

CREDIT REPORTING & ECONOMIC ABUSE:

A practical guideline
for financial counsellors
and community workers

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CONTENTS

Please read first	4
Terms	4
Credit reporting problems relating to domestic and family violence	5
Credit reporting 101	6
What information is recorded on a credit report?	6
Who can access information on a credit report?	7
Credit reporting agencies	7
What is a credit score?	7
How can I check the credit report or credit score of my client?	7
Placing a ban on your client's credit report	8
More information about credit reports	8
Changing, or protecting, your client's credit report	9
Removing information (or stopping reporting) in domestic and family violence circumstances	9
Your arguments	9
How you argue your case about the credit report may depend on the reason for the negative information	10
Multiple applications	10
Are creditors allowed to remove negative information, or to not report?	10
Credit Reporting Code	10
The Australian Banking Association's Industry Guideline on <i>"Preventing and responding to family and domestic violence"</i>	11
Australian Financial Complaints Authority	11
Disputing a creditor's decision	11
Publicly Available Information	11
What about defaults relating to utility debts?	12
Need advice?	12
Credit Reporting after 1 July 2022	13
FHI and RHI - Stopping ongoing harm to your client's credit report	13
Should my client apply for hardship assistance?	13
How will a debt waiver be shown?	13
Joint accounts, repayment history information and financial hardship information	13
What will happen with debt waivers and default removals after July 2022? Will they be recorded as hardship?	14
Final Note	14
Appendix 1 – Sample Letters	15
1. Requesting lender to remove credit enquiries (credit applications) from a credit file where credit application made without the client's knowledge.	16
2. When your client could not make payments due to domestic and family violence	17
3. Seeking waiver of liability for a debt (or joint debt) - Solely on compassionate grounds	18
4. Seeking waiver of liability for a debt (or joint debt) - When there were 'red flags' at the time of the loan.	19

Please read first

The law relating to credit reporting is complex and there is currently no specific regulation regarding credit reporting and domestic and family violence. Therefore, this guide considers the law, various codes and external dispute resolution outcomes to determine what is most likely to be considered good industry practice. Financial Rights Legal Centre and the Economic Abuse Reference Group engages with the Australian Retail Credit Association (ARCA) and the Australian Banking Association (ABA) regarding these issues on an ongoing basis including as part of the review of the Privacy (Credit Reporting) Code 2014 (Version 2.1).

Some of the content relates to circumstances after 1 July 2022.

This guide has two key purposes:

- *a tool for domestic and family violence advocates, caseworkers, community lawyers and financial counsellors; and*
- *to clarify current practices and issues requiring reform.*

Terms

ACL - Australian Credit Licence

AFCA - Australian Financial Complaints Authority

CRB - credit reporting bureau/bodies (sometimes referred to as CRAs)

Default - default listing

DFV - domestic and family violence

Economic abuse - a form of domestic and family violence involving control of money, assets or ability to earn income

Credit Enquiry - a record on a credit report showing that the client applied for credit from a particular lender

FHI - financial hardship information (sometimes referred to as 'hardship flag')

IDR - internal dispute resolution

OAIC - Office of the Australian Information Commissioner (previously the Privacy Commissioner)

RHI - repayment history information

PRDE - Principles of Reciprocity and Data Exchange (industry developed data exchange rules)

Credit reporting problems relating to domestic and family violence

Examples include:

- an abusive partner using, or threatening to use, credit reporting as a form of abuse.
- a victim survivor who has left a relationship but doesn't know what debts are in their name only or in joint names.
- a victim survivor who has fled domestic and family violence years ago, but is being rejected for credit due to negative information on their credit report which was due to the domestic and family violence.
- a victim survivor who has left a relationship but there are credit applications appearing on their credit report as credit enquiries and/or continuing credit facilities which they did not apply for or have no knowledge of.
- a debt waiver having been offered by a creditor due to domestic and family violence circumstances, but the creditor won't agree not to report a default.
- a victim survivor who wants a default or other negative information removed from their credit report.

New legislation on 1 July 2022 raises other issues including:

- a requirement that creditors add financial hardship arrangements (FHI) to credit reports.
- the impact the requirement to report FHI and RHI will have on a joint borrower's credit report since FHI will be recorded on both account holders' reports.

CREDIT REPORTING 101

What information is recorded on a credit report?

Information includes:

- A client's personal identity details including their name, address and past two addresses, gender, date of birth, employment and driver's licence number;
- Details of past and current credit applications a client has made, including joint applications (in the preceding 5 years);
- Details of a client's current credit accounts such as loans and utility accounts;
- Default listings for payments over \$150 which are more than 60 days overdue (in the last 5 years);
- "Clear-out listings" which are also called a serious credit infringement where a credit provider has tried to locate a client unsuccessfully and reasonably believes the person has decided not to pay the debt (in the preceding 7 years). Obtaining credit fraudulently may also lead to a serious credit infringement listing;
- A client's credit score also sometimes called credit rating;
- Bankruptcy (5 years - or more if bankruptcy extended);
- Part 9 debt agreements (5 years - or more if the agreement exceeds 3 years);
- Part 9 applications (although these must be removed if they are withdrawn prior to creditors voting, or are rejected by an official receiver, or lapse);
- Court judgments related to a client's creditworthiness (like default judgments on debts) (listed for 5 years post-judgment);
- Repayment history information (RHI) on loans such as whether monthly payments have been made on time (in the past 24 months); and
- Financial hardship information (FHI) including any hardship arrangements which have been made after 1 July 2022 (for the preceding 12 months).

Repayment history is reported each payment date, and usually occurs monthly. Codes are used and are explained in the credit report. For example, "0" indicates that a payment has been paid on time, "1" indicates that a payment is up to 29 days overdue, and "2" indicates that a payment is between 30 days and 50 days overdue. From July 2022, further codes were introduced including a "V" and "A" which indicate that a hardship arrangement is in place. This financial hardship information (FHI) appears alongside the RHI for each month the client is in an arrangement.

A credit report will give you a clear picture of what debts a client may have. However, it does not include everything. For example, commercial debts may be omitted. Some credit information may also not be listed because new mandatory credit reporting rules only apply to the major banks. Some smaller creditors, including payday lenders such as Cigno and many buy now, pay later lenders such as Afterpay, choose not to participate in the credit reporting regime. Some creditors only report defaults but don't report RHI. Likewise, some credit providers may only be able to see and report on a smaller subset of a client's credit information. In some cases, a credit listing may disappear while the underlying debt is still active. For example, court judgments drop off after 5 years but remain active for 12 years in NSW.

It is important to note that banks and other lenders maintain their own client credit history records often for a much longer period than is required on credit files. For example, a client may have defaulted on a personal loan with bank "ABC". The debt may subsequently have been assigned to a debt collector and later settled by the client. Five years later, the debt no longer appears on the client's credit file, but if the client returned to bank "ABC" in around 5 years' time, the bank would likely still have records concerning the client's personal loan and default. The bank "ABC" would therefore be unlikely to approve any new credit for the client.

Who can access information on a credit report?

The *Privacy Act 1988* (Privacy Act) sets out laws relating to consumer credit reporting. It permits a wide range of creditors to report or obtain information from credit reports. This includes unregulated creditors such as ‘buy now pay later’ providers or any business that is paid in arrears like utilities and telecommunications companies and companies that lease goods. The business must subscribe to one or more credit reporting agency, so not all businesses can access consumer credit reports or record information on them. To participate in consumer credit reporting, businesses must also be members of a recognised external dispute resolution scheme such as the Australian Financial Complaints Authority (AFCA), the Telecommunications Industry Ombudsman or one of the state-based Energy and Water Ombudsman schemes. *This doesn't apply to commercial credit reporting.*

RHI (which includes FHI after 1 July 2022) can only be viewed by holders of an Australian Credit Licence.

Other businesses, in particular estate agents, sometimes require a consumer to include a copy of their credit report as part of a tenancy application. While Financial Rights considers this as an attempt to avoid the law it is not clear what can be done to address it.

Credit reporting agencies

There are three credit reporting agencies in Australia: Experian, Equifax and Illion. The four largest banks have been required, since 2021, to report to all three agencies. The information held by each agency should become similar over time. Smaller creditors may not report to all three agencies and each credit reporting agency may collect different information. A credit report should be obtained from all three agencies to ascertain a complete picture of a client's credit history. Financial Rights has documented many circumstances in which the reports obtained from all three agencies have been substantially disparate, both in terms of what is listed and the credit score given.

What is a credit score?

There is no one credit score used by creditors or available to consumers. The three main credit reporting agencies use different credit scores which are calculated from the credit-related data they retain about an individual.

Credit scores are relatively new to Australia. It is unclear which creditors use them or how they help or hinder an application for new credit. While credit reporting agencies develop scores based on the information in the credit report, most major lenders have their own internal lending score that is used to determine loan outcomes. Internal lending scores may be based on a longer-term horizon of data and more detailed information than is available on a customer's public credit report. For example, this may include metrics such as the total credit outstanding, a customer's discretionary income and assets, and the type of credit products already used. Visit [Credit Smart](#) for more information about credit scores.

How can I check the credit report or credit score of my client?

Consumers are entitled to a free copy of their credit report including a copy of their credit score every three months from each of the three credit reporting agencies or within 90 days of having an application for credit rejected.

The report should be provided within 10 days. If the client has already obtained a report from the same credit reporting body in the last 3 months, a fee may be charged.

Visit [Equifax](#), [Illion](#) and [Experian](#) to get a free copy of each credit report.

A client should be warned about the potential downsides of companies that claim to “fix” their credit report or credit score for a fee. These services are often expensive and fail to deliver any meaningful results. It is also free to lodge your own complaint with AFCA if there is a default listing or misinformation on the credit report that should be removed. Many financial counsellors and consumer legal services provide free advice or assistance to help people lodge such complaints.

Placing a ban on your client's credit report

If a client is at risk of ongoing financial abuse, they should be advised to check their credit report regularly. Risks include where a violent partner obtains fraudulent loans in a client's name. If a client is concerned about credit fraud, they may have a ban placed on their credit report.

A credit report ban may help in circumstances where a client's identity has been stolen. For example, an ex-partner may have used a client's personal details to apply for credit without their knowledge or consent. Another example is if the client has reasonable grounds to believe they have been or are likely to be a victim of fraud, they can request a ban on their credit report. This will stop others fraudulently applying for credit in the client's name. However, it could also affect the client's eligibility to obtain credit while the ban is in place. While the ban is in place, the client's credit information can't be disclosed by a credit reporting agency. Credit providers will not be able to see credit reporting information on any part of their credit report without a client's written permission. However, credit providers will be informed about the ban. This helps to prevent attempts to use an individual person's information to fraudulently obtain credit in their name.

A ban remains in place for a limited time and must be regularly renewed before it expires. Check the rules of each credit reporting agency as there may be different conditions relating to the duration of a ban and how to reapply.

More information about credit reports

This Guide is designed for caseworkers with a base level understanding of Australia's credit reporting system. More information can be found at:

- Financial Rights Legal Centre: financialrights.org.au
- National Debt Helpline: <https://ndh.org.au/Debt-problems/Bad-credit-rating/Get-your-credit-report/> and <https://ndh.org.au/Debt-problems/Bad-credit-rating/Fix-your-credit-report/>
- Money Smart: <https://moneysmart.gov.au/managing-debt/credit-scores-and-credit-reports>
- Credit Smart: <https://www.creditsmart.org.au/>

CHANGING, OR PROTECTING, YOUR CLIENT'S CREDIT REPORT

Removing information (or stopping reporting) in domestic and family violence circumstances

Financial Rights' view is that negative information should not be recorded on a credit report if the debt is incurred as a result of domestic and family violence, or if the negative information is a result of domestic and family violence. However, legal arguments for removing negative information from credit reports are complex.

Circumstances involving domestic and family violence where a client may want negative information removed include where a client:

- does not owe the debt listed. For example, an abusive partner may have obtained a loan in a client's name without their consent.
- was coerced into taking out a loan, either solely in their own name or as a co-borrower. Alternatively, a client may have signed as a guarantor on a loan but received no benefit from it. For example, where funds were used by an abusive partner to pay out their own debts, fund the purchase of a vehicle or spent on gambling.
- took out a loan at a time when they could afford it, but an abusive relationship made it impossible to keep up with their loan commitments. The client may have since left the relationship and be able to resume regular payments, but not clear all the arrears.
- may be listed as a "clear-out" because they were uncontactable during a period they were fleeing a violent relationship. The individual may not have been deliberately avoiding the debt and may now be in contact with the credit provider.
- has had several missed payments recorded under the RHI on their credit report, but they have been paying their share of the debt on time every month to a former abusive partner who has not been making the payments.
- may have a Family Court property order or settlement that provides for a debt to be paid by an abusive former partner who has failed to make the payments.
- may not be aware of missed repayments because their partner has withheld that information.
- may not be aware of credit applications which appear on their credit report. These might be credit enquiries that were made by a former partner fraudulently in the client's name without the client's consent or knowledge. This may have occurred during an abusive relationship or after it ended.

Your arguments

There may be cases where you have already been in contact with the creditor. For example:

- To seek a waiver of a debt if it was incurred because of domestic and family violence;
- Dispute a debt based on irresponsible lending; or
- To seek a repayment arrangement.

If possible, discuss what the creditor may agree to do about removing any negative information from client's credit report at the same time.

How you argue your case about the credit report may depend on the reason for the negative information

If a credit provider waives a debt because of the fraudulent action of another party, all records of the debt should be removed from the credit report. This is because the record is misleading and is not a true reflection of the client's creditworthiness. The debt should not have been listed in the first place.

If a credit provider waives a debt on compassionate grounds some may also be willing to remove the debt information from the client's credit report. However, there is no obligation for credit providers to do this.

If a credit provider accepts that the debt was incurred, or was in arrears, as a result of domestic and family violence, it is good practice for the creditor to remove negative information or not report it. This is supported by some external dispute resolution schemes, the ABA's Industry Guideline [“Preventing and responding to family and domestic violence”](#) as well as the Privacy (Credit Reporting) Code 2014 (Version 2.3). If an account is open and negative RHI has accumulated, the credit provider should either agree to rectify the RHI to indicate the victim survivor has been paying on time (reporting zeros) or they should suppress the RHI during the time the victim survivor was experiencing domestic and family violence (reporting blanks).

Multiple applications

Victim survivors often have a number of credit applications on their reports, as a result of fraud or being coerced into applying for credit. Financial Rights understands that credit applications, or enquiries, have a minor impact on credit worthiness compared to other matters such as defaults or court judgments. It can be very time consuming to remove applications, and while there should be an easier process for doing this, caseworkers should consider whether the outcome for the client is worth the effort.

See Appendix 1 for detailed arguments about particular situations.

Are creditors allowed to remove negative information, or to not report?

Some creditors may say they cannot remove a default or negative RHI, or that they must report this information because of the credit reporting rules. This is wrong.

There is nothing in the credit reporting rules that prevents a creditor from removing negative information from credit reports when domestic and family violence was involved. This view is supported by the guidance published by the ABA and AFCA.

Credit Reporting Code¹

Paragraph 20.5 of the [Privacy \(Credit Reporting\) Code 2014 \(Version 2.3\)](#) allows an individual to request the removal of default information if the overdue payment “*occurred because of the unavoidable consequences of circumstances beyond the individual's control, such as natural disaster, bank error in processing a direct debit or fraud*” and the individual has paid the debt or entered a “*new arrangement*” to pay it off.

Domestic and family violence wasn't contemplated when paragraph 20.5 was written. However, with growing community recognition of the need to respond to domestic and family violence, paragraph 20.5 could be relied upon in cases of domestic and family violence. Financial Rights also considers that “*new arrangement*” in this paragraph, could include a debt waiver. While this argument has yet to be tested in AFCA, it has received positive industry support. It is also being considered as part of the ongoing review of the Privacy (Credit Reporting) Code 2014 (Version 2.1).

¹ The Privacy (Credit Reporting) Code 2014 (Version 2.3) is developed by industry and approved by the OAIC. Creditors agree to comply with this Code when they use the credit reporting system.

The Australian Banking Association’s Industry Guideline on “Preventing and responding to family and domestic violence”²

The ABA’s Industry Guideline “[Preventing and responding to family and domestic violence](#)” states:

“Banks will work with a customer to review their circumstances and should not enter negative credit information if a customer is affected by family and domestic violence, so far as the bank is able to avoid doing so under the law. Where the bank is aware of family and domestic violence and a formal hardship arrangement is in place, the credit report will not reflect missed repayments for the duration of the arrangement.”

Australian Financial Complaints Authority

The AFCA [Approach document to joint facilities and family violence](#) refers to credit reporting at section 2.8. AFCA notes that there may be occasions if domestic and family violence is present “*where it will be appropriate for financial firms to remove or refrain from entering credit information about a vulnerable borrower*”.

AFCA makes decisions based on what it considers “... fair in all the circumstances having regard to legal principles, applicable industry codes or guidance, good industry practice and previous relevant Determinations of AFCA or Predecessor Schemes.”³ AFCA found in two cases that it was unfair for a default listing to remain on a credit report because, among other things, the complainants’ circumstances were beyond their control because of domestic and family violence. In these cases, the lender didn’t know at the time of listing the defaults that the customers were experiencing family violence. AFCA also noted that the debts were repaid once the complainants were aware of the listings in each case.⁴

Disputing a creditor’s decision

If you are instructed to dispute a creditor’s decision to list negative information on a client’s credit report, lodge a complaint with the creditor and explain why the negative information should be removed or shouldn’t be reported. A creditor has 30 days to respond to a complaint.

A creditor might:

- fail to respond in 30 days; or
- refuse to amend or remove your disputed listing.

If this occurs, you can make a complaint to the relevant external dispute resolution scheme if the creditor is a member for example AFCA, the Telecommunications Industry Ombudsman, or the Energy and Water Ombudsman in your state.

A client’s creditor should contact all three credit reporting agencies to have the information removed from all the client’s reports. It is worth advising the client to obtain a free copy of their report from each of the credit reporting agencies after a month or so to check the information has been removed.

If the credit reporting agency(ies) do not remove the negative information on a client’s credit report after being instructed to do so or after being provided with correct information, you can make a complaint to AFCA. Equifax, Illion and Experian are all members of AFCA.

Publicly Available Information

As well as receiving data reported by creditors, publicly available information such as court judgments or bankruptcy determinations are also included in credit reports.

This can be more difficult to change because the information comes from public sources. However, if a judgment is set aside by a creditor, you can seek to have it removed from the report by the credit reporting agency(ies). You may also lodge a complaint with AFCA, if it is not removed. You can try lodging a correction request directly with the credit reporting agency(ies) on the basis that the judgment was brought about as a result of family violence, but we are unaware of any case where a credit reporting agency has agreed to remove a judgment unless it is

² While this is a guideline and not enforceable, it is an indication of good practice, and it is likely that AFCA would apply this in certain cases.

³ AFCA Rules, 13/1/21

⁴ <https://service02.afca.org.au/CaseFiles/FOSSIC/742728.pdf>; <https://service02.afca.org.au/CaseFiles/FOSSIC/617615.pdf>

clearly a case of mistaken identity (judgment is against a different person with the same name) or very clear fraud. They would usually direct the person to get the judgment set aside.

What about defaults relating to utility debts?

Energy companies and other businesses that don't hold an Australian Credit Licence don't report RHI or FHI, but may still report a default or a serious credit infringement.

If the creditor refuses to remove negative information caused by domestic and family violence, you can seek help from the relevant ombudsman scheme. Energy Ombudsman schemes are likely to consider it good practice to remove negative credit information, if it was beyond the control of a consumer because of domestic and family violence.

The Energy and Water Ombudsman Victoria states that in certain circumstances which involve domestic and family violence: *"EWOV may consider it is fair and reasonable for default listing to be removed even if the correct process was followed"*⁵

Similarly, the Energy and Water Ombudsman NSW states in relation to domestic and family violence: *"[W]here default listing has occurred when a provider is not aware of the customer's experience at the time of the listing EWON expects the provider removes the listing"*⁶

The Telecommunications Industry Ombudsman hasn't produced a clear statement on domestic and family violence and the removal of defaults. However, all schemes apply fairness and good industry practice. Therefore, it is advisable to make a complaint on the basis that it is fair to remove negative information if it was caused by circumstances beyond the consumer's control.

There is non-binding telecommunications industry guidance available from the Communications Alliance Industry in relation to domestic and family violence. It asserts that when a service provider is helping a customer in financial hardship who has also been affected by domestic and family violence, it is good industry practice to refrain from credit listing arrears, if the customer is meeting an agreed payment arrangement.⁷

Need advice?

If you need advice, caseworkers (not the public) can contact:

- **NSW** - Financial Rights Legal Centre, dedicated caseworker hotline: 1800 650 084.
- **Victoria** - Consumer Action Law Centre, worker advice line: (03) 9602 3326.
- **Queensland** - Legal Aid Queensland, email cpuadvice@legalaid.qld.gov.au to get advice from a consumer protection lawyer.
- **South Australia** - email consumercredit@unitingcommunities.org.
- **Western Australia** - Consumer Credit Legal Service (WA) Inc, email cclswa@cclswa.org.au and a lawyer will respond.

⁵ EWOV's Position Statement - Credit Collection and Default Listing, March 2018

⁶ Position Statement – EWON's approach to dealing with Family Violence.

⁷ Communications Alliance Industry Guideline: ASSISTING CUSTOMERS EXPERIENCING DOMESTIC AND FAMILY VIOLENCE, Clause 7.1, <https://www.commsalliance.com.au/Documents/all/guidelines/G660>

CREDIT REPORTING AFTER 1 JULY 2022

FHI and RHI - Stopping ongoing harm to your client's credit report

Lenders which hold an Australian Credit Licence, who report RHI, will be required to report FHIs as part of RHI from 1 July 2022. However, they can't report any hardship arrangements made before that date. RHI is already reported by banks and some other creditors. Amending or preventing FHI or RHI can be more complicated than amending defaults.

Should my client apply for hardship assistance?

You should let the lender know that your client is a victim survivor or is experiencing domestic and family violence. Most Australian banks have financial hardship staff who are trained on how to assist victim survivors of domestic and family violence.

Generally, it is in a client's interest to apply for financial hardship assistance, if they're unable to meet repayments and are likely to be able to meet the terms of an alternative arrangement. Up until 30 June 2022, there is no downside to requesting hardship assistance from lenders. If a lender agrees to a hardship arrangement you should specifically ask how payment information will be recorded on the client's credit report during and after the arrangement.

After 1 July 2022, lenders who already record RHI will also add any hardship arrangements made after that date to RHI. The details of a client's situation will not be recorded, but if they are granted a hardship arrangement, the credit report **will** report that this arrangement exists. This FHI will stay on the client's credit report for 12 months.

People who have experienced financial abuse may be reluctant to access financial hardship assistance because it will be recorded as part of their credit report. Despite this change and given the significant benefit which hardship arrangements can provide, clients should be encouraged to seek financial hardship assistance.

A proactive financial hardship arrangement is better than a default. A client's RHI will be reported as "up to date" while they are complying with the arrangement. This is better for their credit score. The FHI will come off the report after 1 year leaving clean, up-to-date RHI for another year before the RHI also disappears.

How will a debt waiver be shown?

In cases involving fraud, coercion or irresponsible lending, all records of the credit should be removed from the consumer's credit report when the debt has been waived (including RHI and FHI if applicable). Where a waiver has been given due to financial hardship or compassionate grounds, you should discuss with the creditor how this will be shown. It may be appropriate for the debt waiver to be reported as a financial hardship arrangement, and the account information to show that the debt had been paid. More detail about how this might work is below.

Joint accounts, repayment history information and financial hardship information

Joint accounts are difficult in financial abuse situations. Australia has an account-based credit reporting system. This means the same information will show up on both account holders' credit reports. If a perpetrator has agreed to pay the mortgage, but is missing payments, those missed payments will show up on their partner's report as well. This may even be a tactic of financial abuse on the part of the perpetrator.

If there is a financial hardship arrangement in place, FHI will be disclosed on both credit reports (after July 2022), unless special circumstances are brought to the creditor's attention.

A lender will usually want both joint borrowers to be aware of, and consent to, a hardship arrangement. However, the Banking Code of Practice⁸ states that banks may negotiate a financial hardship arrangement with one borrower, without notifying the other, in some domestic and family violence circumstances.

AFCA also takes the view that *"it is not necessary for the financial firm to first obtain the other borrower's consent in domestic and family violence circumstances"*⁹

⁸ Clause 159 of the Banking Code says "if you have a joint account with someone and you are experiencing financial difficulty, then we can assist you. If you ask us, we can do so without involving the other person initially."

⁹ Clause 2.6, AFCA Approach to joint facilities and family violence

As at 10 March 2022, the Privacy (Credit Reporting) Code 2014 (Version 2.3) makes it clear that “a Credit Provider (CP) is not, for the purposes of reporting financial hardship information, required to obtain the agreement or consent to the financial hardship arrangement of all individuals who jointly hold the consumer credit (although a CP may need to consider whether it would be appropriate to notify those other individuals)”¹⁰

RHI and FHI would usually show on the credit reports of both joint borrowers. However, where a victim survivor has negotiated an arrangement without the joint borrower’s knowledge or agreement, and safety is a concern, credit providers and credit reporting bodies have agreed to a special credit reporting solution where credit providers can “suppress” RHI and FHI if a customer is experiencing domestic or family violence. FHI is part of RHI so if one is suppressed, they are both suppressed. This means the client and the joint borrower will have blanks or no information relating to their payments on that account while a financial hardship arrangement is in place.

It is possible that a perpetrator could react or get angry about having blanks on their report, but at least there will be no record of the financial hardship information. It’s important that the victim survivor requests that the creditor, or credit reporting agency take the approach of suppressing the information. Under the Principles of Reciprocity and Data Exchange industry data exchange rules, the suppression of RHI and FHI in domestic and family violence situations requires that a victim survivor discloses domestic and family violence and requests that approach.¹¹

What will happen with debt waivers and default removals after July 2022? Will they be recorded as hardship?

In a straightforward situation where a waiver is given due to financial hardship or compassionate grounds for an account that is ongoing, such as a credit card or personal loan, there would be a “V” in the month that the waiver was granted which indicates that a financial hardship arrangement is in place. This would remain for 12 months and the credit report will show “RHI = 0” or “RHI = √” indicating that the payments are up to date. There is likely to be negative information if the account was already in arrears and this may be dealt with separately if you feel it should be removed.

If the account is being closed at the same time as the waiver, there will likely be a “V” in the last month before RHI stopped being reported.

A waiver may not be “in response” to a financial hardship request. For example, where the debt was incurred fraudulently or in breach of responsible lending obligations. In such cases you could argue that no FHI should be recorded and that all other references to the loan should be removed from the credit report.

If the loan has already been charged-off and a default has been recorded, there won’t be any FHI as the creditor won’t be reporting RHI, as RHI stops once the account is closed. “Charged off” means that the creditor has recorded the account as a loss and closed the account. However, it doesn’t mean the creditor won’t pursue payment or haven’t sold the debt to a debt collector. In this case, the creditor should report “payment information” which will show that the default amount is no longer owing. It would then be a separate question as to whether the default information should be removed under paragraph 20.5 of the Privacy (Credit Reporting) Code 2014 (Version 2.3) If the account is closed and there is no ongoing RHI, then there will be no financial hardship arrangement listed. Financial hardship information only exists for open and ongoing credit accounts. Getting an old debt waived will not attract FHI.

Final Note

Credit providers should not provide unreasonable barriers to victim survivors seeking assistance. For example, it is unreasonable (and dangerous) to insist that every victim survivor produce a court order or evidence of a police complaint. However, these matters can be complex in practice and sometimes the outcome will be a pragmatic compromise.

¹⁰ Section 8A.1(f) of Privacy (Credit Reporting) Code 2014 (Version 2.3)

¹¹ See Schedule 2, point 6 of the PRDE Version 21. Available at <https://www.arca.asn.au/static/uploads/files/prde-version-21-wfynxonudyrq.pdf>

APPENDIX 1

SAMPLE LETTERS

Below you will find some examples of letters you might use when negotiating on a client's behalf:

1. Requesting a lender remove credit enquiries or credit applications from a credit file where the credit application was made without the client's knowledge.

2. When your client cannot make payments due to domestic and family violence.

3. Seeking a waiver of liability for a debt or joint debt - solely on compassionate grounds.

4. Seeking a waiver of liability for a debt or joint debt - when there were "red flags" at the time of the loan.

Also, make sure to check the creditor's website for any domestic and family violence policy which can be referred to in the letter.

INSTRUCTIONS:

When using these sample letters please replace the **highlighted** sections with the specific information about your client. Please delete any examples which are not relevant to your case.

1. Requesting lender to remove credit enquiries (credit applications) from a credit file where credit application made without the client's knowledge.

Re: Request to lender for removal of credit enquiry from credit file

[Financial firm contact details]

Dear [IDR CONTACT],

Our client: [Name]

Date of Birth: [DOB]

We act for NNNN. An authority signed by our client is attached.

We are requesting that you remove the credit enquiry information in relation to [lender details] from my client's credit report.

IMPORTANT: Our client has experienced family and domestic violence. To maintain our client's safety, we request that you:

- Do not disclose personal information to any third party that may put our client at risk, such as new address or contact details;
- Do not request that our client make contact with her ex-partner; and
- Ensure all future correspondence in this matter is directed to this service.

Background

Our client is a victim of family violence. [Provide a brief description of the client's circumstances] Financial circumstances are less important here - background information should focus on the abuse experienced - in particular financial abuse.

[We attach a copy of the apprehended violence order/affidavit/medical report/statement prepared by the client's counsellor/doctor documenting the abuse. Only include this if you regard it necessary to achieve an outcome and you have the client's consent.]

In relation to this credit enquiry, NNNN advised us that [FOR EXAMPLE]:

- Any application made to lender name for the above personal loan was without her knowledge or consent;
- She was unaware of the existence on this enquiry until recently obtaining a copy of her credit report;
- She was unaware of the loan/account until recently and received no benefit from it;
- She suspects that her husband at the time (now ex-husband) may have used her personal information to impersonate her for the purpose of obtaining credit;

Note that it may be important to provide further documentation to support the client's assertion of the fraudulent loan. For example, a report made to police with details of the event number.

The credit enquiry listings are inaccurate. The enquiries were made without her knowledge, consent or permission, and would unfairly prejudice our client as she seeks to get back onto her feet and obtain credit.

In light of this, and with reference to the AFCA Approach to Joint Facilities and Family Violence and [(if bank) lender name commitment to the Australian Bankers Association Family Violence Guidelines] we kindly request that lender name:

- Note that the loan application was not made with our client's knowledge or consent; and
- Contact Equifax / Illion / Experian and ask them to remove all references to the credit enquiry from our client's credit file.

This would assist our client in regaining her financial independence without continuing to bear the burden of the domestic and family violence she has experienced.

We would appreciate your response in writing as soon as possible.

2. When your client could not make payments due to domestic and family violence

[Financial firm contact details]

Dear [IDR CONTACT]

Our client: [Name]

Date of Birth: [DOB]

Account number: [Enter if known, otherwise delete]

We act for NNNN. An authority signed by our client is attached.

We are requesting [financial firm] remove the adverse information from our client's credit report on the basis that payment arrears / inability to pay was due to domestic and family violence.

IMPORTANT: Our client has experienced family and domestic violence. To maintain our client's safety, we request that you:

- do not disclose personal information to any third party that may put our client at risk, such as new address or contact details;
- do not request that our client make contact with her ex-partner; and
- ensure all future correspondence in this matter is directed to this service.

Background

[Please edit to fit facts]

[Name] entered into the loan with [financial firm] on [date]. [He/she/they] met payments on [his/her/their] loan until [date].

Between [date] and [date], [he/she/they] was subject to physical and financial abuse [if there is evidence of the abuse such as a copy of an AVO or medical report, and the client consents, consider attaching]. As a result, [he/she/they] was not able to meet [his/her/their] payment obligations under the loan. [Name] did not tell [Financial firm] about the abuse because [list reasons, include only if appropriate].

I understand that [financial firm] listed negative repayment history information (RHI) on [Name's] credit file between [date] and [date]. Further, on [date], [financial firm] listed a default listing on [his/her/their] credit file.

On [date], [Name] entered into an arrangement to clear the overdue amount/has paid the overdue amount. [Name] is now trying to rebuild [his/her/their] life and wants [his/her/their] credit report to reflect [his/her/their] actual credit worthiness.

In light of this, and with reference to the AFCA Approach to Joint Facilities and Family Violence and [(if bank) lender name commitment to the Australian Bankers Association Family Violence Guidelines] we kindly request that **lender name** take steps to remove the adverse information from our client's credit report on the basis that payment arrears/inability to pay was due to domestic and family violence.

This would assist our client in regaining her financial independence without continuing to bear the burden of the domestic and family violence she has experienced.

If you have any questions about the above, please do not hesitate to contact me on the details provided below.

3. Seeking waiver of liability for a debt (or joint debt) - Solely on compassionate grounds

[Financial firm contact details]

Dear [IDR CONTACT]

Dear [IDR CONTACT],

Our client: [Name]

Date of Birth: [DOB]

We act for **NNNN**. An authority signed by our client is attached.

We are seeking a compassionate waiver on behalf of our client and to have any negative credit information relating to this account removed from [his/her/their] credit file.

IMPORTANT: Our client has experienced family and domestic violence. To maintain our client's safety, we request that you:

- do not disclose personal information to any third party that may put our client at risk, such as new address or contact details;
- do not request that our client make contact with her ex-partner; and
- ensure all future correspondence in this matter is directed to this service.

Background

Our client is a victim of family violence. **[Provide a brief description of the client's circumstances]** Our client is [insert age], **[they have X dependent children, they have [medical condition X], they are currently unemployed/employed and only receive X per week, they have no assets, they have no other debts/a number of other debts incurred in their name by a third party.**

Focus on the personal circumstances of the client because this is the basis for your request for a waiver on compassionate grounds].

[We attach a copy of the apprehended violence order/affidavit/medical report/statement prepared by the client's counsellor/doctor documenting the abuse. Only include this if you regard it necessary to achieve an outcome and you have the client's consent.]

At the time the [loan/account/mortgage] was applied for, **our client was acting under the coercive control of X**. We are instructed the loan proceeds were used by **X for X** and our client received **no** benefit from the **loan/minimal** benefit from the loan.

Our client still faces financial hardship and cannot **afford any repayments/can only afford repayments of X per week if at all.**

[We attach a statement of financial position prepared by our office as at today's date].

In the circumstances, we seek a compassionate waiver on behalf of our client. Accordingly, any associated default listings and negative repayment history information made on our client's credit report should also be removed.

[If joint loan: We are aware that because this is a joint debt, it may not be straight forward to remove negative information for our client alone. However, we request [name of financial firm] suppress the RHI and remove the default information. We understand this will affect both borrowers, but this is a better option than exacerbating the impact of domestic and family violence on our client by allowing the negative information to remain.

In relation to the credit report, please see page 13 of the AFCA Approach Document "Joint Facilities and Family Violence" which states that:

"Where a financial firm default lists a borrower who has experienced family violence because it was not aware of the borrower's circumstances at the time of the listing, we consider it to be good industry practice for the financial firm to remove the listing. This is because customers who have experienced family violence are likely to struggle to achieve financial autonomy if they have adverse information on their credit file."

If you have any questions about the above, please do not hesitate to contact me on the details provided below.

4. Seeking waiver of liability for a debt (or joint debt) - When there were 'red flags' at the time of the loan.

[Financial firm contact details]

Dear [IDR CONTACT],

Our client: [Name]

Date of Birth: [DOB]

We act for NNNN. An authority signed by our client is attached.

We are seeking a waiver on behalf of our client [refund of payments made – if relevant] and to have negative credit information relating to this account removed from [his/her/their] credit file.

IMPORTANT: Our client has experienced family and domestic violence. To maintain our client's safety, we request that you:

- do not disclose personal information to any third party that may put our client at risk, such as new address or contact details;
- do not request that our client make contact with her ex-partner; and
- ensure all future correspondence in this matter is directed to this service.

Background

Our client is a victim of family violence. Provide a brief description of the client's circumstances] Our client is [insert age], [they have X dependent children, they have [medical condition X], they are currently unemployed/employed and only receive X per week, they have no assets, they have no other debts/a number of other debts incurred in their name by a third party.

[We attach a copy of the apprehended violence order/affidavit/medical report/statement prepared by the client's counsellor/doctor documenting the abuse. Only include this if you regard it necessary to achieve an outcome.]

At the time the [loan/account/mortgage] was applied for, our client was acting under the coercive control of X. We are instructed the loan proceeds were used by X for X and our client received no benefit from the loan/minimal benefit from the loan.

We believe your organisation should have been alerted at the time the loan was applied for that our client was acting under the control of a third party [OR] that this loan was unsuitable **given our client was not present at the meeting with your representatives/our client did not sign any application form/the proceeds of the loan were paid to another party/our client does not have a driver's license (car loan)/ my client's income and expenditure clearly demonstrate she could not afford this loan and any proper suitability assessment would have identified this].** We are instructed the loan proceeds were used by X for X and our client received no benefit from the loan/minimal benefit from the loan. **This is documented by our client's bank statements (copy attached).**

[if applicable] We have also verified our client could not afford the loan/mortgage at the time it was granted without undue financial hardship – or if joint loan, the borrowers couldn't afford the loan. A copy of the Statement of Financial Position prepared by our office as at [the date of the application] is attached.

Our client is still suffering financial hardship and cannot **afford any repayments/can only afford repayments of X per week** if at all. **We attach a statement of financial position prepared by our office as at today's date. [This shouldn't be necessary if you have a strong argument that the lender was at fault for granting the loan]**

In the circumstances, we seek a waiver on behalf of our client. Accordingly, any associated default listings and negative repayment history information made on our client's credit report should also be removed.

[If joint loan: We are aware that because this is a joint debt, it may not be straight forward to remove negative information for our client alone. However, we request [insert name of financial firm] suppress the RHI and remove the default information. We understand this will affect both borrowers, but this is a better option than exacerbating the impact of domestic and family violence on our client by allowing the negative information to remain.

In relation to the credit report, please see page 13 of the AFCA Approach Document "Joint Facilities and Family Violence" which states that:

"Where a financial firm default lists a borrower who has experienced family violence because it was not aware of the borrower's circumstances at the time of the listing, we consider it to be good industry practice for the financial firm to remove the listing. This is because customers who have experienced family violence are likely to struggle to achieve financial autonomy if they have adverse information on their credit file."

4. cont.

OPTIONAL: If this waiver is not agreed to, please provide to us the following documents so our client may obtain additional advice:

1. Copy of the loan contract;
2. Copy of the loan application form;
3. Copy of any preliminary assessment and any other relevant documents such as Centrelink income statements, payslips or bank statements obtained to complete this assessment;
4. Copy of the final assessment performed pursuant to the National Consumer Credit Protection Act 2009 and any other verifying documents such as Centrelink income statements, payslips or bank statements obtained to complete this assessment;
5. Copy of any insurance contract(s) in your possession;
6. Any notices under the National Credit Code previously sent to me;
7. Account statements for the life of the loan; and
8. A statement of the current payout figure with details of how this amount is calculated.

Please provide the requested information within 30 days of the date of this email. The above information is requested under the National Consumer Credit Code.

If you have any questions about the above, please do not hesitate, to contact me on the details provided below.

Financial Rights Legal Centre

The Financial Rights Legal Centre is a community legal centre specialising in financial services, particularly in the areas of consumer credit, banking, debt recovery and insurance. It is the only such Centre in NSW, and one of the only centres in Australia that fully integrates telephone assistance and financial counselling with legal advice and representation. The Financial Rights Legal Centre also operates the Insurance Law Service, a national specialist consumer insurance advice service, Mob Strong Debt Help, and the Credit & Debt Legal Advice Line. See financialrights.org.au

Economic Abuse Reference Group

The Economic Abuse Reference Group (EARG) is a network of community organisations throughout Australia, which influences government and industry responses to the financial impact of domestic and family violence (DFV). Members include family violence services, community legal services, financial counselling services and women's services.

EARG regularly engages with government, industry, and regulators.

EARG is funded by the Ecstra Foundation. See earg.org.au

