definition, he would have been entitled to a TPD benefit, notwithstanding the fact that he could work part time. His argument was that based on the previous case law, in particular *Chammas v Harwood Nominees*, the Hannover definition on its proper construction read “... *unable ever to engage in or work [full time] for reward in any occupation...*”

The superannuation fund and Hannover argued that the TPD definition in the Hannover policy had the same meaning as the Commlnsure policy, notwithstanding that only the Commlnsure policy specifically precluded people with a part time work capacity from being



eligible for a TPD benefit. In other words, the fund and insurer argued that a part time work capacity would have prevented Mr Manglicmot from being eligible for the TPD benefit under the Hannover policy as well.

The court was therefore charged with determining whether the phrase “unable ever to engage in or work for reward in any occupation” meant “unable ever to engage in or work [either full time or part time]” or whether to accept Mr Manglicmot’s argument that it meant “unable ever to engage in or work [full time]”.

#### **The decision**

After consideration of all the relevant case law, the court decided against Mr Manglicmot.

The court interpreted the TPD definition in the Hannover policy strictly, such that Mr Manglicmot’s capacity for part time work necessarily meant that he was not TPD.

The court also said that this reasoning applies to the “common form wording” of TPD definitions as well. (The common form wording is: “incapacitated to such an extent as to render the member unlikely ever to engage in or work for reward in any occupation or work for which [he] is reasonably qualified by education, training or experience” [at 70].)

#### **Relevance for us**

The court preferred the argument that “ever to engage in or work for reward in any occupation” meant: ever to return to work at all, either full time or part time. It follows that if a claimant returns to part time work or has a capacity to return to part time work, he/she may not be TPD.

This case is now the leading authority on the “full time/ part time question”. It is a Court of Appeal decision and insurers will argue that it overturns any lower court contradictory case law, including *Chammas* and *Halloran* (both single judge NSW Supreme Court decisions).

However in our view the court has left open a limited number of ways to argue an exception to this rule. For example, it may be possible to argue that this precedent does not apply if there is a significant difference in the policy wording. Alternatively, clients may be able to get around this decision in circumstances where he or she has undergone further education or retraining.

The law on superannuation TPD claims is constantly changing and it is really important to keep up to date if you are helping clients with TPD claims.

If you have any questions, call **Briohny Coglin** on 9605 2659 for free advice.

## *Emerging Issues in Flood Recovery*

### *Danielle Archer - FCRC*

At the recent FCRC conference, a session was held for financial counsellors who deliver flood relief financial counselling. Not only was it an opportunity for case discussion, it was also an exercise in surveying exactly where we are with disaster recovery and looking at what the emerging issues are.

It may be seven months since the initial devastation of the floods, but the need for financial counselling and other forms of social support is still substantial in affected communities. Late last month, the ABC's 7pm news reported that. "...grants are running out, but demand for help isn't". This news may not actually be new to financial counsellors, but it is certainly an important issue and one which is reflected in our case work.

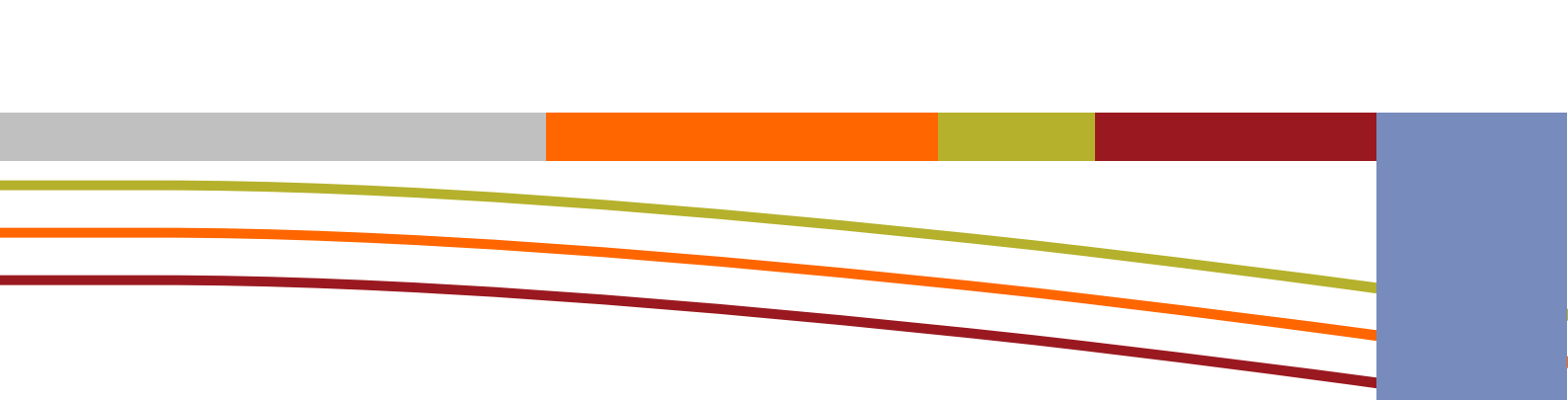
One financial counsellor reported that, "When the February floods hit, my client was living alone as her husband has passed away a couple of years earlier. Water entered her house and destroyed all floor coverings and furniture that could not be removed quickly enough. She was living on a pension from her husband's insurance but was very concerned that she was not "worthy" of assistance as others had suffered more than her. The home was brick on concrete floors, and she lived in this through the winter as she did not have enough money to pay the excess on her insurance to replace the

floor coverings. Mould had started to grow in several rooms of her house and the client displayed signs of depression, stating that she could not find the energy or the effort to start cleaning the house and was very emotional about her plight. She presented with a very serious cough on several occasions and when questioned about medical attention, she would say that she would go and see her doctor soon."

In this case the client was eligible for several grants and the FC applied for these so she could have her floor coverings replaced. However, the client was very adamant that she was aware of the flood recovery monies but didn't think she should apply as others needed the money more. As we know, this attitude is frequently observed by FC's.

But what about people who don't have the support of an FC? Resistance to seeking financial support is common and many people who would have been eligible have gone without help and financial support. Deadlines for grants exacerbate this problem and they all too often dry up before people realise they need help.

Jordan Tamblyn is the local Flood Recovery Officer in the Rochester area. He told the ABC 7pm news,



“There's no book to say that people will recover at the same speed ... and I certainly would envisage we'll have people coming forward for the next 5 or 6 months.”

Mr Tamblyn is not wrong. In determining grant deadlines and processes, governments and funding bodies should consider the ongoing impact of affected communities and also the new issues that tend to emerge long after the flood waters have subsided.

Many financial counsellors, health services and flood recovery workers have reported that the ground is still water logged and holding a great deal of moisture. This is creating housing, structural and mould issues for people who may not have initially been affected or who may have felt that the initial affects were either minimal or resolved.

Issues like mould and rising damp often show up long after a flood, despite being directly caused by it.

A Rochester resident who had to have her floors replaced due to mould told ABC 7pm news, “You go for six months thinking you know you're safe from the floods and all the hassle of the floods and then this happens.”

Our own case work tells the same story. From an FC in the Mitchell area, “I recently saw a client in Rochester

who has been affected by mould in the house caused by the recent floods. The mould in the carpets is affecting his health and upon further inspection it has been discovered moisture has affected the house foundations. The stumps now need to be replaced. The clients Insurance Company has yet has not made a decision in regard to the claim. My client receives a Disability Support pension. The issue will be if the Insurance Company rejects the claim and the client is forced to seek additional finance to complete works which may not be affordable.” This case is still ongoing, but deadlines from grants have long passed. Further to this, many people who depend on seasonal work in flood affected regions are now beginning to feel the long term affects. Loss of livelihood is a serious issue with which people are presenting to financial counsellors. Some of these people don't live in the directly impacted area. Others may not have been flooded themselves, exempting them from grant eligibility and driving them into financial hardship and in some case bankruptcy.

An FC in the Mildura area tells us of how this issue has affected her clients:

“My client was a seasonal worker and along with her partner relied on the fruit industry (mainly grapes) for

their income. Due to the loss of most crops, she was also unable to find suitable work. Her partner left the district to try and find alternative work in another industry, which left her alone for several months trying to manage the bills and phone calls from creditors. The client managed to organise hardship arrangements for most creditors but not before she was issued with a repossession notice for her car. Her partner found alternative work away from the district which enabled them to stay afloat until work was available in their area.”

The same FC also reported:

“My client is a local worker in a fruit packing company. During normal season times she would work fulltime for most of the year and incur reasonable overtime. After the February floods in Mildura, a lot of crops were lost and destroyed which impacted on the amount of fruit being received at the packing company. The consequence was that the client did not have her normal income and was unable to find other seasonal work due to the impact on local growers and the loss of their crops. She had a personal loan with a major bank and after financial hardship finished, still couldn't guarantee that she would be able to make the payments. After reviewing all her options, she decided to proceed with bankruptcy.”

Governments and funding bodies should consider using these issues to inform a discussion into formulation a broad based definition of 'disaster affected' as far as grant eligibility goes. Financial counsellors are well placed to contribute to any potential discussions around this.

One of the most valuable things we can do as a sector is continue to collect case studies following disaster events, so that we can track trends, systemic problems and emerging issues.

The FCRC will be presenting a report to government in June next year. We encourage you to contact us with your cases and concerns.

**Danielle Archer**

Project Co-ordinator - Flood Relief Initiative  
darcher@fcrc.org.au

## *Changes to Early Super Access Administration*

**From 1 November 2011, the Department of Human Services (DHS) takes over administration of the early release of superannuation benefits on compassionate grounds from the Australian Prudential Regulation Authority (APRA).**

### **What will you notice?**

- The DHS logo will replace the APRA logo on letters and other information for the early release of superannuation benefits.
- From 1 November 2011 a new email address [ERSBenquiries@humanservices.gov.au](mailto:ERSBenquiries@humanservices.gov.au) and a new fax number 1800 228 455.

### **What's not changing?**

- No change to the grounds for early release of superannuation on compassionate grounds.
- No change to the contact number 1300 131 060.
- Applicants do NOT need to take any action — all applications will continue to be processed as normal.

From 1 November 2011 contact DHS for information on the early release of superannuation benefits.

Telephone: 1300 131 060

Fax: 1800 228 455

Web: [www.humanservices.gov.au](http://www.humanservices.gov.au)

Email: [ERSBenquiries@humanservices.gov.au](mailto:ERSBenquiries@humanservices.gov.au)

Early Release of Superannuation Branch

PO Box 1001

Tuggeranong DC ACT 2901

## *Principles of Bankruptcy - Equity of Exoneration*

### *Ian Liddell - FC - Mitchell Community Health*

#### What is it?

Equity of exoneration, or the doctrine of exoneration, is a strategy used to claim against a trustee under bankruptcy that the equity in a property of the non bankrupt spouse should be greater than that being allowed for by that trustee.

#### When do we use it?

When providing bankruptcy advice to couples where the husband (usually) has used equity in the family home to raise capital for a business that has subsequently failed and then has petitioned for Bankruptcy to clear his personal (and if applicable, business) debts. There maybe other examples involving one partner using equity in the family home that only benefits that partner and leaves the other party with less than a satisfactory claim for their share of equity in that property. See further readings below.

#### A typical situation

The couple have a mortgage of \$200,000.00 against a property valued at \$500,000.00 to enable them to initially buy the property. The husband then borrows an additional \$200,000.00 for a business loan against the family home. The business subsequently fails and he petitions for bankruptcy.

His trustee under bankruptcy claims a half share

(\$50,000.00) of the remaining equity (\$100,000.00) in the property.

The non bankrupt spouse, under equity of exoneration, claims the full amount of the remaining equity, and if successful prevents the trustee from claiming a half share.

#### How it works

Under equity of exoneration the \$200,000.00 business loan is set aside from the equation leaving equity of a \$300,000.00 to be shared equally between the parties. The non bankrupt spouse claims her right to half that amount being \$150,000.00.

However there is only \$100,000.00 remaining after the property has been sold and the 2 mortgages have been discharged. She then stakes a claim for her entitlement against the trustee under bankruptcy for the remaining \$100,000.00. Her claim is actually for \$150,000.00 but there is only \$100,000.00 left and that is all she would get. The trustee under bankruptcy now receives nothing.

#### Further considerations

An important consideration is that you must establish that the loan was for business purposes. The argument that the wife benefited from the business is dismissed in the case Parsons v McBain. The benefit must come



## *OGR Employee Value Propositions and Recruitment Kits*

*Melissa Ferguson*

directly from the loan.

If part of the loan was of a benefit for the wife that amount must be used to adjust the benefit she would be entitled to.

### Further reading

[http://www.worrells.net.au/library/insolvency/  
Jointly%20owned%20property%20and%  
20exoneration.pdf](http://www.worrells.net.au/library/insolvency/Jointly%20owned%20property%20and%20exoneration.pdf)

[http://www.worrells.net.au/insolvency%  
20resources/doctrine\\_of\\_exoneration.htm](http://www.worrells.net.au/insolvency%20resources/doctrine_of_exoneration.htm)

[http://www.bransgroves.com.au/mortgage-case-  
notes/phillip-ashley-dickson-v-geoffrey-philip-reidy-  
2004-nswsc-1200.html](http://www.bransgroves.com.au/mortgage-case-notes/phillip-ashley-dickson-v-geoffrey-philip-reidy-2004-nswsc-1200.html)

[http://www.vicbar.com.au/webdata/pdf/Forbes-  
EquitableInterests.pdf](http://www.vicbar.com.au/webdata/pdf/Forbes-EquitableInterests.pdf)

In 2010 as part of the problem gambling counselling, financial counselling and community education workforce development strategy, the Office of Gaming and Racing (OGR) appointed SACS Consulting to work with representatives across the financial counselling sector to develop Employee Value Propositions (EVPs) and recruitment kits for agencies to use when recruiting financial counselling staff. During the consultation process, in March 2011 problem gambling and financial counsellors also participated in a survey contributing feedback on draft role descriptions.

SACS have now provided OGR with a suite of tools including a competency analysis, EVP's and recruitment kits for 15 roles across the financial counselling, problem gambling counselling and community education workforce. The recruitment kits are intended for use by all agencies and are seen as an important tool supporting the recruitment and retention of staff. The SACS Consulting Competency Analysis of Funded Activity and Recruitment Kits can be found at the following link:

<<http://www.fcrc.org.au/guides-resources>>

## ITSA Bankruptcy Q and A

### **Real questions from financial counsellors across the country...**

ITSA welcomes enquiries and we aim to provide a timely response. If you have an enquiry for ITSA, you can call the National Service Centre on 1300 364 785. Once you hear ‘Welcome to ITSA...’ you have 6 seconds to press 9 and it will take you to the special queue set up for financial counsellors where we have dedicated staff to take your call. If you miss this 6 second time frame you will go into the general queue for all clients. Alternatively you can send ITSA an email to [financial.counsellors@itsa.gov.au](mailto:financial.counsellors@itsa.gov.au) with your enquiry. If you can provide some context around your question, this will assist us to provide a response that meets your needs. We aim to turn around email enquiries within 24 hours.

### **Overseas Debts**

S55(2A) of the *Bankruptcy Act 1966* (the Act) outlines when the Official Receiver is required to reject a debtor’s petition. Where debts are incurred in Australia and the client no longer resides, has a dwelling house or an affiliation with a business activity in Australia, then the Official Receiver is unable to accept a debtor’s petition in Australia as there is no nexus with Australia. A person who has incurred a debt overseas and now


lives in Australia can, on the other hand, submit a debtor’s petition. In the latter case they need to understand that if they ever go back to the country where they incurred the debt, they might still be made bankrupt in that country for the same debt.

### **Motor vehicles**

s116(2)(ca) of the Act outlines that property primarily used as a means of transport, where the aggregate value does not exceed the threshold (currently \$7050), is exempt property. When determining who owns the vehicle, look at the contract of sale vs registration as registration does not mean ownership.

The Official Trustee (OT) will also look at the intention of the parties. If a vehicle is registered in the name of the bankrupt and the person who purchased the vehicle can provide clear evidence that they acquired the vehicle with an intention that they would own it, not the bankrupt, and only placed the vehicle in their name as they were unable to place it in their own name, the OT will take this into account. However if the vehicle was purchased by a third party and gifted to the bankrupt, then the vehicle is an asset of the bankrupt and subject to the provision.

A bankrupt can own more than one vehicle that they use primarily as a means of transport; however the aggregate value cannot exceed the threshold. Where



a couple jointly owns a vehicle and both become bankrupt, the OT will look at each party having \$7050 interest, ie \$14 100. In this example, if the vehicle was worth \$10 000 the OT would have no interest in the vehicle.

**Trauma Insurance** – s116(2)(g) of the Act provides that a right to recover compensation or damages, and the compensation or damages recovered, in respect of an injury or wrong, are property that is not divisible amongst the bankrupt's creditors.

The relevant case law provides that a "right to recover compensation" is one "for any personal injury or wrong done to the bankrupt" where "the damages or part of them are to be estimated by immediate reference to pain felt by the bankrupt in respect of his mind, body or character and without reference to his rights of property": *Cox v Journeaux (No 2)* (1935) 52 CLR 713<sup>1</sup>; 8 ABC 58; 9 ALJ 127; [1936] ALR 40 at 721 (CLR) (per Dixon J); *Faulkner v Bluett* (1981) 52 FLR 115<sup>11</sup>; *Bryant v Commonwealth Bank of Australia* (1997) 75 FCR 545<sup>1</sup> (FC).

Every case needs to be looked at on its own set of facts where a clear link between an event and the

injury suffered by the bankrupt is established. The illness needs to be the result of something 'done' to them, not as a result of an alternative illness where symptoms later develop that fall within the trauma policy. For example, if a person has a limb severed and claims under the trauma policy, this would afford an exemption as a personal injury; however if a person has diabetes which later results in blindness and they can claim eyesight loss under their policy, this would not be exempt and the OT can claim the proceeds as an asset.

# MoneyMinded

financial skills for the future



## **Do you work with adults or young people who could benefit from an improved understanding of all things financial?**

MoneyMinded is a successful financial literacy skills based workshop that covers a broad range of topics including planning and budgeting, debt, understanding paperwork, rights and responsibilities, superannuation and tenancy to name a few.

The aim of MoneyMinded is to help transform 'finance' from something complicated and overwhelming into a tool that is easy to understand and manageable.

### **Who is the training for?**

The **3 day workshop** is for community workers interested in delivering the MoneyMinded resource to their own clients. This workshop will provide you with the skills, knowledge, useful contacts and tools to help your clients address their financial matters.

## **The workshop is free to all community workers**

### **Final workshop date for 2011:**

**When:** Tues 22<sup>nd</sup>, Wed 23<sup>rd</sup> and Mon 28<sup>th</sup> November

**Location:** Mezzanine level, 145 Smith St Fitzroy

**Time:** 9.30 – 4.30pm

### **To register please email:**

[moneyminded@bsl.org.au](mailto:moneyminded@bsl.org.au) or [fmendez@bsl.org.au](mailto:fmendez@bsl.org.au)

## Upcoming Professional Development

**Mental Health Issues Working Group - Professional Development 2011**  
**November 15 - 10.00am-4.00pm**  
**Lionel Murphy Centre - 300 Queen Street Melbourne**

10.00	A Snapshot of Mental Illness and Treatment
11.00	Morning Tea
11.30	Financial Counselling and Mental Illness - Panel Discussion
12.30	Lunch
1.30	Mental Illness and the Law - Capacity and other issues
2.30	Afternoon Tea
3.00	Suicide - risk assessment and referral pathways

RSVP: [admin@frc.org.au](mailto:admin@frc.org.au)  
Non-members also welcome

**VIDEO CONFERENCING AVAILABLE - CONTACT THE FCRC OFFICE**

### **The ABCs of Problem Gambling Counselling**

October 24: 9.00-4.30  
City of Kingston Mentone  
Customer Service Centre

A one day introductory workshop for professionals wishing to become more confident in assessing and applying a therapeutic framework to support their clients.

Registration \$90 incl lunch, morning and afternoon tea  
Enquiries to Noa Weinstein, Counsellor: 9575 5351

### **Guardianship and Administration**

November 10: 2.30-4.15  
Alfred Hospital  
Commercial Road Prahran

Including representatives from the Office of the Public Advocate, State Trustees and VCAT Guardianship List

Free Session

RSVP to Chanara Hyde  
[chanara.hyde@state.trustees.com.au](mailto:chanara.hyde@state.trustees.com.au)  
03 9667 6239

### **Professional Development 2012**

FCRC is currently drawing up the professional development calendar for 2012.

Member input as to the content, regularity and format of PD is highly valued. If you see the need for training in a particular area or have comments about the program please contact the FCRC office: 9663 2000 or [admin@frc.org.au](mailto:admin@frc.org.au)

## *Diploma Update and Information*

### CHC 52108 DIPLOMA OF COMMUNITY SERVICES - Financial Counselling

FCRC have partnered with Victoria University to offer the nationally accredited Diploma of Community Services Financial Counselling. Full information about the course will be available via the website soon.

There will be 2 training intakes for 2012:

1. EXPERIENCED FCS: those who are working as FCs and have little or no capacity for RPL will be accelerated students
2. NEW STUDENTS with no experience in the field

Please note that classes for the two intakes will run separately, on different days. Enrolments will be open soon with training to commence in MARCH 2012.

EXPERIENCED currently employed financial counsellors who are seeking recognition for previous qualifications and current practise experience should contact [timothy.logan@vu.edu.au](mailto:timothy.logan@vu.edu.au) to make an appointment for Recognition of prior learning ( RPL)

Interviews are on **3 November**. You will be given a time for an interview, which will take between 30 and 45 minutes.

#### THINGS TO BRING TO INTERVIEW:

- academic transcript (original and one photocopy)
- resume
- supporting evidence of relevant experience

Remember unit outlines are on the FCRC website. Check what is in each unit to get an idea of which units you will be able to provide evidence for. Full unit outlines may be obtained by going to [www.training.gov.au](http://www.training.gov.au). Place the unit code into the search on the home page and you will get a full outline of all aspects of that unit, including parameters for evidence of knowledge, pathways etc. The unit outlines currently on the website re an adaptation containing the elements and performance criteria, which is the nuts and bolts of what you need to know that can be used to obtain a THIRD PARTY REPORT to assist with the RPL process.



## *Employment Opportunities*

### **Financial Counsellor Position with Kildonan Uniting Care**

0.8 to Fulltime FTE – 3 month contract

Salary Packaging

Epping & Outreach

Kildonan UnitingCare is one of Victoria's most vibrant and ground-breaking community service organisations. Kildonan delivers integrated & innovative services, empowering vulnerable people and providing options & choices.

Join our Financial Inclusion and Energy services team as our next financial counsellor. Your primary responsibility will be to provide information, options, support and advocacy to individuals and families who find themselves in financial difficulties. The position will require you to contribute to the extension of the consumer rights of the target group and to ensure the protection of the individual's welfare rights.

You will have well-developed communication skills, and be a compassionate and empathetic person. Sound organisational, time management and planning skills are a must in order to manage client casework and ensure client files are accurate and recorded. Your understanding of credit and debt, particularly the National Credit Code, the Bankruptcy Act and Debt Recovery Legislation is highly valuable.

Requirements:

Eligibility for membership of Financial and Consumer Rights Council

Minimum 2 years demonstrated experience in a financial counselling role and an understanding of issues relevant to the community service sector

Community Services Diploma or relevant tertiary qualification

You will be required to undertake a Criminal Records Check with satisfactory outcome and apply / hold a valid Working with Children Check (E) Card. Travel between sites is required therefore you will need to hold a current Victorian Driver's licence.

For further information, a confidential and private conversation please contact People & Culture on 9412 5700 or refer to our website [www.kildonan.unitingcare.org.au](http://www.kildonan.unitingcare.org.au) for a position description.

An application addressing the key selection criteria, your resume and cover letter needs to be sent to [hr@kildonan.org.au](mailto:hr@kildonan.org.au) by 5pm, Friday 18th November 2011.

Kildonan UnitingCare – An Equal Opportunity Employer

## Financial Counsellor Position with Financial Counselling Victoria

1A 147 Centre Dandenong Road  
Cheltenham 3192

Requires a fully trained Financial Counsellor with at least 2 years experience, who has completed their Diploma of Financial Counselling.

The position is for a 12 month contract with a review at the end of the period - 4 days per week or .8 EFT.

Salary will be paid under the current SAC's Award and will be negotiable with experience and qualifications.

Primary Role of the Financial Counsellor will be the core function of undertaking casework and providing information and options to low income and vulnerable families and individuals who are experiencing financial difficulties.

Other functions will include networking, community development and education.

Job Description can be accessed at [www.financial-counselling.org.au](http://www.financial-counselling.org.au).

Any queries can be made via phone at 9585 1955

Applications close on Friday 11 November.

Please send to Lyn White Manager Financial Counselling 1A 147 Centre Dandenong Road Cheltenham 3192 or email to [lynwhite@financial-counselling.org.au](mailto:lynwhite@financial-counselling.org.au)

## Financial Counsellor Position - Port Phillip Community Group

Location: 161 Chapel Street, St Kilda 3182

This is an ongoing position of 20 hrs per week

Remuneration will be negotiated on PPCG EBA (SACS scale or above) according to qualifications & experience.

### KEY RESPONSIBILITIES

#### Casework

- To provide information/options and explain fully the implications of those options to clients in relation to their financial situation.
- To advocate and negotiate on behalf of clients as required.
- To assist clients to develop skills and strategies to address issues.
- To encourage and empower clients to advocate and negotiate on their own behalf as appropriate.

- To endeavour to empower and equip clients to understand and cope with financial and debt problems in the future.
- To maintain accurate client and program records and statistics as required.

#### **Community development & community education**

- To provide support and assistance to community based initiatives and mutual support groups etc
- To undertake effective distribution and dissemination of information to the community in relation to debt, credit and financial issues and related social issues.
- To undertake social action and advocacy on consumer debt issues.
- To act as a resource to Port Phillip Community Group and SKLS staff on financial counselling issues.

**Other responsibilities available in the full position description via the FCRC Careers website**

#### **POSITION REQUIREMENTS**

##### **Qualifications & Experience**

- Diploma of Community Services (Financial Counselling), or course in progress; or Bachelor of Social Work or equivalent; or Diploma of Welfare Work; and
- Significant experience working with complex clients in financial crisis;
- Demonstrated experience in delivering financial counselling
- Experience & competence with using IRIS database.
- Current Victorian Driver's License.

First Aid certificate Level 11 (desirable).

#### **APPLICATION**

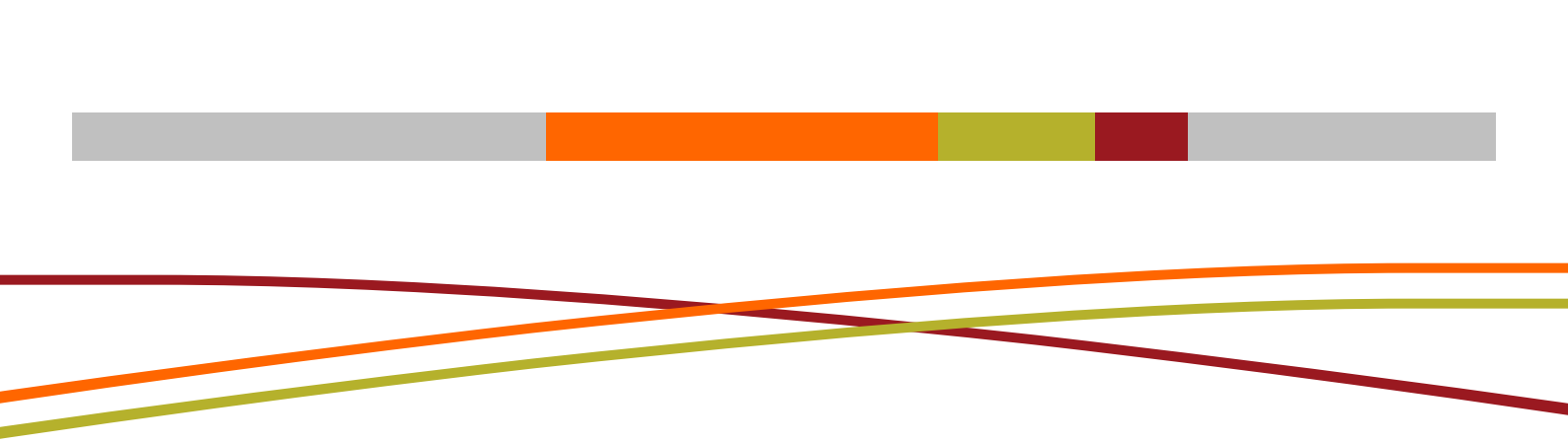
Applications must contain a resume and response to the Position Requirements & Key responsibilities.

Applications must be addressed to:

Ann Ades, Team Leader, Information & Support, Port Phillip Community Group and mailed/ e- mailed to [ann@ppcg.org.au](mailto:ann@ppcg.org.au)

Applications must be received by: Close of business: Friday 11<sup>th</sup> November, 2011

**Appointment is subject to a Police check and 3 month probationary period.**



The Devil's Advocate is a bi-monthly newsletter that is published for the benefit of FCRC members, associates and other stakeholders. The Devil's Advocate's primary function is to distribute information to the FCRC membership and beyond.

The views expressed in this newsletter are not necessarily those of the FCRC or its membership. Furthermore, articles relating to products and/or services should not be seen as a recommendation or endorsement of such products by the FCRC, and are provided for information only.

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First Floor, Ross House, 247 - 251 Flinders Lane, Melbourne Vic 3000  
Ph: (03) 9663 2000 - Fax: (03) 9663 7677 - Toll Free (Rural): 1800 134 139  
Email: [admin@fcrc.org.au](mailto:admin@fcrc.org.au) - [www.fcrc.org.au](http://www.fcrc.org.au)