



This fact sheet does not apply to the work of rural financial counsellors. Rural financial counselling is a service provided specifically for primary producers and rural small businesses, and has a specific licensing exemption for that work.

Can I help clients with small business debts?

Financial counselling services are exempt from the licensing requirements for both an Australian Financial Services Licence and a Credit Licence.

Both exemptions are subject to strict conditions (see FCA Fact Sheet 2 “Do I need a licence to be a financial counsellor”) and use the following definition of financial counselling services.

A counselling and advocacy service provided predominantly for the purposes of assisting individuals who are in financial difficulty.

This means that you are acting within the terms of the exemptions only when you are providing a service to an individual in financial difficulty.

You cannot assist businesses that are in financial difficulty. However, you may be able to assist an individual who has debts that arise from their involvement with a small business.

This fact sheet provides a decision making process to help you make good decisions about whether to offer help in a particular situation.

Step 1: An individual with a debt

One of the reasons people use business structures, rather than operate the business in their own right, is to limit their personal liability for debts of business. The following table shows when an individual will be liable for business debts.

Name	Type of structure	Is there an individual liable for business debts?
Sole trader	An individual operating a business in their own right	YES —There is no legal distinction between the sole trader individual and the business. All of the individual's personal assets may be claimed by creditors of the business.
Partnership	A number of individuals (or sometimes companies or trusts) who come together to operate a business	YES —Partners who are individuals are liable for the debts of the business They are entitled to be paid back by the partnership for debts they pay personally Where both members of a couple are the only partners in a small business, then all of their personal assets may be claimed by creditors of a business.
Trust	Trustees (individuals or companies) are the legal operators of the business, but the business is owned by beneficiaries (can be individuals, companies or other trusts).	YES —Individual trustees are liable for debts unless they have been able to limit this in some way. They are entitled to be paid back by the funds held in the trust. Where both members of a couple are the only trustees operating a business, then all of their personal assets may be claimed by creditors of a business.
Company	A separate legal entity that is operated by its directors and owned by its shareholders (the shareholder can be individuals, companies or trusts)	NOT WITHOUT MORE —The company is a separate legal entity BUT —Company directors may be individually liable where they take on that liability eg: <ul style="list-style-type: none"> ■ They provide security over personal assets for company debts ■ Give personal guarantees for company debts Or where the law makes them liable, eg where the company <ul style="list-style-type: none"> ■ Does not pay PAYG tax instalments ■ Does not pay superannuation for employees ■ Trades while insolvent

FACT SHEET

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As the table demonstrates, even with the use of other business structures, there are many circumstances in which an individual will be responsible for business debts.

If there is an individual with a debt, then go to Step 2

Step 2: Is the request for help for the individual or the business?

If the request relates to:

- the debts arising from a business that is still trading, and
- the person seeking your help is still involved with that business

This may be a request to help the business rather than the individual.

It is **not** the role of financial counsellors to assist in the operation of businesses. For example, helping a tradesperson negotiate time to pay or new trading terms with their trade suppliers is not appropriate.

If the request has the essential character of seeking help for an individual in financial difficulty, the fact that the debt is related to a business does not disqualify a client from help.

For example, it is appropriate for financial counsellors to help individuals having trouble paying their home mortgage even if the mortgage secures a business debt, and even if their financial difficulty arises because their business is doing badly.

Similarly, if the request comes:

- after the business has ceased trading, or
- after the individual has left the business, and
- is about residual debt the individual has from their involvement in the business

then it may be appropriate for a financial counsellor to assist. The fact that the debts arose from a failed business do not alter the fact that you are now being asked to assist an individual in financial difficulty.

If you are satisfied that you are assisting an individual and not a business, go to Step 3.

Step 3: Does my agency have a policy about this situation?

Agencies providing financial counselling services may have policies about assisting clients with small business debts. You should make sure you understand the policies that apply in your agency, and any limitations that those policies impose.

If your agency's policy allows you to provide assistance, go to Step 4.

Step 4: Is the matter one I should help with?

If the answers to the previous steps indicate that you can provide help, then there is still a question of whether you should in this case.

Some cases involve a degree of complexity that means you cannot competently provide a service within the time constraints that apply to your work. This is not a reflection of your expertise or competence, simply an acknowledgement that there are limits on free publicly funded services.

For example if the client cannot give a clear account of their situation, and you would have to delve into the records of the operations of the business to understand their issue and how to help them, then it will not be appropriate to offer assistance.

In other cases there may be complex business structures and transactions between them that would be difficult to track without the assistance of a forensic accountant. If this is relevant to the question of whether the individual owes the debt, then you cannot assist.

If there are legal issues impacting on whether the debts claimed against the individual are properly owing, then legal advice will be required before financial counselling. Similarly if there is a question about whether the client can recover the debt from other participants in the business, the client will need legal advice.

On the other hand, if the complexities have been resolved when the client consults you, they should not be disqualified from help simply because the debt arose in a complex business situation. For example, if there is a judgment against the individual for business debts, you can assist them as you would any other individual facing a judgment debt.

Sometimes this decision about whether you should assist will be a difficult one. You may want to talk through the issue with a colleague to help you make a good decision.

If you have completed these 4 steps and concluded that you should help the client, proceed with the service.