



## **Submission by the Financial Rights Legal Centre**

Parliamentary Joint Committee on Corporations and Financial Services

### **Inquiry into the Financial Services Regulatory Framework in Relation to Financial Abuse**

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Financial Rights Legal Centre  
PO BOX 538, Surry Hills  
Tel (02) 9212 4216  
Fax (02) 9212 4711

[info@financialrights.org.au](mailto:info@financialrights.org.au)  
[www.financialrights.org.au](http://www.financialrights.org.au)  
@Fin\_Rights\_CLC  
ABN: 40 506 635 273

# Introduction

Thank you for the opportunity to provide input to the inquiry into financial services regulatory framework in relation to financial abuse.

The Financial Rights Legal Centre (**Financial Rights**) is a community legal centre that specialises in helping consumers understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates part of the National Debt Helpline, helping NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies, and the Mob Strong Debt Help (**Mob Strong**) services which assist Aboriginal and Torres Strait Islander Peoples with credit, debt and insurance matters.

The financial abuse victim survivors we assist commonly present to us with complex financial debts, to multiple providers, of different credit and/or insurance products. Sometimes they have debts owing as a direct result of financial abuse, through fraud, coercion to take on the debt, or entering debt because their abuser does not contribute to shared costs. In other instances, the debts can arise in the aftermath of financial and other abuse, as they try to escape or re-start a safer life.

Whatever the cause, the challenge for people and their advocates is the same – a complex web of debt (or in the case of insurance, coverage) that needs to be unravelled and resolved, which can be difficult even without the added trauma of escaping an abuse situation.

This submission gives an insight into the ways the financial services regulatory framework fails these Australians. It fails by:

- Not requiring financial service providers to actively prevent harm through the use of their products and services.
- Treating financial abuse as a series of individual cases, rather than as a systemic problem to interrogate and eliminate, through monitoring and reporting mechanisms.
- Keeping business obligations to address financial abuse as voluntary guidelines whilst giving business flexibility in deciding if and how to provide redress to victims.
- Having inconsistent rules across different sectors, that require a dispute to be raised with each business and thus retelling of the story of abuse.
- Variance among businesses in terms of training and implementation of sector-wide rules.

- Failing to consider the intricate relationships in different cultures and how this could show a fine line between cultural obligations and financial abuse.

Many of the people who seek assistance from our service are women who are struggling financially and psychologically as a result of relationship debt and financial abuse. Assisting these women to extricate themselves from crippling debt, clear their credit reports, claim on insurance or unencumber their assets from unfairly incurred mortgages and charges, is vital to ensuring their successful transition to independence and future well-being. It can mean the difference between living in safety and returning to a situation of abuse.

“My children and I were domestic violence survivors. We lost all property, money and possessions. My youngest child’s life was in danger and we needed to move every 6 months to a place we could not be discovered. We were all suffering from PTSD, and the children were being treated by a host of medical and allied health professionals.... I cannot begin to describe the levels of stress these last 24 years have produced. This legal matter would’ve been the straw that broke this camel’s back. I did not have the financial means to deal with it or the mental capacity to take on yet another incredibly stressful situation.”

- Client survey, Financial Rights Legal Centre

While financial abuse cuts across gender lines and occurs in a variety of relationship contexts, Financial Services Providers have an important role to play in the success of the National Plan to End Violence Against Women and Children. The purpose of better identifying, responding to and preventing financial abuse is not just about making products and processes fair and treating vulnerable customers better. There is a crucial safety dimension to removing barriers to escaping violence and supporting victim-survivors to live independently. This is not about apportioning blame and whether it is reasonable for financial firms to detect and respond to financial abuse and family violence, it is about what role they can and should play in stopping the scourge of family violence and mitigating its consequences.

## Structure of this submission

This submission will provide a high-level summary of the prevalence and impact of financial abuse that Financial Rights has observed in our work on the National Debt Helpline (NSW), the Insurance Law Service, a national specialist consumer insurance advice service, Mob Strong and the Credit & Debt Legal Advice Line.<sup>1</sup>

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<sup>1</sup> Partly addressing Term of Reference 1. Parliamentary Joint Committee On Corporations And Financial Services, [Inquiry into the financial services regulatory framework in relation to financial abuse in Australia](#), April 2024

We will then detail the issues our clients have faced in seeking assistance with respect to financial abuse in each distinct sector that our service specialises in:

- Credit and Banking
- Credit Reporting
- General Insurance
- Life Insurance<sup>2</sup>

For each of these we will outline the effectiveness (or otherwise) of the existing legislative common law, regulatory and self-regulatory arrangements that govern the ability of financial institutions to prevent and respond to financial abuse.<sup>3</sup>

The submission then addresses areas of reform for each of these sectors that will serve to prevent, protect and proactively detect and deal with rising incidence of financial abuse via financial services.<sup>4</sup>

We also raise concerns about how AFSA is not adequately considering financial abuse in their dealings with vulnerable clients.

Finally, we address the need for funding and operation of relevant advisory and advocacy bodies including services like our own.

Our specific recommendations are at **Appendix A**.

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<sup>2</sup> Providing the requisite detail to address Term of Reference 1.

<sup>3</sup> Addressing Term of Reference 2

<sup>4</sup> Addressing Term of Reference 3 and 4

# Financial abuse in the financial services sector

Helping victim survivors of economic abuse is an important part of Financial Rights' credit, debt and insurance advice and casework.

Financial abuse occurs when someone takes control of another person's finances. It can occur at the same time as other forms of family violence – such as physical or verbal abuse but may also exist on its own. Sometimes the person affected does not recognise the conduct as abuse or is unaware of the abusive conduct until its impact emerges later. It can slowly get worse over time, or even commence after the relationship has ended as a means of retaining control or inflict harm when the parties are not in physical proximity to one another. Financial abuse can occur between a person and their partner or spouse, child, parent, carer or anyone else they have any kind of ongoing relationship with. It can take different shapes or forms, involving criminal conduct (such as fraud, or coercive control in some states), but not always.

Financial Rights publishes a [fact sheet](#) to help identify where someone may be experiencing financial abuse. Signs can include:

- limited access to your own money or finances.
- not knowing what's happening to your money as someone else has taken control and won't let you see account statements.
- feeling scared or uncomfortable raising your concerns with the person doing this to you.
- feeling coerced (forced) into agreeing to signing up to loans that you don't want.
- debts and bills are put under your name, but the money or service is used by someone else.
- your name is taken off accounts without you knowing or agreeing.
- your signature is forged, or your phone or internet log-ins are used to apply for loans or services in your name, without you knowing or agreeing.
- you worry about who will take care of you, if you say anything about how the person is managing your finances.
- you felt pressured to sign a Power of Attorney over to someone.
- you willingly signed a Power of Attorney to someone, but that person has taken control and you don't know what is happening.
- your ability to work and earn income, or get support, is being controlled or limited.

The above is by no means an exhaustive list.

From 2021 to the end of May 2024, Financial Rights provided 1,617 individual services where financial abuse was a known factor at the time we provided the service - that is to say, this is a conservative estimate of how many people we provide services to may have been

experiencing financial abuse. In 2021 and 2022, this accounted for 3% of our total services. In 2023 and 2024, it increased to 4% of total services.

Our services are strongly skewed toward self-help, with on-line fact sheets, sample letter generators, online problem solvers, online web-chat, phone information and advice all part of the service mix. The "Financial abuse" page on our website hosts fact sheets, sample letters, and links to and external assistance available was accessed 3,483 views by 2,614 discreet users in the last 12 months.

Casework services are provided to people who fit our priority client categories, of whom people experiencing family violence are one. Last year, 30% of our casework assisted people experiencing family violence<sup>5</sup>, up from 22% the previous year. We currently receive some funding to specifically address issues for women, which we use to assist women impacted by family violence and financial abuse. The future of this funding beyond June 2025 is currently unclear.

Our casework services make up a relatively small part of the service offering (3%), and casework assistance is what many people experiencing financial abuse really need to address their issues. It is not enough to arm them with advice about their rights and ask them to negotiate with their creditors and insurers directly. As described elsewhere in this submission, people who have experienced financial abuse are often overwhelmed by multiple debts and credit listings, or other intractable problems that present complex legal challenges to professional caseworkers. We find that many of our casework clients are suffering from the debilitating effects of the abuse, severely inhibiting their capacity for self-advocacy.

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<sup>5</sup> Financial Rights, [Annual Report 2023](#), p5

## Credit and banking

Perpetrators of financial abuse can perpetuate abuse via credit products (credit cards, pay day loans, personal loans, buy now pay later facilities, mortgages, etc) and banking products (joint accounts, savings accounts, online banking services and apps). Victim-survivors can also be further traumatised when seeking help from the credit and banking sector.

This section details the most common issues that arise for the victim-survivors we work with in their interaction with the credit and banking sector:

- Poor responsible lending approaches
- The ease of obtaining credit
- The sale of credit via retail outlets including car yards
- The shift of banking services to online platforms
- Outsourcing services in a way that dilutes consumer protections
- Poor hardship practices
- Poor service provision, communication and care
- The design of joint accounts
- Small business lending used to perpetrate abuse
- Lack of consistent systems to proactively identify financial abuse

### Issues faced by victim survivors in the Credit and Banking sector

#### Poor approaches to responsible lending obligations

The responsible lending obligations under the *National Consumer Credit Protection Act* (**the Credit Act**) require providers to assess whether a credit product or credit limit increase is not unsuitable for a consumer by gathering and considering information about the consumer's financial circumstances, as well as taking reasonable steps to verify that information.

When a lender does not undertake an appropriately robust approach to their responsible lending obligations, victim-survivors are at increased risk of being loaded up with debt – especially in situations where they do not obtain any or limited benefit from the credit.

#### Case study 1. Taya's story - S296963

Taya experienced financial abuse from her ex-partner, who coerced her to obtain an unsecured personal loan in her name to purchase a vehicle that was primarily for his use. She applied for a personal loan with her bank online, as she had a previous loan with them.

The vehicle itself was written off in a flooding event, and the ex-partner claimed on his insurance and bought himself a new car. Taya was left to continue paying the original loan.

We reviewed the loan documents and assessed that the loan was unaffordable because the monthly living expenses figure used in the bank's suitability assessment was \$1500, which was \$1300 lower than the applicable Henderson Poverty Index at the time. Further, her actual monthly living expenses as obtained from her bank statements for the 90 days preceding the loan) were over \$4000. Had a proper suitability assessment been undertaken, Taya would not have been approved for the loan.

## **Case study 2. Vanessa's story - C222761**

Vanessa is a single mother with 4 children. She was fleeing a DV relationship with her four children and needed money for bond, rent, car repairs and moving costs.

She found a non-bank lender online and applied for a \$5,000 loan. A representative called Vanessa about her online loan application but did not enquire accurately about her expenses. They also told her to "underestimate your expenses so we can approve your loan". Vanessa told them she was fleeing a DV relationship and needed money, at this point they should have referred Vanessa to more suitable emergency relief options rather than approving her for a high interest loan contract.

Lenders can also cause harm by not looking out for, ignoring or not picking up on the signs of financial abuse. Much – but not all – of this arises due to the fact that lenders rely on customers self-identifying. The shift to online banking and on-boarding has also made it more difficult to identify potential abuse in the responsible lending process.

## **Case study 3. Arista's story – C208511**

Arista signed a guarantee secured over her home to help her partner with a bank business loan of \$50,000. She had been led to believe the purpose was to prevent his truck (used for business) being repossessed by the finance company.

Unbeknownst to her, it was in fact an unlimited guarantee over her home. Arista says this was not made clear to her, and she was not spoken to separately or advised to get her own advice. Her ex-partner had threatened to harm himself if she did not help him with the loan.

The relationship broken down the next year, and her ex-partner went to the bank and fraudulently provided Arista's signature to increase the loan amount by \$200,000. He then



moved money around and out of the business account, and then disappeared with the money and his whereabouts have not been known since.

Whether banks can or cannot identify financial abuse in the responsible lending process, a more robust approach to responsible lending would ensure fewer victim-survivors are left with debt they cannot afford in the first place. Taking more care to identify the requirements and objectives of borrowers as required by the law also has the potential to mitigate against situations where the borrower has been seriously deceived as to the purpose of a transaction.

## The ease of obtaining credit

Somewhat related to poor responsible lending practices is the increasing ease of obtaining credit more generally.

Automation and the anonymity of online application processes have increased the ability of bad actors to either obtain loans in partner's names or pressure victim-survivors to take out credit, or refinance, using online services by an abuser. The business in question simply says they couldn't have known, because it was all done online – which is how the business offers the application for credit.

### Case study 4. Dinara's story – S291777

Dinara was in an abusive relationship. The partner had access to all Dinara's identification documents and obtained a credit card in her name for \$6,000. Dinara only found out when she was contacted by a debt collection agency.

A financial counsellor raised the potential fraud with the agency, who did not respond. We then raised the matter with the fraud team of the original credit provider. The original creditor agreed it was fraudulently obtained (although would not provide us what they relied on in assessing this) and bought the debt back.

The creditor bought back the debt, waived it, and updating her credit file. The debt was around \$20,000 at the time of being waived.

Buy Now Pay Later (**BNPL**) is an example of a credit product that has been purposefully designed to prioritise frictionless, easy, on-boarding and usage, over safety. Minimal identification requirements combined with few hurdles to sign up and maintain a BNPL product online or on a phone, means that perpetrators can conduct financial abuse using a small amount of personal information without the victim's knowledge, with few if any enquiries conducted about loan suitability to substantiate the true nature of the account.

Many victims of the abuse only find out they have a BNPL debt or debts in their name much later, usually when they are being pursued by a debt collector and their credit score has been negatively impacted.

### **Case study 5. Fran's story - C216206**

Fran was referred to Financial Rights by her domestic violence support worker. She had incurred debts in her name where the credit had been for the benefit of her ex-partner, and as a result of the abuse (financial, emotional, verbal and physical) she experienced at his hands.

Fran's partner had used Fran's two BNPL accounts for his own purchases by taking her phone, locking her in the house, and using the BNPL apps to pay for things on her account.

Fran had left the relationship with the support of her domestic violence worker and police. She could not afford to repay these debts without significant financial hardship; attempting to pay them had put her in a position where she could not afford to attend essential medical appointments.

### **Case study 6. Gavin's story - S265401**

Gavin was contacted by his BNPL provider about two accounts with close to \$5000 owing in total. He didn't recall opening them and believed that his ex-girlfriend had used his ID to open the accounts.

He had referred the matter to fraud team, however the BNPL provider decided there was insufficient evidence corroborating his story and continued to hold him liable.

Financial Rights helped Gavin write to the BNPL provider requesting information and documents and again raised his concerns that the accounts were fraudulently created.

Following this intervention, the BNPL provider reversed their decision and decided to release Gavin from liability under the accounts.

Other victim survivors are abused through coercion, where a victim survivor may obtain BNPL for the benefit of their partner, which is clearly not for the victim survivor's benefit. Perpetrators of family violence may promise to repay these debts, only to cancel the direct debit and leave the victim survivor with the liability, sometimes as retaliation after an

argument or after separation. Victims then become laden with debt that leads to a debt spiral.

### **Case study 7. Mel's story - S306107, S306108**

Mel was in a domestically violent relationship where her ex-partner perpetrated physical, emotional and financial abuse against her. This included obtaining a number of loans and wage advance products in Mel's name for his own benefit, using access he had to her phone and bank accounts. He used her phone to apply for the wage advance products and transferred the funds to his own account for his own use.

While Mel knew what her ex-partner was doing, due to the abusive nature of their relationship she felt that she couldn't tell him to stop.

Victim survivors who are in financial hardship may also use BNPL credit to pay for necessities when escaping an abusive relationship. However, the automated payments via direct debit often result in the victim survivor prioritising BNPL repayments ahead of rent, food or basic living expenses, or taking out payday loans and other lines of credit to repay their BNPL debts. This spiral can delay victim survivors seeking help from financial counselling services or accessing more appropriate financial assistance available to them, including No Interest Loan Schemes and Centrelink entitlements.

### **The sale of credit via retail outlets including caryards**

Related to the ease of obtaining credit is the ease in which credit is sold in the retail space.

The point-of-sale exemptions under the credit regulations enable retailers including car dealers to avoid responsible lending protections, leading to unaffordable debt.<sup>6</sup> Retailers and car dealers recommend and facilitate unsuitable and unaffordable credit applications and consumer leases because they do not need to assess whether the credit meets the consumer's requirements and objectives; and whether the consumer can afford the credit without substantial hardship. This responsibility is shirked onto finance providers who are accessed by online portals.

Consumers are 'assisted' in their credit applications, which are driven by a sales culture with no incentive to comply with the law. Rather, sales staff are incentivised to ensure credit is approved so they can make the sale and benefit from commissions and kickbacks.

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<sup>6</sup> Reg. 23, *National Consumer Credit Protection Regulations 2010* (Cth)

This sales-driven culture and lack of protections leads to an environment easily exploited by perpetrators.

## Case study 8. Eliza's story - C219204

Eliza is a single mother who is self-employed, running her own hair dressing business and part owning a property with her father. She was in a relationship characterised by domestic abuse and financial abuse. Her former partner would 'borrow' large sums of money from her to pay his legal fees, crypto currency trading, and pay off alleged personal debts. He employed tactics that were manipulative and abusive. She would often discover the funds she paid him for one purpose, would instead be used to fund investments which always seemed to fail.

When she was pregnant with their child, he convinced her they needed an additional car for their growing family. Using her mobile phone and email, he applied for finance, for a business purpose, through a broker to lease a sports car from a second hand dealer. The car was entirely unsuitable for a person with a child – it had low seats, 2 doors, and no room for a car seat).

She was also pressured into obtaining early access of her superannuation by the abusive partner. She believes it would have been evident as he was yelling at her in the background to increase the access from \$10,000 to \$20,000. Her superannuation was paid to her bank overdraft account.

The partner also pressured her to extend her overdraft facility from \$5,000 to \$25,000. Again he was screaming and threatening her (and now their child) in the background. The bank approved the overdraft and \$12,000 was paid into her bank account and then on to her abusive partner. The remainder was used for her expenses (her partner had by this point squandered her previous savings).

Shortly after, Eliza left the relationship – but she was struggling with the debts, particularly the car.

Police had assisted her to regain possession of the car, and she wanted to surrender the car, and not have any shortfall. We provided the lender with the ADVO and a family law affidavit detailing the abuse and circumstances of the loan, after which they agreed to our proposal and the car was surrendered.

We asked her bank lender for call recordings and the overdraft assessment in accordance with the Banking Code of Practice. The lender would not provide recordings or the basis of the assessment the overdraft was affordable. In light of Eliza's circumstances they offered to waive half of the overdraft amount (around \$6,000) and to reduce the overdraft limit.

Eliza considered the offer – and in weighing up pros of the \$6,000 offer now versus a longer dispute over the recordings (which may not exist) and an assessment which may have shown she could afford it, she decided to accept the offer. Eliza suffered significant financial losses at the hands of her abusive partner, and the \$6,000 was a drop in the ocean, but she was grateful for any assistance in relieving her ongoing financial hardship caused by the car lease loan and the overdraft.

### Case study 9. Terri's story – S291661

Terri is in her early 20s. In 2022 her then partner coerced her into getting a car loan of almost \$50,000 from a non-bank lender, as he was unable to obtain a loan in his name. Her ex-partner perpetrated physical, emotional and financial abuse against Terri during their relationship. In early 2023 Terri ended the relationship and obtained an AVO against him.

Terri says that the car was exclusively used by her ex-partner and while she ended up making the loan repayments, she could only do so with substantial hardship. Terri never used the car.

We raised a dispute with the lender, arguing that the loan was unsuitable and unjust. We offered for Terri to surrender the car and requested that the lender refund all payments she made under the loan (approximately \$4,000) and waive any shortfall on the loan.

The lender refused, and instead offered to consider a hardship arrangement if Terri surrendered the car. After negotiation, the lender agreed that Terri surrender the car and the lender retained payments already made, but the remainder of the loan was waived.

The lender also changed the negative RHI listings on Terri's credit report to 'not reported'.

Sales staff often have no training in financial abuse and have no incentive to notice common red flags that would indicate a loan or credit card may not meet the borrower's requirements and objectives.

Financial products are complicated and those recommending them and offering advice on applications should be licensed to ensure they do so appropriately and according to the legal protections in the *Credit Act*.

## The shift of banking services to online platforms has facilitated increased abuse

In tandem with the shift of credit services to the digital channel, there has been a wholesale shift to the online provision of banking services that has created an environment for financial abuse to flourish.

Having access to contactless self-service options for people managing their own financial products and services can have many benefits, but it is clear that businesses do not have the ability to prevent, identify and remediate where misuse occurs.

Accessing in person services, for example in bank branches, is becoming increasingly difficult. Branches continue to close and customer service channels shift to self-service via apps.<sup>7</sup>

Yet many consumer protections to pick up financial abuse were developed for an in-person world. For example, section 3.2 of the Australian Banking Association's (**ABA**) Preventing and Responding to Financial Abuse Industry Guideline suggests if a person remains silent and allows the other to do all the talking, doesn't seem to understand the transaction, indicates they should have enough money to pay bills but doesn't – all rely on in-person interactions. Section 4.3 of the guideline suggests banks investigate ways to identify potential financial abuse involving digital banking platforms, but gives examples suggesting this would be found on a case by case basis. There is no recommendation to collate, interrogate, and report on the findings of this section.

Financial institutions consistently assert that they cannot possibly know someone is experiencing financial abuse without it being explicitly disclosed to them. Yet this is in many ways a problem of their own making as they increasingly withdraw face-to-face services previously relied on by vulnerable people.

We also know that despite the efforts of industry to shift people online, this is simply not suitable for everyone. The COVID-19 pandemic allowed financial institutions to efficiently move anyone they possibly could onto digital banking. And yet there remain people who could not or did not wish to be shifted online - people in regional and remote areas who have unreliable internet for whom being online isn't a way of life, people who need to use an interpreter to communicate clearly on their banking matters, First Nations people and newer migrants who may lack familiarity with financial systems, and older Australians for whom scams are an ever present threat who are rightly trusting only of face to face transactions.

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<sup>7</sup> APRA point of presence data from October 2023 shows a further decline in bank branches in the year to 30 June 2023, with a reduction of 424 branches across Australia (11 per cent), including 122 branches (7 per cent) in regional and remote areas. Branch numbers have declined by 34 per cent in regional and remote areas, and 37 per cent overall, since the end of June 2017. APRA, [APRA releases latest points of presence statistics for authorised deposit-taking institutions, 18 October 2023](#)

Keeping multiple avenues of contacting financial services remains a priority to meet the varying needs of the entire community.

While the shift to online products and services appears inevitable, it is sobering to remember that nearly a quarter (23.6%) of the population are considered excluded or highly excluded in the Australian Digital Inclusion Index.<sup>8</sup> These Australians lack the required resources to participate fully in economic, social, and civic life. Highly excluded Australians are more likely to have a disability (24.5% highly excluded), live in public housing (28.2% highly excluded), have not completed secondary school (32.5% highly excluded), or be over 75 years of age (42.3% highly excluded).

Digital exclusion of First Nations people is particularly problematic and is fundamental to the risk of being financially abused.

The 2023 Australian Digital Inclusion Index found that nationally, there is a 7.5 point gap in digital inclusion between First Nations and non-First Nations people. In remote and very remote parts of Australia, this digital gap is even wider<sup>9</sup>. Ongoing digital exclusion means that people don't have the ability to manage their financial services in the way expected of them by financial services providers. Being pushed into using online services exposes these people to significant risk of financial abuse.

First Nations households may, for example, share one device, meaning the customer has limited opportunities to make calls and use website portals and is at greater risk of others being able to access their accounts and apps. When a First Nations person needs to rely on other people to access a device or navigate technology, there is an increased risk of financial abuse.

Other factors that can intersect with the experience of First Nations customers include generational trauma, language, literacy, and financial literacy. While culture is not a vulnerability in itself (in fact quite the opposite) there are cross-cultural differences which mean that Aboriginal and Torres Strait Islanders may find it particularly difficult to navigate some financial services products, services and processes.

## **Outsourcing services decreases consumer protections**

Even where banks have attempted to fill in the gap left by the closure of branches through establishing the Bank@Post program, problems remain.

One gap that exists in the obligations pertains to intersection of obligations between bank staff and Bank@Post staff. The role of Bank@Post staff is ambiguous compared to

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<sup>8</sup> [Digital inclusion: the Australian context in 2023 - Australian Digital Inclusion Index](#)

<sup>9</sup> As above

obligations on staff employed directly by a bank. The ABA's Banking Code of Practice (**Banking Code**) 'Who the Code applies to' section states:

"We", "us" and "our" "We", "us" and "our" means the bank that you deal with that has signed up to the Code<sup>10</sup>.

And yet, accessing banking services at Bank@Post does not give the same protections. In the case of our client below, a financial abuser insisted their victim shift to making post office withdrawals when branch staff became suspicious of frequent withdrawals.

### Case study 10. Pansy's story - C249089

Pansy lives with an intellectual disability. She is employed full time.

A work colleague perpetrated financial abuse against Pansy by coercing her to make cash withdrawals from her bank several times a week over a period of several years, which she handed directly to the perpetrator.

When Pansy told the perpetrator that the bank branch teller questioned her about the transactions, the perpetrator directed Pansy to instead withdraw cash from an Australia Post branch, located in the same suburb as the bank. The perpetrator waited in the car park whilst she made these transactions, (as they had done at the bank).

Pansy was coerced to hand over around \$150k in total.

With the help of an advocate, Pansy's family lodged a dispute firstly with the bank, and then in AFCA. Pansy was offered under \$4k as a goodwill payment to settle the matter, which was accepted. The family also reported the matter to police.

Pansy's family only approached us after they had settled in AFCA, so we don't know how much was lost after the switch to Bank@Post after bank staff became suspicious – or whether her bank had flagged the account for future review, or if a review was triggered because of the abrupt change in withdrawal pattern, or if they ever followed up directly with Pansy. It does however show why protections belong in umbrella legislation.

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<sup>10</sup> ABA, [Banking Code of Practice](#), 5 October 2021, p11



## Poor hardship practices

Section 72 of the *National Credit Code* provides debtors the right to give a credit provider notice, either verbally or in writing, of their inability to meet their obligations under a credit contract.

Access to a hardship variation is important to anyone who has had a change of circumstances that temporarily effect their ability to pay off a debt – for example a job loss, a family breakdown, and so on. Good creditor hardship practices are therefore critical to enliven this ability.

However, for a number of reasons, hardship processes have real limitations for victims of financial abuse. Bourova, Ramsay and Ali, for example, found that:

'women dealing with the emotional, physical and economic repercussions of family violence find it difficult to access appropriate assistance under [the hardship] protections.'

Poor hardship practices that we see frequently include:

- Difficulty accessing a lender's hardship team or program.
- Processes can be onerous or difficult for consumers to navigate.
- Offering very short-term hardship – for example on 2 months in the aftermath of a job loss with no new employment secured.
- Offering completely hardship solutions, such as a temporary moratorium on repayments when the issue is that the victim is disputing liability due to fraud or coercion.
- Asking for evidence that is unreasonable or would put the victim at risk to provide.
- Making hardship options dependent on consent of the perpetrator.
- Refusing to extend hardship for a short period when a change of circumstances is imminent.
- Referring people to financial counselling agencies rather than investigating what options they can offer.<sup>11</sup>

Creditors also have a degree of discretion in what they offer, which is not always what their customer needs.<sup>12</sup> If they do not agree to change the credit contract they are required to

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<sup>11</sup> ASIC has also recently released a [Report 783 Hardship, hard to get help: Lenders fall short in financial hardship support](#) which has confirmed many of the issues we see.

<sup>12</sup> As set out in the note to section 77(3) a credit provider need not agree to change the credit contract, especially if the credit provider does not believe there is a reasonable cause for the debtor's inability to repay; or reasonably believes that the debtor would not be able to meet his or her obligations under the credit contract even if the contract were varied.

state why they have not agreed and inform the debtor of their rights to complain to Australian Financial Complaints Authority (**AFCA**). The Act explicitly recognises 'family violence' as a reasonable cause for the debtor's inability to meet his or her obligations.<sup>13</sup>

Where a victim-survivor has overcome the barriers to accessing hardship, the response they receive is highly variable and victims are often unable to meet varied repayment plans.

Debt waiver (including protections from the impact of adverse credit reporting) is often likely to be the only suitable arrangement for a victim of financial abuse, but in our casework experience this is not always the outcome. Creditors often take a judgmental approach, or a defensive one – how could we have known what was happening – rather than seeing the issue as one of removing barriers to escaping violence.

## **Poor service provision, communications, and care**

Despite the emphasis banks (for example) have made to train staff and deal sensitively with people experiencing abuse, we continue to frequently see poor treatment of people experiencing incredible vulnerability. The examples in this section show people at their most vulnerable being treated insensitively – and in contravention of all good industry practices.<sup>14</sup>

Because of inconsistently applied policies, time and again we assist people who have been unable to successfully self-advocate. Without our intervention it is clear these clients would have received a much poorer outcome.

### **Case study 11. Una's story – C224146**

Una is a First nations woman in her 30s who works casually and is the primary carer for her father who suffers from diabetes and other health issues and needs help with his personal care. Una's role as his carer means she is unable to work additional hours.

Una was in a 5-year relationship with her ex-partner, during which she experienced financial, emotional and physical abuse. During that relationship her ex-partner created a large amount of debt that she has been paying off. She has repaid a large amount of that debt but still has debt remaining.

Her ex-partner had a poor credit history and she felt she had no choice but to allow him to use her credit to access the things he wanted to try and keep things calm and herself safe.

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<sup>13</sup> See note to section 77(3).

<sup>14</sup> As outlined in the Banking Code of Practice and associated guidelines, ABA, [Preventing and Responding to Financial Abuse \(Including Elder Abuse\)](#), February 2021 and ABA, [Preventing and Responding to Family and Domestic Violence \(FDV\)](#)

Una told us she had previously received hardship from the creditor and had explained the financial abuse and relationship debt to them. They advised her to take him to court and gave her the National Debt Helpline phone number.

After Mob Strong advocacy, the creditor agreed to waive the full outstanding balance of almost \$30,000. Una no longer needs to communicate with her ex-partner as the debt has been waived.

## Case study 12. Brenda's story - S281790; S288849; S287271

Brenda instructed us that her ex-partner subjected her to financial abuse and that he obtained a number of debts in her name through a major bank. The bank sold the personal loan to a debt collector so our solicitors contacted both about Brenda's matter. It was very difficult to obtain information about the personal loan and it took approximately 8 months to obtain documentation from the original creditor.

On obtaining documentation we discovered that there were 3 personal loans, refinanced after 2 years and again after a few weeks.

The personal loans were unsuitable for Brenda. The creditor did not take any steps to verify Brenda's expenses for any of the loans; it relied on a living expense figure that was substantially less than the Henderson Poverty Index when assessing the loans. The first loan was entered into when she was only 18, and was based on income from a job that Brenda had only held for around a fortnight (which she subsequently lost).

For the first refinance, Brenda had called the bank and said that her then partner had asked her to call because he had applied for the wrong loan amount. It was evident in reviewing these calls, that Brenda believed that the loan was in her then partner's name. This did not raise any red-flags for the creditor. She rang later, at his behest, for the second refinance, where she told them her situation was changing, but they assessed it on the current situation and not the changes she had explained.

The following year Brenda called to say that she had had a bad break up and that her former partner had taken over her credit card and blocked her access to their joint account. In response, the employee said "*these things happen*". The creditor did not take any appropriate action, such as referring Brenda to its financial abuse team or stopping the sale of her credit card to a collection agency.

The lender disputed that any responsible lending breaches occurred and relied on the time that had passed and refinancing to argue it was outside of the jurisdiction of AFCA and would not review the earlier loans that dated over 6 years or were refinanced.

Getting a handle on how banks and credit providers undertake training to address financial abuse is quite opaque, notwithstanding that some information is available through Code compliance committee reports. What is also apparent is that training needs to be underpinned by processes that ensure staff are guiding customers to their entitlements. The examples here suggests that the major bank below did not have clear processes and referrals and it is particularly concerning that this was evident even in the bank's specialist team.

### **Case study 13. Georgia's story – S227781**

Georgia contacted us as she was being contacted by a bank for a car loan when her ex-partner defaulted. Her ex still had the car, and Georgia had no benefit from the loan.

Although she raised domestic violence concerns when the car loan was taken out, the bank continued to harass her leading her to lodge a complaint at AFCA. After she did this, the bank offered to reduce the loan balance by \$3,000 but continued to hold her liable and said they could not look at the domestic violence concerns without a police report. Georgia had been separated for many years by this point and was too anxious to report to police.

Georgia had already previously gone bankrupt. The bank then agreed to close the account but advised they were unable to "take her name off the loan" due to being in joint names.

### **Case study 14. Carolina's story - S306200**

Carolina had joint account with her ex-husband at a major bank that was used as a shared account to pay for their children's school fees.

Carolina's ex-husband had perpetrated family violence and was refusing to sign for money to be released from the joint account to pay the school.

Carolina went to branch said told them she was experiencing abuse and wanted to speak to someone – the bank just gave her the *1800Respect* phone number. She returned later armed with information from the bank's website saying it would treat people in her position with extra care and was told someone would ring her – which they never did.

Financial Rights provided Carolina with the direct contact details for the bank's specialist support team. The initial person she spoke to wanted to phone her ex-husband with her on the phone.

Carolina only obtained a satisfactory response when she lodged in IDR complaint with the bank.

### Case study 15. Diane's story - C236536

Diane's son took out a business loan and listed her as a co-borrower of the loan and placed security over her vehicle, unbeknownst to her. Diane is a victim of domestic and financial abuse by her son, for which he was imprisoned. Diane is terminally ill.

She recently tried to sell her car and discovered that a creditor had security over it. When Diane contacted the creditor, they advised her that her son - the perpetrator - would need to ring regarding the loan. When told multiple times this was a domestic violence situation, the creditor told her to report to the police even though Diane had already made a report to the relevant state police. When she told them that the loan was taken out by way of fraud, the creditor told her to report the fraud to the police - which again, Diane had already done.

The creditor ultimately agreed to not proceed with enforcement action to recoup the loan, however, they are continuing to refuse to remove the Personal Property Securities Register (PPSR) security on her vehicle.

Diane cannot access external dispute resolution like AFCA, because the lender is not a member. She needs the encumbrance removed so she can arrange her affairs and ensure that the perpetrator does not benefit from her death. As she cannot go to AFCA, she now has to navigate the PPSR process.

### The design of joint accounts

Joint finances are frequently used as a tool of control and abuse, particularly if the perpetrator can no longer harm their victim in the form of physical or psychological abuse. Joint account terms typically make any party to the loan liable for the full amount: see **Georgia's story**. Perpetrators can also use joint accounts to prevent important payments; see also **Carolina's story** above.

Even though it may not be in the abuser's best interests to stop payment or default on a debt, they may do so knowing that it will cause further pain for their victim. Joint credit

accounts mean that when there are missed payments, 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 co-borrower's report as well. **Josephine's story** in the credit reporting section speaks to this.

We also have concerns with respect to the ease of sharing joint account data (and potentially initiating changes to bank accounts) via the Consumer Data Right (**CDR**).

The CDR, in short allows consumers to share their financial data held by banks with third parties to obtain services - such as budgeting, credit comparisons or account switching recommendations.

The CDR rules introduced the concept of voluntary, express and informed consent when deciding to sharing data. This appropriately empowers someone to make their own decisions. However, Treasury introduced an "opt-out" sharing model for joint account data. Under this model, joint account holders are presumed to have provided consent and need to actively opt-out of sharing data when sharing occurs. Not only is this counter to the voluntary, express and informed consent concept embedded in the rules - it undermines safety-by-design principles and is likely lead to poor outcomes, especially for those consumers who may be subject to financial abuse. The harm is currently limited under the regime since CDR data can only be provided for read-only purposes – i.e. to provide information to a consumer on switching for example. However, the potential for harm increases under a regime where action initiation is enabled – allowing perpetrators to make significant changes to a victim-survivors finances without their explicit consent.<sup>15</sup>

## **Small business lending used to perpetrate abuse**

Consumer protections for small businesses remain a gap in the credit regulatory framework. Not all lenders are required to be licenced or be members of AFCA. As a result, we are contacted by victims of financial abuse who have nowhere to turn for help. See also **Diane's story** above.

Even where there may be protections that victim-survivors could avail themselves of in the common law, a lack of access to free dispute resolution usually means these remedies are only available through the courts and are therefore out of reach for most people.

The current policy settings for the regulation of business lending repeatedly fail victim-survivors and allow abuse to flourish and safety to be compromised. While access to business lending is important economically, the cost to the economy and the well-being of

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<sup>15</sup> See: [Joint submission by Financial Rights Legal Centre, Consumer Action Law Centre and the Australian Communications Consumer Action Network on Australian Treasury's 'Opt-out' joint account data sharing model](#), 26 May 2021

our population as a result of family and domestic violence is also enormous. It is time we rejected the false dichotomy of consumer versus business lending (as we have in other areas like unfair terms and competition law) and recognised the spectrum that exists between large, sophisticated businesses and smaller operations. We should also provide improved access to justice for victim/survivors caught up in business borrowing as a priority.

### Case study 16. Peng's story - C110343

Under duress, Peng's adult son made her sign paperwork as a co-borrower on a truck loan for his business. Her involvement was needed for the deal because, unlike her son, she owned her home and was financially stable.

Peng's son's business failed inside its first year. Peng has been making the repayments when she discovers payments are not up to date. Her contact details are not on the loan, so she gets no regular or fulsome correspondence about this from the creditor.

Peng cleared the most recent arrears on the promise that if her son returned to normal repayments, the loan would be back on track and he could keep the truck. Then the lender changed its mind, announced it had actually terminated the loan a year ago due to defaults at that time, and demanded return of the car.

Peng's son refused to let her disclose where the truck was, and Peng was threatened with legal action. She attempted to negotiate with the lender, but because they are unlicensed and not in AFCA, she had little leverage and they simply refused to engage.

### Lack of consistent systems to proactively identify financial abuse

Financial service providers should have systems and processes that can capture and flag consumers in vulnerable circumstances, for use by the business to offer that customer appropriate supports and service. It would seem negligent to not capture information where it is relevant to past or future interactions with that customer – particularly one in vulnerable circumstances. Repeating stories of abuse can be re-traumatising.

Unfortunately, this is not the case. ABA members have committed under the Banking Code of Practice to take extra care with customers experiencing vulnerability. However, it became apparent that banks felt that the *Privacy Act* specifically precludes them from capturing personal information pertaining to vulnerability.

We disagree with this position but understand that the Office of the Australian Information Commissioner (**OAIC**) has provided written guidance confirming this view. The full advice has not been provided to us.

The 2022 *Privacy Act* review did consider the issue of whether banks are effectively hamstrung from acting in a customer's interests without express and informed consent. Ultimately it recommended that:

"... [f]urther consultation should be undertaken to clarify the issues and identify options to ensure that financial institutions can act appropriately in the interests of customers who may be experiencing financial abuse or may no longer have capacity to consent".<sup>16</sup>

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<sup>16</sup> [Privacy Act Review Final Report](#), February 2023, Page 165, Recommendation 17.3



# Protections for people experiencing financial abuse in credit and banking

The preceding section outlined a number of the on-the-ground/day to day issues that confront and frustrate victim-survivors and their representatives when dealing with the credit and banking sector. It points to a number of failures and gaps in the consumer protection framework as it applies to financial abuse in specific circumstances.

This section provides a higher-level overview of the consumer protections framework as it applies to financial abuse in the credit and banking sector. It then proceeds to recommendations to improving consumer protections, particularly in respect to a more proactive and preventative approach by credit providers and ADIs.

## Key current protections

### Laws and regulations that apply to all financial services

Under the **Corporations Act 2001** financial institutions are required to do all things necessary to ensure that licensed services are provided '**efficiently, honestly and fairly**' when providing financial services<sup>17</sup> or consumer credit.<sup>18</sup> This is a high-level general obligation which, according to Allsop CJ, reflects a:

"legislative policy to require social and commercial norms or standards of behaviour to be adhered to."<sup>19</sup>

In egregious cases of financial institutions facilitating financial abuse, this obligation may be breached. However, as far as we are aware, this obligation has not been interpreted as requiring financial institutions to take positive steps to prevent or respond appropriately to financial abuse.

Under the **common law**, the equitable doctrines of **undue influence** and **unconscionable conduct** may provide a remedy against the perpetrator of financial abuse and, in limited situations, against the financial institution. Undue influences can be used to set aside transactions or agreements such as loans where one party has exerted excessive pressure or influence over another. Under the doctrine of unconscionable the court will set aside a transaction or agreement where one party has taken unfair advantage of the other's special

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<sup>17</sup> Section 912A(1)(a) *Corporations Act 2001*

<sup>18</sup> Section 47(1)(a) *National Consumer Credit Protection Act 2009*

<sup>19</sup> *ASIC v Westpac Securities Administration Limited* [2019] FCAFC 187, at [173]

disability, weakness or disadvantage. One party's economic dependence or fear of another could potentially could be a special disadvantage.

These doctrines can only be invoked against the financial institution (as opposed to the perpetrator) if the institution has knowingly or recklessly facilitated the financial abuse. This is a high bar and success will depend on the specific circumstances of each case.

In any case, bringing an unconscionability or undue influence case in court is likely to be so time-consuming and costly as to be impractical for most victims of financial abuse.

**General consumer protection provisions** in relation to financial services are set out in in Part 2, Div 2 of the ***Australian Securities and Investments Commission Act 2001***.

However, they are unlikely to govern the ability of financial institutions to prevent and respond to financial abuse, except in the most extreme cases of complicity by the financial institution.

The **design and distribution obligations (DDO)**<sup>20</sup> have been introduced to help consumers obtain appropriate financial products by requiring:

- issuers of financial products to design products that are likely to be consistent with the likely objectives, financial situation and needs of the consumers for whom they are intended
- issuers and distributors of financial products to take reasonable steps that are likely to result in financial products reaching consumers in the target market for the product defined by the issuer; and
- issuers to monitor consumer outcomes and review products to ensure consumers are receiving products that are likely to be consistent with their likely objectives, financial situation and needs.

There is clearly some scope for this obligation to influence product design and distribution practices to minimise financial abuse. ASIC guidance states that, in complying with DDO, financial institutions should:

“consider consumer vulnerabilities, and how those vulnerabilities may increase the risk that consumers are sold products that do not meet their objectives, financial situation and needs, and will lead to poor consumer outcomes.”<sup>21</sup>

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<sup>20</sup> Part 7.8A, *Corporations Act 2001*

<sup>21</sup> RG 274.47 at [ASIC Regulatory Guide 274 Product design and distribution obligations](#), 11 December 2020

However, we are not aware of the DDO having this influence and, in fact, the breadth of the obligation and lack of specificity in the ASIC guidance about how to design and distribute financial products to protect vulnerable customers (such as victims of financial abuse), mitigate against DDO having this influence. Research in 2022 showed no target market determinations refer specifically to consideration of customer vulnerability, family violence or safety.<sup>22</sup> There is scope for both industry and regulator to consider how the DDO could be used to require the design and distribution of financial products which prevent or impede financial abuse. As set out in the Centre for Women's Economic Safety's discussion paper *Designed to Disrupt: Reimagining banking products to improve financial safety*,

"the starting point is to identify the ways products are weaponised to cause harm and to consider potential design options to prevent, disrupt and respond that also address the underlying drivers of gendered violence against women."<sup>23</sup>

## **Laws and regulations that apply to the credit and banking sector specifically**

**The National Consumer Credit Protection Act 2009 (NCCP Act) and National Credit Code (NCC)** govern the supply of most personal credit in Australia. They apply to personal loans, home loans, consumer leases, credit cards, payday loans, and investment loans for residential property. However, they do not apply to some types of loans, such as, BNPL products, investment loans (other than for residential property), and pawnbroking loans (although the 'unjust transactions' and 'unconscionable interest and charges' provisions in the NCC apply to such loans.).

As outlined above, credit providers must meet **Responsible Lending Obligations** which act as a key general protection for consumers against unsuitable lending but it also requires that lenders make more enquiries where circumstances indicate that someone may be perpetrating or subject to financial abuse. As shown above, this does not always help since the RLO approach taken by some credit providers are minimal and red flags are missed or ignored.

Credit providers must also respond appropriately to **hardship**. The creditor may, but is not required to, vary the credit contract in response to a hardship notice. As outlined above, hardship processes have real limitations for victims of financial abuse.

Sections 76 and 77 NCC re: **unjust contracts** may in theory provide some relief for victims of financial abuse who are liable for a debt incurred by a perpetrator. These sections provide a court with the power to make range of remedial orders if it is satisfied that, at the time a

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<sup>22</sup> Catherine Fitzpatrick, Centre for Women's Economic Safety, [Designed to Disrupt: Reimagining banking products to improve financial safety, CWES Discussion Paper 1](#), 2022 p6

<sup>23</sup> As above, p18

credit contract, mortgage or guarantee was entered into, it was unjust. In determining whether it is unjust the court will have regard to the public interest and the circumstances of the case including:

- the extent to which the provisions of the contract, mortgage or guarantee or change and their legal and practical effect were accurately explained to the debtor, mortgagor or guarantor and whether or not the debtor, mortgagor or guarantor understood those provisions and their effect; and
- whether the credit provider or any other person exerted or used unfair pressure, undue influence or unfair tactics on the debtor, mortgagor or guarantor and, if so, the nature and extent of that unfair pressure, undue influence or unfair tactics.

However, access to such judicial remedies will often be challenging for victims of financial abuse. AFCA is available in consumer lending, but as these matters are dealt with on very much a case-by-case basis. This does not necessarily translate into any change on the part of the credit provider in terms of their processes, nor is it clear to us whether it would ever lead to AFCA raising a systemic issue.

### **Self-regulation in the credit and banking sector**

And then there are the self-regulatory ABA and Customer Owned Banking Association's (**COBA**) Codes of Practice (as well as the Australian Financial Industry Association's (AFIA) Buy Now Pay Later Code of Practice) which supplements the legislative and regulatory framework outlined above.

Taking the ABA Banking Code as the key example, all 19 member ABA member banks that provide retail banking services must adopt the Code. It binds the subscriber banks as a matter of contract; that is, the ABA Code provisions form part of the contract between a bank and its customer. In addition, the ABA has established the Banking Code Compliance Committee (**BCCC**) as an independent compliance monitoring body under the ABA Code. The BCCC can impose a limited range of sanctions<sup>24</sup> for serious or systemic breaches of the ABA Code, or failure to cooperate with the BCCC.<sup>25</sup>

In this sense, the ABA Code has stronger enforcement mechanisms than many other forms of self-regulation. Nevertheless, there are significant limitations. The ABA Code cannot be enforced by a regulator such as ASIC and victims of financial abuse often struggle to enforce contractual rights. Having said that, AFCA will take the ABA Code commitments into account when determining disputes. In fact, AFCA may have regard to the ABA Code as evidence of

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<sup>24</sup> Clause 7.2 [Banking Code Compliance Committee Charter](#)

<sup>25</sup> Clause 7.1 [Banking Code Compliance Committee Charter](#)

good industry practice in relation to disputes involving entities that are not actually bound by the ABA Code.

Key relevant provisions of the ABA Code include:

- **Chapter 14 (Vulnerability)** sets out commitments to take extra care with customers who are experiencing vulnerability, including elder abuse, family or domestic violence and financial abuse. There is a commitment (in clause 33 and 39) to train staff to act with sensitivity, respect and compassion towards customers who appear to be in a vulnerable situation, but no commitment to train staff to *identify* customers who may be experiencing vulnerability.
- **Chapter 17 (responsible lending)** states that if an individual applying for a loan or an increase in a loan will not receive a substantial benefit from the loan member banks will not approve the individual as a co-borrower unless they have, among other factors, ensured the individual is not experiencing financial abuse: clause 54(c). This raises the possibility of co-debtors who were experiencing financial abuse making a claim to the bank itself or to AFCA to sever their liability for the debt.
- **Part 7 (Guaranteeing a loan)** includes protections for a guarantor that may prevent victims of financial abuse guaranteeing a perpetrator's loan in some circumstances. For example, clause 110 provides that if the bank attends the signing of the guarantee it will ensure that the guarantor signs the guarantee in the absence of the borrower. However, it is not mandatory that the guarantor seek independent legal and financial advice or that the guarantee be executed in the absence of the borrower.
- **Chapter 35 (Joint Accounts)** provides that, in the case of joint accounts, one account holder can ask that the account authority on a joint account be changed so that all joint account holders have to approve withdrawals. This should enable a victim of financial abuse put in place arrangements to that it knows if a perpetrator is drawing down on a joint account. The Draft new Code also includes a commitment to allow someone to separately ask for financial hardship assistance, without contacting the other person initially.
- **Chapter 39 (Hardship) Clause 159** provides that, in the case of joint accounts, the bank can assist one borrower with hardship without involving the other borrower. Clause 162 provides that a customer experiencing hardship can choose to have the bank deal with their financial counsellor or representative. However, there is no obligation to provide third party assistance to victims of financial abuse.

The ABA has also developed two industry guidelines relating to financial abuse: *Preventing and Responding to Financial Abuse (including Elder Abuse)*<sup>26</sup> and *Preventing and Responding*

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<sup>26</sup> ABA, [Preventing and Responding to Financial Abuse \(Including Elder Abuse\)](#), February 2021

to *Family and Domestic Violence*.<sup>27</sup> These industry guidelines reflect good industry practice and ABA members are encouraged to follow them. However, they are not binding. Nevertheless, they contain principles of good practice which, if followed are likely to protect victims of financial abuse.

The ABA has also prepared customer fact sheets about financial abuse and setting up powers of attorney.

The Customer Owned Banking Code provides similar but slightly different protections.<sup>28</sup> The AFIA Buy Now Pay Later Code (which is not contractually enforceable) also provides some high level, vaguer commitments to supporting people experiencing vulnerabilities.<sup>29</sup> Like the ABA Banking Code, the COBA Code and the AFIA Code require customers to self-identify themselves as victims of abuse in order to invoke protections.<sup>30</sup>

Both ABA Code subscribers and COBA Code subscribers have been subject to criticism for not meeting their commitments to those experiencing vulnerability.<sup>31</sup>

Like the ABA Code, the Customer Owned Banking Code has a Code Compliance Committee who monitor compliance and undertake targeted proactive inquiries on matters related to the Code.

## **AFCA Approaches**

In addition to the above, AFCA has approach documents relating to Responsible Lending (including reference to lenders needing to be mindful of possible elder or financial abuse) and Financial Abuse and Joint Accounts.<sup>32</sup>

AFCA Approaches can help stakeholders understand what AFCA will take into account in deciding these types of disputes. This document covers many of the issues raised in the case studies including caryard sales, joint accounts and credit reporting complaints. This is an

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<sup>27</sup> ABA, [Preventing and Responding to Family and Domestic Violence \(FDV\)](#), April 2021

<sup>28</sup> [Customer Owned Banking Code of Practice 2022](#)

<sup>29</sup> AFIA, [BNPL Code of Practice](#), 2022

<sup>30</sup> Clause 26 of the COPBCOP says "(w)e will adapt our customer service standards where reasonably practicable, and take extra care where we are aware that you are experiencing vulnerable circumstances" and notes financial abuse is one of those circumstances.

Section 8.3 of the BNPL Code says "(w)e will take extra care if you have a vulnerability. However, we may become aware of your vulnerability circumstances only if you tell us about them or it is otherwise reasonable for us to become aware of it".

<sup>31</sup> See for example, BCCC, [Banks' compliance with Part 4 of the Banking Code: inclusivity, accessibility and vulnerability](#), December 2021; COBCCC, [Vulnerability: Inquiry into how Code subscribers approach vulnerability and deal with issues concerning domestic and family violence and elder abuse](#), June 2022

<sup>32</sup> The [AFCA Approach to Responsible Lending Australian Financial Complaints Authority](#) January 2024, The [AFCA Approach to joint accounts and family violence](#) June 2022

important document as it gives clear indicators to business about how it interprets the totality of applicable regulation.

## Navigating redress

Victim survivors of financial abuse don't have clear pathways to dispute debts incurred due to financial abuse. Advocates like ourselves use knowledge of regulatory obligations, processes, and previous outcomes of similar situations to try and address the client's debt. Typically, our process will look at:

- Whether the loan met responsible lending criteria and was suitable to the needs of the client
- Seeking evidence from the credit provider that would demonstrate they were not on notice about the financial abuse, including copies of documents and conversations that might suggest red flags were missed.
- Whether there were any breaches of any specific Code obligations are evident

Depending on the situation, we will seek to lodge complaints in internal dispute resolution (**IDR**), then external dispute resolution (**EDR**) as the merit of the case allows.

We rely on either obligations in the primary regulation (for example responsible lending provisions) and the voluntary guidance documents when we seek redress for a client.

- A waiver of the debt on goodwill/compassionate grounds.
- Partial waiver of the debt.
- More favourable terms, for example, repaying a debt on a longer period than the initial term allows.
- A debt waiver contingent on the client making a certain number of payments.

All these outcomes are negotiated, rather than an automatic right for a victim, and will often leave the victim survivor with some debt, even if their overall situation is improved.

We then undertake this process separately with each creditor – which as the case studies show, are usually multiple.

It is important to recognise that, as professional advocates, our staff understand who to contact in a credit provider, how to navigate processes and procedures, ask nuanced questions, and know when to follow a line of enquiry. These are finely honed and accessible to us. It is unclear what processes a bank undertakes with people who are self-advocating – who do not have the same experience, knowledge and expertise and understanding of the kind of outcome that can be made available to someone. Given the complexity involved, and the retraumatising effect of retelling the story, it is a difficult process for a victim survivor to navigate.

We have tried on numerous occasions to assist victim-survivors to self-advocate by arming them with information and contacts, but we almost always have to step in and represent them when they call us back to say they are not getting the support they need. Even where banks have set up specialised support services, they are not always empowered to assist with the full range of problems victim-survivors present with. For example, a particular area of the bank can help with escaping violence payments and referrals to support services but cannot look at a liability issue or joint account issue stemming from the same set of facts. We understand these problems will necessarily involve other sections of the bank, but the support departments/helpline staff should be able to case manage the process, providing a single point of contact for the victim-survivor, preventing the need for re-telling their story and making sure the different parts of the bank are responding in a timely and co-ordinated manner. This is not always the case.

## **Improving protections for people experiencing financial abuse**

It is clear from above summary of the consumer protection landscape that protections as they apply to financial abuse in the financial services industry broadly and the credit and banking sector specifically are:

- piecemeal;
- focused on responding to abuse and developing remedies but not the prevention of financial abuse from the start, and
- found in self-regulatory guidance that is vague and aspirational.

Many of these laws or other regulatory arrangements vary depending on the institution involved and/or the financial product to which the abuse is connected.

There is limited law or regulation that applies across the financial sector and that is specifically directed to financial abuse. This is unfortunate because the variety of ways in which perpetrators can use the financial system and financial products or services to abuse victims (such as abuse of joint accounts, opening credit accounts in the name of the victim) means that cross industry rules and regulations are likely to be more effective at combatting abuse on an ongoing basis.

The current complexity of the piecemeal regulatory arrangements increases the likelihood of gaps in protection. It also increases the challenges and costs for victims and their advisers who seek to navigate the system to obtain a remedy.

While there is some, albeit insufficient focus, on preventing the abuse in the first place, the existing framework outlined above focuses primarily on providing remedies and improving the experience of victims of abuse. Prevention requires identification of the risk of abuse and



taking proactive steps through, for example, product design and constructive and sensitive engagement with customers, to prevent the risk before it materialises.

The truism, prevention is better than cure, is clearly apposite in relation to financial abuse. As a result of their experience, victims of financial abuse can face barriers to exercising legal rights through courts, through external dispute resolution bodies such as AFCA or through contacting a financial institution directly. Vulnerability to financial abuse is often correlated with, and increased by, other vulnerability factors (such as age, low English literacy, financial stress)<sup>33</sup> making the exercise of legal rights and engagement with financial institutions challenging, if not impossible without significant assistance from service providers, such as financial counsellors, and community and legal aid lawyers, whose services are under strain.

Finally, much of the key practical protections for consumers fall to the less than robust self-regulatory codes of practice and related aspirational best practice guidance that it at best weakly enforceable via AFCA.

We therefore see several opportunities to improve the broad financial services regulatory framework's approach to financial abuse.

### **Introduce legislative obligations to protect customers experiencing vulnerability**

The government should introduce clear obligations on all financial institutions (including the credit and banking sector) to protect vulnerable customers.

In the UK all financial firms are subject to conduct obligations which apply in relation to the supply of financial products or services to natural persons and which the regulator has clearly stated require firms to take steps to prevent and respond to financial abuse.

The UK Financial Conduct Authority (**FCA UK**), unlike ASIC, has rule making powers. Using these powers it has made the Principles for Business, which are a general statement of the fundamental conduct obligations of financial firms.<sup>34</sup> Relevantly, Principle 6 (Customers' interests) provides that:

'A firm must pay due regard to the interests of customers and treat them fairly' and Principle 12 (the Consumer Duty) provides that 'A firm must act to deliver good outcomes for retail customers.'

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<sup>33</sup> Bourova, Ramsay and Ali, [Limitations of Australia's Legal hardship Protections for Women with Debt Problems caused by Economic Abuse](#), (2019) 42 UNSWLJ 1146, 1161

<sup>34</sup> FCA [UK Principles for Businesses](#)

The FCA UK has issued guidance,<sup>35</sup> setting out what it thinks firms should do to comply with their obligations under the Principles<sup>36</sup> and to ensure they treat vulnerable customers fairly.<sup>37</sup>

This Guidance specifically recognises domestic abuse, including economic control, as a factor that creates vulnerability. It also focuses on ways that firms can prevent domestic abuse, as well as how firms should respond if harm occurs. Firms that breach the Principles because they fail to treat vulnerable consumers fairly may be liable to disciplinary action.

The FCA UK also takes vulnerability into account through the licensing or authorisation process. When applying for authorisation by the FCA a firm must provide a 'regulatory business plan', which, among other things, must set out information about applicant's approach to identifying, and meeting the needs of, customers in vulnerable circumstances. For example, it should set out:<sup>38</sup>

- how the applicant will identify when a customer is in a vulnerable circumstance;
- what the applicant's process will be when dealing with customers in vulnerable circumstances; and
- what services will be offered to customers who find themselves in vulnerable circumstances.

Introducing stronger, more effective powers for ASIC to oversee the credit and banking sector (as well as all other financial services sectors, including general insurance, life insurance etc) would support a framework directed at preventing financial abuse. The ability for ASIC to make rules should be part of the toolkit.

While responding appropriately to people impacted by abuse will always be an important, After-the-fact remedies are simply not as powerful as prevention. The financial services

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<sup>35</sup> FCA UK, FG21/1 [Guidance for firms on the fair treatment of vulnerable customers](#), February 2021

<sup>36</sup> FG 21/1 states that Principle 6 is the key principle underlying the need for firms to take particular care when dealing with vulnerable customers. Principle 12 (Consumer Duty) emphasises that treating vulnerable customers fairly is part of complying with Principle 6. Principle 12 (Consumer Duty) provides 'A firm must act to deliver good outcomes for retail customers.' is also relevant but is not referred to in FG 21/1 because it was finalised after the finalisation of FG 21/1

<sup>37</sup> The Guidance states that to achieve good outcomes for vulnerable customers, firms should:

- understand the needs of their target market / customer base
- ensure their staff have the right skills and capability to recognise and respond to the needs of vulnerable customers
- respond to customer needs throughout product design, flexible customer service provision and communications
- monitor and assess whether they are meeting and responding to the needs of customers with characteristics of vulnerability, and make improvements where this is not happening

<sup>38</sup> [How to apply for authorisation or registration | FCA](#)

sector needs to be obliged to take proactive steps to prevent the abuse in addition to making significant improvements in their ability to respond appropriately in the aftermath.

In the absence of new over-arching obligations, a consolidation of rules around financial abuse should at least be implemented. This can be achieved by shifting obligations on business out of guidelines and into clear consumer-outcome oriented rules will significantly strengthen the framework.

Consideration should also be given to establishing specific enforceable minimum standards for banks and credit providers via their self-regulatory Codes to act with respect to financial abuse. The aspirational nature of code guidance leads to inconsistent outcomes for victim survivors. Whether someone experiencing financial abuse is able to be supported in an appropriate manner is wholly dependent on chance and the willingness of individual firms providing minimal support, best practice support or somewhere in between.

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## **Recommendation | Legislative obligations on all financial institutions to protect vulnerable customers**

1. Introduce clear obligations on all financial institutions (including the credit and banking sector) to protect vulnerable customers
2. Give ASIC rule making powers, reflecting those of the UK's Financial Conduct Authority

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### **Make financial services and products safer**

Financial services and products (including those provided by the banking and credit sector) should be made safe from the start. This can be achieved by amending the design and distribution obligations to specifically ensure misuse of products have been considered and designed for.

Taking a safety by design approach to the development of products before they go to market will go a long way toward preventing financial abuse. Requiring a consideration of, and mitigation against, means products themselves will become safer.

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## **Recommendation | Make all financial products safer**

3. Amend the design and distribution obligations to require the design and distribution of financial products to prevent or impede financial abuse.

## **Report on root causes of financial abuse and how they are addressing it**

Training staff and relying on victim disclosure is the preferred approach of the financial institutions. These sophisticated financial institutions seem unwilling to use the data they hold to try to play a more hands-on role in understanding how they missed an instance of financial abuse and how they can stop it happening again.

All financial services should be required to play a more active role in identifying people who are subject to financial abuse and rely less on staff training alone to do this.

As services continue to move to digital-only delivery and there is less and less direct customer engagement, systems need to be far more sophisticated than they currently are. It is not enough to continue to say 'we can't know if no one tells us'.

Some answers will be found in the analysis of their own data – data that financial services firms only have access to.

Where a person is found to have experienced financial abuse, the institution should be conducting an investigation into the patterns and behaviours exhibited in transactions and interactions with the customer, to understand how it can better identify and prevent in the future. At scale, we expect financial institutions like banks will have a clearer understanding of how they can develop interventions.

Our concern is that financial service providers (like banks and others) will simply continue to position themselves as passive bystanders, rather than acknowledge that they are key players who can identify and disrupt abuse where it has occurred.

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## **Recommendation | Report on financial abuse**

- 4. Financial institutions should be obliged to report on the volume of financial abuse instances annually and publish investigations into the root cause.**

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### **Improve credit and banking sector practices**

In addition to opportunities to improve the broad financial services regulatory framework's approach to financial abuse, we also outline several specific recommendations to improve the credit and banking sector's approach to financial abuse more specifically, based upon the specific issues identified in the previous section.

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## Recommendation | Improve credit and banking sector practices

### *Introduce appropriate friction to lending process*

5. Require credit providers to introduce appropriate friction points that could expose financial abuse throughout the lifetime of the loan including at the on-boarding stage.

### *Regulate Buy Now Pay Later as credit*

6. Parliament pass the *Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024* and regulate BNPL as credit. The Bill should be amended to require Low Cost Credit providers to have regard to any signs that a consumer may be at risk of financial abuse.

### *Remove the Point-of-Sale exemption*

7. Implement Commissioner Hayne's and the Senate Standing Committees on Economics' recommendations to remove the exemptions from consumer credit regulation.

### *Improve access to credit and banking services*

8. Long term financial literacy and capability funding for First Nations communities is needed to help build financial skills and help protect people against financial abuse. This includes funding for community based financial workers.
9. Ensuring access to cash and in-person financial services where people bank in person is another important preventative to financial abuse for First Nations consumers.

### *Extend consumer protections to those who rely on Bank@Post*

10. Ensure Bank@Post is required to meet the requirements of the Banking Code of Practice.

### *Strengthen hardship requirements*

11. The hardship provisions of the Credit Act should be reformed to:
  - a. Make disclosure of family violence an automatic trigger for admittance into creditors' hardship programs

- b. Prescribe particular circumstances where creditors will need to consider debt waiver.
- c. Introduce the ability to access hardship for joint debt without the consent of the other co-debtor.

*Empower victim-survivors in dealing with joint accounts and loans*

- 12. Require banks to introduce simplified processes to separate joint accounts from abusive ex partners without notification.
- 13. Return to the original opt-in consent rules for joint account holders to access and share joint account data via the Consumer Data Right.
- 14. Joint loans should not be allowed where one debtor receives little or no benefit.

*Extend protections to small business owners*

- 15. Extend consumer protections with respect to financial abuse to people who run small to medium enterprises.

*Empower financial services to record and use information with respect to vulnerability*

- 16. Ensure all financial service providers have systems and processes that can capture and flag consumers in vulnerable circumstances including financial abuse.
  - 17. Require banks to introduce simplified processes to separate joint accounts from abusive ex partners without notification.
  - 18. Return to the original opt-in consent rules for joint account holders to access and share joint account data via the Consumer Data Right
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## Credit reporting

Credit reports are a record of a person's credit history. They include information about what credit products a person holds, their repayment history, records of any payment defaults and any financial hardship for open accounts. Australia's credit reporting framework plays a vital role in Australia's financial system by facilitating efficient credit assessments by lenders and reducing the risk of unsuitable lending to consumers, while balancing the privacy of accessing sensitive personal information.

Victims of financial abuse and family violence may engage with the credit reporting framework at various points. Victim survivors may seek to correct information in their credit report where an abuser has taken out credit in the victim's name and negative information such as a default is recorded.

Credit reports may also enable abusers obtaining information about a victim's financial situation with respect to joint accounts. Part IIIA of the *Privacy Act* is drafted on the basis of a credit provider reporting data on a contract with a single borrower to a single Credit Reporting Body (**CRB**) and may not effectively consider joint accounts with multiple borrowers.

In the current Attorney General's Department Review into Australia's Credit Reporting Framework, Financial Rights identified several solutions to reduce the risk of harm in the credit reporting framework in relation to family violence and financial abuse.<sup>39</sup>

### Issues faced by victim survivors in credit reporting

Family violence and financial abuse can have a serious impact on a person's financial independence, safety and well-being. There are numerous ways in which a victim survivor may experience credit reporting impacts because of abuse.

#### Financial abuse impacts credit reports

As outlined above, loans and credit facilities can be opened fraudulently, without the victim's knowledge or consent using the person's details and devices, both during the relationship and after separation. Similarly, the victim can be coerced into taking out loans and credit facilities, either jointly or in their own name, but largely or entirely for the abuser's benefit because of a spectrum of controlling and threatening conduct or actual violence. A loan may have been taken out with full knowledge and consent, but the victim is thrust into hardship

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<sup>39</sup> Financial Rights, [Joint Consumer Submission to AGD Review of Australia's Credit Reporting Framework](#), 7 June 2024.

because of being prevented from working, or having no control over his or her income, or experiencing physical or mental illness because of the abuse. In some cases, the victim/survivor may have been forced to flee with little or no preparation, leaving behind a job, home and other assets or belongings. Sometimes many or all these factors may be at play.

All of these have an impact upon one's credit report.

The difficulty of obtaining financial independence is often the most significant barrier for a victim survivor to leaving a violent relationship, and a lack of financial independence often results in a person returning to that relationship. Having a clear credit report is vital to this endeavour.

### **Case study 17. Sarabi's story - C218648**

Sarabi is a victim of domestic violence and has 2 dependent children with autism. Her mortgagee has granted her a hardship arrangement and frozen her payments during the pandemic, so she has not made any payments for a year. There is about \$300,000 equity in the property, but this is a joint mortgage with her abusive ex-husband. They have done a final separation document in court and Sarabi has an AVO against him.

When her ex moved out he stopped contributing to the mortgage. As a part of his continuing economic abuse he keeps calling the bank and reinstating the mortgage payments. Sarabi believes her ex wants her to lose the house. By removing the hardship arrangement, RHI is reported on her credit report again. He tells the bank that they are in the process of selling but Sarabi says that is not true. She wants to remain in the house with her children. Sarabi wants to refinance but the missed payments now on her credit report are making that impossible. She has called several lenders and they have all said she cannot secure a loan with her current credit score.

There is a court order that Sarabi's ex should be removed from the title and the mortgage but her credit report is now too poor. The poor handling of the situation has triggered her trauma anxiety from the domestic violence and left her scared that she and her children will end up homeless.



## Case study 18. Emma's story – C221006

Emma was in an abusive marriage for several years. After separating from her husband Emma had to take out an ADVO. He was later incarcerated for the abuse. During her relationship Emma's husband exerted coercive behaviour over her. He was unemployed and had a very bad credit history and he pressured her to take out loans to pay for his addiction.

When Emma reached out to Financial Rights for help she had no assets apart from a vehicle and she was renting in private accommodation. In late 2021 she became aware of a number of default listings on her credit report by different lenders and debt collectors. Emma wants these defaults removed so she can move on with her life.

Emma did not receive any benefit from these loans and was experiencing domestic violence at the time the loans were issued. Financial Rights has had to help her apply to each of the 6 creditors to show evidence of the domestic violence, resolve the debts and remove the default listings.

## Case study 19. Sophia's story - C201939

Sophia is a young single parent of a new baby and her sole source of income when she contacted us was Centrelink. Sophia had just recently taken out an AVO and separated from her partner of 7 years due to prolonged domestic violence including financial abuse. Sophia and her baby had to leave her rental and move to regional NSW to live with her parents because of her ex-partner's continued threatening behaviour. Sophia advised Financial Rights that her ex-partner has always been abusive physically and financially, that he did not contribute to household expenses so she had to manage all the bills herself – often when she was only working part-time.

When Financial Rights first started working with Sophia she had seven unsecured debts totalling around \$10,000. Financial Rights helped Sophia contact her creditors one by one to request the removal of default listings from her credit report. Financial Rights was continuously met with barriers to communicating or getting a response from some of the creditors but in the end we were successful at helping Sophia clear her credit report. Sophia's life is now turning around, she seems happy and is back working with her previous employer before she had to flee her home. She would never have been able to this without professional support.

## Case study 20. Tilly's story – S288603

Tilly is a young First Nations woman with an intellectual and other disability. She lives in transitional housing and receives the Disability Support Pension.

Tilly contacted us because she wanted to rent a home but is being denied leases because estate agents say she has a bad credit report and they won't rent to her. She obtained copies of her credit reports and sought our help.

We discovered that Tilly's last two partners had taken advantage of her and taken multiple BNPL loans and a person loan out in her name. She has been trying to pay them back as these are the debts on her credit report. She didn't receive any benefit from the loans and is unable to afford the repayment arrangement she entered to try and address the debts.

## Customer-based vs account-based reporting

The credit reporting regime deals with accounts rather than individuals which can cause significant issues.

Credit Providers (**CPs**) and AFCA accept that there are circumstances where one joint borrower should not have been a borrower, should not be liable for payment, and/or should be granted a variation without notice to the other borrower due to safety concerns. These approaches should be supported by the credit reporting framework.

However, consumer representatives raised concerns in a submission to the OAIC in April 2021 with regards to how the new Mandatory Legislation was going to be interpreted and implemented into the Credit Reporting Code (**CR Code**). That submission argued that account-based reporting is inappropriate, and that individual based reporting is the optimal way to meet both privacy and safety objectives for at risk borrowers. Account-based reporting necessarily includes weighing up the privacy rights of one joint account holder against the safety and privacy rights of the other. Safety should trump privacy in these circumstances.

The assumption that account-based reporting is fundamental to the credit reporting system is not correct. While we recognise that converting the entire system to individual reporting would entail costs, individual reporting is possible in discrete cases. Our anecdotal experience is that credit providers can manually report different repayment histories for different joint account holders. In the context of victim survivors of economic abuse, this change can be critical.

The credit reporting framework should allow the credit information on joint accounts to be split in discrete economic abuse situations where the CP and the individual agree it is the best option.

### **Case study 21. Josephine's story - S305012**

Josephine took out a joint mortgage with her two siblings over an investment property. They have an agreement about how much each sibling will pay towards the loan. Unfortunately, one of her siblings struggles with mental health issues and can be very controlling and abusive. When he does not get what he wants he stops making payments on the mortgage. The joint loan is now three months in arrears and Josephine's credit report is beginning to show missed payments in her RHI even though she and her sister pay their portion each month.

Josephine's relationship with her unwell sibling has now broken down. He is taking the rental income directly from the tenants in the property and not making any payments on the loan. Josephine and her sister cannot service the loan on their own. They have hired a solicitor to go to court to sell the property but in the meantime Josephine's credit history is getting ruined. She wants to purchase her own property once this one is sold but she won't be able to with a poor credit history. She has asked the bank about a hardship arrangement but was told she needs her brother's agreement to put that in place. Even when she pushed back and told them this is an abusive situation the bank still said they would try to contact her brother for the next 2-3 months before actioning the hardship arrangement.

### **Dealing with commercial credit reporting can be difficult**

We have also seen examples of harm through commercial credit reporting. Commercial credit reporting is the maintenance and reporting of credit histories and risks for commercial companies. These reports are typically created by credit rating bodies that also create credit ratings to help assess companies.

Commercial credit reporting is similar to consumer credit reports but specifically for businesses to assess risk in extending loans. Government departments are also large users of commercial credit for regulating businesses and in collecting taxes. In general commercial credit providers are less sophisticated in supporting victim survivors of financial abuse.

### **Case study 22. Erin's story – S303830**

Erin is a financial counsellor trying to support a client that has escaped a financially abusive relationship. Erin is trying to help her client remove a default from her commercial credit file

that was the result of financial abuse. Unfortunately, Erin has had a very frustrating experience working with the commercial credit provider.

First the commercial credit provider told Erin that they cannot remove defaults simply based on the evidence Erin had provided regarding the financial abuse. The credit provider told Erin they found it “hard to believe any creditor would waive a debt simply based on DV and coercive behaviour”.

The commercial credit provider told Erin if she wanted to pursue the correction there would need to be a thorough legal investigation which would require proof that this specific debt had been taken out fraudulently before they would be prepared to consider removing the debt from the commercial credit file. The commercial credit provider told Erin her client would need to engage a solicitor to work through this matter with their legal team. Erin told the commercial credit provider that her client did not have the resources to hire a solicitor and that they were not following best practices when it comes to financial abuse of their customer. They told Erin that if she does nothing from here, they won't take any further action, but the default will stay on her client's credit report.

### **Case study 23. Wendy's story - S291610**

Wendy had escaped an abusive relationship and was beginning to put her life back together. She applied for a car loan and was rejected because, unbeknownst to her, Wendy had a commercial listing on her credit report. Wendy contacted the company with which the listing was associated and discovered that her ex-partner had put her down as a 'manager' of that company on a credit application. Wendy explained this to the company, and the company said that they would remove the listing if she sent them a considerable volume of personal information about her circumstances.

Wendy came to us for advice on how to limit the information she gave to the company. Much of the information the company requested related to the period during which she was in an abusive relationship. Wendy would find it challenging and re-traumatising to find and submit some of her personal information from that time.

## **Protections for people experiencing financial abuse in credit reporting**

Like many other financial services, the regulation of credit reporting is complicated. Some credit reporting provisions exist in Part IIIA of the *Privacy Act* and other mandatory credit

reporting provisions exist in Part 3-2CA of the Credit Act. Additional regulatory obligations are included in the CR Code and the Principles of Reciprocal Data Exchange (**PRDE**), which is a self-regulatory set of principles between credit reporting bodies and credit providers.

A wholesale review of the credit reporting framework is currently underway, having been initiated in April 2024. Financial Rights has worked closely on making improvements to the regime for many years and is leading the development of a joint consumer-sector submission.

## Key current protections

After the 2021 Independent review of the CR Code the Australian Retail Credit Association (**ARCA**) made a number of amendments to better protect victims of financial abuse and family violence. The changes to the CR Code include:

- Amending the corrections provisions to include domestic abuse as an example of “circumstances beyond the individual’s control”;
- Extending correction requests to include CPs;
- Expanding the correctable categories of information; and
- Creating a new mechanism to enable the correction of multiple instances of incorrect information stemming from one event (like family violence).

Consumer representatives supported these changes and will continue to work with ARCA to ensure protections in the CR Code keep evolving.

ASIC has also taken steps to protect victim survivor of financial abuse in the credit reporting space. In July 2022, shortly after credit reporting changes meant that financial hardship information would be recorded against an individual’s repayment history, ASIC advised large banks who are subject to mandatory credit reporting obligations of a new tool. ASIC’s no-action letter to banks indicated that they could withhold the reporting of certain credit information where there was a joint account and family violence was involved.<sup>40</sup> ASIC stressed at the time this was a temporary measure, but it has remained in place.

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<sup>40</sup> ASIC, [No-action letter – Notifying joint account holders \(family violence\)](#), 8 July 2022

# Improving protections for people experiencing financial abuse via the credit reporting system

## Greater flexibility for credit providers to not list or to correct past credit reporting information

The most important change that needs to be made to the credit reporting framework to ensure victims of financial abuse are protected is to ensure there is flexibility built into the reporting frameworks. No two financial abuse situations are the same and credit providers need to have the flexibility to support their customers without being hamstrung by mandatory or strict reporting rules.

There needs to be greater flexibility for CPs not to list or to remove negative information from credit reports. In practice CPs regularly agree to waive a debt or not pursue payment against one account holder due to the debt being incurred in connection with domestic abuse. The ABA issued an updated industry guideline on the matter.<sup>41</sup>

Best practice for banks is to not enter negative credit information if a customer is affected by family and domestic violence. Under this guideline, banks should not reflect missed repayments or list defaults if the bank is aware that family and domestic violence has affected the consumer's ability to pay or may be relevant to their liability to pay the debt. Of course, there will be many times when a victim survivor is not able to communicate about their situation to the credit provider because they are either experiencing or fleeing violence, unaware of the financial abuse or otherwise incapacitated. If those individuals later reach out to a CP for assistance, the CP should be able to update and correct past repayment history information or remove defaults that have already been listed. This type of flexibility to correct is also important for victims of scams and identity theft.

ARCA has been working on industry guidance which confirms that the CR Code and the PRDE allow lenders (in cases of financial abuse) to suppress or correct past credit reporting information where the circumstances of the negative information were beyond the individual's control and the CP believes it is necessary to protect the safety of an individual or where the credit reporting information would be inaccurate, irrelevant or misleading.

## Make the ASIC 2022 No Action letter permanent

Notwithstanding the above, ASIC's 2022 No Action letter demonstrates that there is an issue associated with the inflexibility of the existing mandatory reporting rules. ASIC's letter relates to the requirement for CPs to notify joint account holders about hardship variations, however when there is family violence involved there were concerns for the safety of victim survivors if

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<sup>41</sup> ABA, [Financial Abuse and Family and Domestic Violence](#), April 2021

a perpetrator was given notice about a hardship variation. ASIC is essentially making a promise not to enforce a breach of the law but has included a number of caveats in the letter.<sup>42</sup> We also note that while the No Action letter has been implemented, it is only temporary to allow time for a more detailed policy consideration to occur. So, it is critical that this be addressed.

## **Best practice guideline is needed for credit reporting bureaus**

We have advocated that industry body ARCA develop a best practice financial abuse guideline for CRBs and CPs. The ABA guideline on Financial Abuse sets a high industry- albeit voluntary - standard including recognition of a trauma informed approach, but not all lenders are ABA members.

Credit reporting bureaus would also benefit from guidance on best practice when a victim survivor reaches out with a security or correction request.

Introducing clear guidance for credit reporting bureaus and credit providers that is consistent with other financial service providers will be important for achieving better outcomes for victims of financial abuse.

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## **Recommendation | Credit Reporting**

- 19. Credit reporting regime needs to embed flexibility into the regime to ensure victims of financial abuse are not penalised by the regime.**
- 20. The credit reporting framework should mandate the inclusion of a mechanism for splitting joint accounts.**
- 21. Require credit providers to inform a survivor/victim of the options available**
- 22. ASIC's 2022 No Action letter should be made permanent**

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<sup>42</sup> ASIC, [No-action letter – Notifying joint account holders \(family violence\)](#), 8 July 2022

# General Insurance

General insurance helps people to protect themselves against financial losses borne of risks against their assets including their home or motor vehicle. Insurance can be taken out by a single person over an asset but can also be taken out jointly – with family members or spouses.

The design of general insurance products as well as the service delivery of insurers can lead to significant detriment to people experiencing financial abuse and may amplify the harms being experienced by a victim. This section outlines the most common issues that we see on the Insurance Law Service.

## Issues faced by victim survivors in general insurance

### General insurance is used as a weapon

General insurance can be used as a weapon when a perpetrator has control, or takes control, over family insurances. A victim-survivor can be deprived of the insurance (by a non-disclosure), of a claim (via an exclusion), of a payment (where a payout is made to a perpetrator) or of information about the insurance (if the insurance is in the perpetrators name alone).

There are multiple ways a perpetrator can wield a general insurance product as a weapon. For example, a perpetrator can:

- A perpetrator can take control of the family insurances through cancelling the policy or varying the policy, removing the victim-survivor as a co-insured party or third-party beneficiary. This is done to ensure that a victim-survivor is not covered by the policy, claim or payment.
- A perpetrator can refuse to access a benefit under a policy in their own name, such as temporary accommodation under home and contents insurance, because it is the victim-survivor (and possibly children) living in the home and in need of the benefit.
- A perpetrator can use insurance to stalk their ex-partner by accessing new contact and address details.
- A perpetrator can force victim-survivors to pay an excess following an accident.

The following case study involves a perpetrator controlling the insurance such that it deprived the victim-survivor of much needed temporary accommodation and demonstrates the misuse of insurance and non-responsiveness of an insurer to the fraught situation.



## Case study 24. Imelda's story - S258723

Imelda was in de-facto relationship with Ronald from whom she suffered financial abuse. They had two children together and Imelda had been stay at home mum since 2012. The title to the marital home and the insurance policy that covered it was in Ronalds name only.

In 2019 they separated and Imelda and the children remained in the home (shared custody). Imelda started seeing John who physically abused her and in 2020 he beat her up and then set fire to the house. Imelda ran out of the house with only the clothes on her back and has been (with the kids) in crisis accommodation ever since.

Ronald claimed on the insurance policy but refused to claim the temporary accommodation benefit. Imelda had been dealing with the insurer's agent and asking for temporary accommodation but no accommodation was provided.

Our solicitor contacted the insurer seeking to claim under the policy on the basis that Imelda:

- was a third party beneficiary under the policy;
- was a tenant in the property;
- is an equitable owner of the property as it was the marital home to which she contributed
- is the victim of financial abuse by Ronald and to deny her the benefit would be for the insurer to assist in the furtherance of the financial abuse toward her;
- is claiming urgent financial need of benefits under 7.7 of the General Insurance Code of Practice (as it was at the time)
- been asking insurer for temp accommodation in her dealings with their agent so insurer had been on notice of claim for some time
- under the Family and Domestic Violence policy insurer promises to recognise vulnerable customers, be flexible and explore best options.

After our intervention Imelda was provided assistance.

## Case study 25. Namrata's story - S258851

Namrata was separated from her abusive husband when she contacted us. Together they have 3 children, a property, and 2 cars that were both in his name. A family court order regarding the property was underway.

Namrata was using the lowest valued (under \$5000) family car to look after their children. She applied for insurance with a couple of insurers, but they told her they could not insure her as the vehicle was not registered in her name. Namrata wasn't sure what to do, as she needed insurance to use the car.

### **Innocent co-insured parties are unfairly treated because of acts of a partner**

The second key issue relates to the conduct of a perpetrator, which generally activates an exclusion.

For example, many if not most home and contents policies have intentional or malicious damage clauses.<sup>43</sup> Malicious damage is regarded as intentional, and includes actions (e.g., damaging a letterbox) also referred to as vandalism. Malicious damage clauses can act against the interests of a victim survivor in a number of ways. Firstly, innocent victim survivors end up uncovered for damage caused by a perpetrator, and secondly, certain requirements such as mandatory reporting of the event to police in order that the event be covered and secondly.

### **Victim survivors are left uncovered for damage**

Policy wordings vary in their approach to the conduct of others but generally:

- the insured person has no claim for damage to or loss of the home or contents caused intentionally by a family member;
- a family member is defined widely to include a partner or spouse and can be extended to a resident or an invitee, even an estranged or former spouse or partner.

Our service has assisted clients who have had an ex-partner wilfully damaged insured property, and the insurer has relied on clauses that exclude cover for damage by known

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<sup>43</sup> Diana M. Grace, Ph.D. and Michael J. Platow, Ph.D., [Standardising general insurance definitions](#) March 2022

parties. The consequence is often that the family violence survivor and the family are not entitled to a claim on the home building or home contents insurance.

### **Case study 26. Vivi's story - S307964**

Vivi took out home contents insurance after moving in with her partner. Her partner perpetrated domestic violence against her. Vivi had to flee the home leaving her contents behind (some were destroyed/damaged by partner).

Vivi tried to claim on the contents insurance and was initially told property damage by "family" was excluded but the insurer would consider an ex-gratia payment.

Vivi was made to jump through hoops responding to the insurer. She asked for a female assessor to come to her property, but insurer sent a male. There were other broken promises by the insurer and overall poor handling of the claim caused Vivi significant stress.

After all this the insurer fell back to their position that they would offer nothing as not covered under policy. The only reason Vivi had agreed to continue the claim was she thought the insurer was making assessments to decide on the ex-gratia payment.

### **Case study 27. Amira's story - S308555**

Amira is a relatively new migrant to Australia. She used own savings to purchase own car but did not know how to apply for insurance. Her partner applied on her behalf and put the insurance in both names.

After the relationship ended, the ex-partner took Amira's car and crashed it. Her insurer is refusing to pay, as say that partner is likely to have committed insurance fraud, and had a bad driving history so had they known of this they wouldn't have offered insurance. Amira says if she had better understanding of insurance she would've put insurance into her sole name, as it was her car.

The reason why these clauses act against the interest of victim survivors is because of the joint nature of the policy. A joint policy indemnifies co-insureds where there is a joint loss

and is typically used for home or car insurance. A composite policy is generally used for business insurance, allows for each insured to have a separate and distinct claim.

To get around this, two insurers – Suncorp and Allianz - have introduced a 'conduct of others' clause to provide flexibility to pay a claim in cases of mental illness, substance abuse and/or an act of violence or intimidation by a co-insured, even where there is no legal requirement to do so.

The need for 'conduct of others' clauses has been raised by advocates with the insurance industry for nearly 2 decades. As the Centre for Women's Economic Safety *Designed to Disrupt* insurance report notes, it took 16 years before the first insurer acted to introduce this provision, and only one other has since joined suit.<sup>44</sup>

This is a well-known problem to the general insurance industry and one that requires an industry-wide standard rather than an insurer fortuitously having such a clause if it's needed. The ability to perpetuate financial abuse will continue until all insurers introduce 'conduct of others' clauses.

### **Insurers oblige people to act in ways that compromise their personal safety**

Some insurers ask claimants to act in such a way that could compromise their safety - specifically requiring them inform police in the case of a "malicious act". This can pose a significant risk in cases of domestic violence which has already been recognised as a risk by consumer advocates and some insurers. Instances of domestic violence are not the only circumstances in which informing the police may cause harm. For example, a person exposed to violence may not have previously reported this to the police and may be subjected to providing additional evidence in order to obtain this exemption.

The insurance industry should abandon this particular requirement, given the often undue encumbrance the requirement to report malicious acts to the police can place on claimants, and noting that not all insurers have this requirement.

### **Innocent co-insureds are disadvantaged by a perpetrator's failure to disclose**

Similar to the above scenarios is the situation where a co-insured is denied coverage on the basis that the other joint owner of the insurance product has failed to disclose important information to the insurer.

Much of the law on this issue is guided by the High Court decision in *Advance (N.S.W.) Insurance Agencies Pty. Limited v Matthews (1989) 166 CLR 606* (or Matthew's case). In that case. Mr and Mrs Matthews took out joint insurance to cover their household contents. Two

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<sup>44</sup> Catherine Fitzpatrick, Centre for Women's Economic Safety, [Reimagining general insurance products to improve financial safety, CWES Discussion Paper 2](#),

days later, their home was robbed in relation to which they made a claim on the policy. The Insurer rejected the claim because Mr Matthews failed to disclose that he previously had an insurance claim rejected. Mrs Matthews was unable to recover any compensation despite being unaware of the issue.

The High Court determined that Mr Matthews' actions precluded the co-insured Mrs Matthews from receiving any compensation from the Insurer. The majority found that it would be unfair for a co-insured party "responsible for the fraudulent non-disclosure to be able to compel performance of the contract by the Insurer". The Court noted the unfairness of the result to Mrs Matthews but held that "it is not a matter that compels one to adopt a different construction".

The reasoning in the *Matthews* case has been used in other scenarios impacting innocent co-insureds. For example, *MMI General Insurance Ltd v Baktoo [2000] NSWCA 70* the NSW Court of Appeal found that in the case of the insurance of the joint interest of two insureds in a property, an innocent co-insured is entitled to be indemnified where the other co-insured has fraudulently attempted to obtain a benefit under the policy.

## **Poor claims handling practices**

The third issue involves issues about how a survivor is treated by insurers particularly during the claims management process and during interviews.

Insurers can be reticent to deal fairly with victims of abuse. The Insurance Law Service is often engaged in cases where IDR has failed, but quickly resolves with our intervention despite no new information being forthcoming.

### **Case study 28. May's story - S299920**

May is a single mother of 2. She ex-husband perpetrated violence against her and she has an DVO against him.

May's car was stolen from her garage and she made a claim on her comprehensive car insurance. The insurer denied the claim stating she had left a key to the car in close proximity while the car was unattended. May had previously been advised by the police to keep a key close to her car in case her ex-husband breached the DVO and she had to flee quickly.

May disputed the denial with the insurer without success, and then sought our help.

Once we intervened, the insurer very quickly overturned the denial of the claim and offered to pay May an additional goodwill payment, which she accepted.

## Protections for people experiencing financial abuse in general insurance

The preceding section outlined several of the on the ground/day to day issues and frustrations victim survivors of financial abuse experience when dealing with the general insurance sector. It points to a number of failures and gaps in the consumer protection framework as it applies to financial abuse in specific circumstances.

This section examines the consumer protections framework as it applies to financial abuse in the general insurance sector.

### Key current protections in general insurance

General insurers are subject to the same provisions that apply to all other financial services – with all their flaws, as outlined above under Credit and Banking. These are:

- the 'efficiently, honestly and fairly' requirements under the *Corporations Act 2001*
- the equitable doctrines of undue influence and unconscionable conduct
- the General consumer protection provisions under the *Australian Securities and Investments Commission Act 2001*.
- design and distribution obligations.

The key governing legislation for general insurers is the *Insurance Contracts Act 1984* which outlines the rights and obligations of insurance contracts. It outlines the responsibilities of both insurers and those who are insured, including the duty of utmost good faith, the duty to take reasonable steps to not make a misrepresentation.

It addresses fraudulent claims, pre-existing defects, subrogation and numerous other ways to protect insurers and insureds.

It does not address financial abuse or spell out any obligations general insurers should have towards those experiencing vulnerability.

The [Insurance Contracts Regulations 2017](#) does include one standard definition – for flood – and a standard cover regime – but this does not include any standard definitions for the concepts therein. It has also been widely acknowledged as being ineffective.<sup>45</sup>

The key consumer protections relating to financial abuse arise out of General Insurance Code of Practice. However, the commitments made to customers with respect to family violence or financial abuse are limited.

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<sup>45</sup> See Treasury, [Standardising natural hazard definitions and reviewing standard cover for insurance Consultation paper](#) March 2024

For example, Clause 91 acknowledges “family violence” as a factor contributing to vulnerability – although it does not extend to domestic violence, financial abuse or elder abuse. Clause 95 commits subscribers to:

- (a) have a publicly available policy about how the subscriber will support consumers affected by family violence.
- (b) that this policy will be published on the subscriber’s website.

The Insurance Council of Australia (**ICA**) has also produced a non-binding, aspirational guidance for insurers to assist them to meet their Clause 95(b) commitment.<sup>46</sup> The ICA’s Family Violence Guidance Document details how subscribers to the General Insurance Code can identify and support people affected by family violence, to help ensure timely, consistent and targeted assistance is provided during the claims process and at other points of contact.

The General Insurance Code Governance Committee released research into whether subscribers met these basic commitments.<sup>47</sup> 2021 research from ourselves subsequently examined whether subscribers met not just the letter of the commitment but the spirit of the commitment – i.e. the quality of the policies developed and what protections and commitments were being made to customers who may be subject to family violence.<sup>48</sup> This research found that a little over half the subscribers had policies that addressed only half of the requirements under the 11 areas listed in the ICA’s Guide to helping customers affected by family violence to be included in a family violence policy.<sup>49</sup>

In addition to this, the ICA has developed standards for investigators under the enforceable code. The standards require that when an insurer is aware that a customer is being affected by family violence, the insurer must use an interviewer whom they are satisfied has appropriate training or experience to carry out the interview.

## **Improving protections for people experiencing financial abuse**

In line with recommendations above, laws applying to all financial services should be reformed to protect customers experiencing vulnerability including– introducing reforms to design and distribution obligations to make general insurance products safer, and introducing legislative obligations protect customers experiencing vulnerability.

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<sup>46</sup> ICA, [Guide to helping customers affected by family violence](#), 2020

<sup>47</sup> CGC, [Assessment of compliance with new provision on family violence policies](#), March 2021

<sup>48</sup> Financial Rights, [Family Violence and General Insurance: Desktop audit of family violence policies](#), August 2021

<sup>49</sup> Financial Rights is undertaking an update of this research to examine whether insurer subscribers have improved their approach to their family violence policies. This should be available to the reviewers to consider in June.

However, consideration also needs to be given to addressing specific issues that arise in the general insurance sector, given the nature of the product and its regulation.

Reforms to the *Insurance Contracts Act* are required, for example, to address the issues raised by loss or damage caused by a co-insured, family member or visitor. Innocent co-insureds should not be penalised where it was unreasonable for them to know the other party had failed to disclose relevant information to the insurer.

The general insurance sector can also take steps now on their own to improve their approach to people experiencing financial abuse and family and domestic violence by strengthening, and making more enforceable, the General Insurance Code.

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## Recommendation | General Insurance

23. Clarify the duty of utmost good faith to include meeting obligations towards customers experiencing vulnerability – including those experiencing financial abuse.
24. Amend the *Insurance Contracts Act* to provide insurers more leeway to deem a joint insurance policy to be a composite policy in certain situation including upon separation or divorce of co-insureds, or in situations where a victim-survivor's claim would ordinarily be denied due of a wilful act or breach by a perpetrator.
25. Require general insurance products to include a standard 'conduct of others clause' to enable insurer discretion where 'malicious damage' exclusions disadvantage a victim-survivor.
26. Address the *Matthews case* which effectively penalises an 'innocent' co-insured where the other party has failed to disclose relevant information to the insurer.
27. Key elements of the Insurance Council Family Violence Guide should be included in the General Insurance Code in such a way that empowers the CGC to assess subscribers meeting the content expectations of a family violence policy and compliance with their commitments made under those policies
28. The General Insurance Code should be strengthened and include commitments to meet best practice standards including:
  - d. introducing a large button to navigate quickly away from a financial abuse page to another website for safety reasons
  - e. flagging (with consent) those customers impacted by family and domestic violence



- f. ensuring communication preferences (including gender preferences) are considered, and
- g. assuring customers that their family violence situation will not hurt their claim
- h. preventing perpetrators being able to cancel insurance policies with an insurer without the knowledge or consent of a victim-survivor
- i. not requiring notification or consent to the other joint policyholder when assessing financial hardship of a victim-survivor
- j. fast tracking hardship request and support
- k. not notifying claims (or seeking consent on a claim) from a co-policyholder where family violence is involved
- l. including a term in insurers' terms and conditions that make financial abuse an unacceptable customer behaviour, with consequences for those who misuse insurance products or services.

**29. Include the Code as part of the Terms and Conditions of the contract - making all clauses in the Code enforceable**

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# Life Insurance

Life insurance policies can be an important financial protection for families.

Life insurance policies pay out a sum upon death or diagnosis of a terminal illness, usually during the term of cover. Life insurance can be taken out in single or joint names, and aims to financially protect a beneficiary, usually a child or partner, upon death of the policyholder.

However, there are many elements of the ownership and contractual design of life insurance that can be used as an opportunity for financial abuse and coercive and controlling behaviour both during a relationship, and long after separation.

## Issues faced by victim survivors in life insurance

### The difficulty of changing life insurance policies

Life insurance policies are usually taken out by someone over their own life and choose a family member to be the beneficiary. Other policies may be jointly owned by say, a husband and wife.

Issues arise however when one party to a joint life insurance either wants to be removed from the policy or remove a perpetrator's name to then hold the policy in their own name solely. The privity of contract requires that the owners must agree to any changes to, or assignment or cancellation of, the policy. In situations of family violence, this can cause problems where a perpetrator does not agree to a change.

### Case study 29. Nadia's story - S248392

After consulting a financial planner with her husband, Nadia bought a life insurance policy for the family including 3 children. As the main income earner she was the insured person, and her husband the policy owner.

20 years later, the relationship broke down. While they were in the process of divorcing, Nadia was diagnosed with terminal cancer. Her husband had legal representation during the divorce, but Nadia decided to self-represent and a settlement was entered.

After agreeing to terms on the divorce, Nadia discovered the life insurance policy still in force. Nadia wanted to claim the terminal illness policy, but her ex-husband refused to assign her the rights. Nadia was distressed, at the thought he was waiting for her to die and would not take any steps to help her.

Nadia was found to have no legal rights and her only course of action was to seek family law orders to compel the insurer to transfer the policy as it was considered property.

### Case study 30. Jesse's story - S245569

Jesse contacted us in 2020 because 4 life insurance policies she and her ex-partner had held for over a decade were in arrears and due to lapse due to non-payment. Jesse has a restraining order against her ex-partner, who is in custody on charges for violence committed against her, with whom she has children.

Jesse understood that they each had 2 separate policies each for death and trauma. However, correspondence from the insurer stated they were in fact joint policy holders, which then separately lists them as life insured for 2 each of the policies. The insurer did not have the PDS publicly available on their website.

Jesse could afford to pay the \$90 for her own overdue premiums but would struggle with the additional premium for all of them. Jesse couldn't afford the 4 premiums and wanted to pay for just her policies and lower the amount of cover to reduce the cost. However, the insurer told that the policies are in joint names and that any changes made to one policy would require both parties to sign paperwork (meaning lawyers would need to assist given the restraining order in place).

Jesse wanted to keep her cover without having to contact her ex, and without going through the underwriting process again. She decided to request a change of terms to the policies based on the financial hardship provisions of the Life Insurance Code of Practice. However, the Code does not oblige the insurer to convert the joint policy to a single policy, nor to offer her a single policy on the same terms she originally agreed to.

There is no legislative basis to require the cancellation or assignment of an insurance policy where a policy owner has ceased to have an insurable interest over the life of someone.

Another issue that arises in the fact that a perpetrator can unilaterally stop payments of premiums on a jointly held policy, the failure of which will lead to the policy lapsing and coverage ceasing. This can be done to cause distress or force a victim-survivor to pay, causing them financial difficulty.

## The ease of taking out a policy over somebody else

Life policies can also be taken out by a perpetrator over a victim-survivor without the victim-survivor's consent or knowledge are used as a mechanism for coercion and control. This is a chilling tool of financial abuse that intimidates and threatens people when they discover what has occurred.

### Case study 31. Denise's story - S305627

Denise's relative was a perpetrator of domestic violence in the past, predominantly using coercive control against herself and her mother. The family member was a financial advisor and had spoken to her about obtaining a life and trauma policy and she participated in completing some health information. To her knowledge the application was not submitted. To her surprise, some years later she was contacted by a financial advisor and advised there was such a product.

She contacted the insurance company that the policies were held with, to ask them if she could amend the beneficiary of the life insurance policy, and if she needed to make a claim on the trauma insurance policy, could she contact them directly, rather than going through the family member. She was advised as she was not the policyholder, they could not agree to either of those requests.

Given the past history of domestic violence, she did not want to reach out to financial advisor directly, but she wanted these policies cancelled, as she felt it was another way the family member was trying to control her life (and she did not feel great about them benefiting financially from her death). It was causing her a great deal of distress.

The victim survivor who is insured under the life insurance policy but who is not the owner has no power to make any changes, again due to the privity of contract.

Traditionally an insured needed to show that they had an 'insurable interest'. Since 1995, for insurance contracts to which the *Insurance Contracts Act 1984* applies, there is no longer any requirement for the policyowner of a life insurance contract to have an insurable interest in the life insured. The *Insurance Contracts Act 1984* now provides that:

A contract to which this section applies is not void by reason only that the insured did not have, at the time when the contract was entered into, an interest in the subject-matter of the contract.<sup>50</sup>

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<sup>50</sup> Section 18, *Insurance Contracts Act 1984*

There is also no requirement to specify 'the names of the persons who may benefit under the contract' in the policy document.<sup>51</sup>

The shift to the use of new technologies for purchasing life insurance policies also raises the ability for perpetrators to impersonate a victim-survivor and fill in their details.

Taking out life insurance over a victim-survivor with their knowledge can also be threatening and used against a victim. For example, perpetrators can threaten to take the victim-survivor's life to gain financially from the life insurance policy. The same threat can be made to those with a jointly held policy.

## **Protections for people experiencing financial abuse in life insurance**

### **Key current protections in life insurance**

Life insurers are subject to the same provisions that apply to all other financial services – with all their flaws, as outlined above under Credit and Banking. These are:

- the 'efficiently, honestly and fairly' requirements under the *Corporations Act 2001*
- the equitable doctrines of undue influence and unconscionable conduct
- the General consumer protection provisions under the *Australian Securities and Investments Commission Act 2001*.
- design and distribution obligations.

The *Insurance Contracts Act 1984* and *Life Insurance Act 1995* are the primary legislation that applies to life insurance products. Like other legislation in the financial services sector referenced in this submission there are no specific requirements to consider financial abuse or vulnerabilities. In fact, as outlined above, many of the ways in which life insurance is designed and regulated –the nature of "insurable interests", the privity of contract etc - acts counter to the interests of victim-survivors.

Life Insurers have also made self-regulatory commitments via the Life Insurance Code of Practice.<sup>52</sup> Like the general insurance code, this code commits life insurers to support customers experiencing vulnerability<sup>53</sup> and those experiencing financial hardship.<sup>54</sup>

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<sup>51</sup> Section 20, *Insurance Contracts Act 1984*

<sup>52</sup> [Life Insurance Code of Practice 2.1.1 \(Current\)](#)

<sup>53</sup> Clauses 6.9-6.17 of the Life Code

<sup>54</sup> Clauses 6.18-6.22 of the Life Code

Since the 2023 review of the Life Code, insurers have been obliged to have a publicly available policy on their websites outlining how they will support people impacted by family violence.

To support the development of these policies there is an FSC Life Insurance Family and Domestic Violence Policy however this is an aspirational document, does not bind insurers nor does it have legal force. Compliance with the guide is voluntary.

Financial Rights undertook a desktop audit of life insurance family violence policies in May 2024, to benchmark all Life Insurance Code subscribers and to encourage ongoing improvements to their family violence policies. Our assessment found that insurer family violence policies varied considerably in meeting the 11 areas that a policy “should” have. Only one subscriber of the 17 surveyed was found to have a policy that addressed all 11 code clauses. Disappointingly, a little over half the subscribers scored 5.5 out of 11 or less.

Once again, the specific obligations sit outside legislation and the self-regulatory Code in a guideline.

## **Improving protections for people experiencing financial abuse**

The Government needs to consider the current life insurance regulatory framework and how it impedes positive outcomes for victim-survivors or financial abuse.

At a broad financial services sector level – introducing reforms to design and distribution obligations to make life insurance products safer, legislative obligations to protect customers experiencing vulnerability can assist.

More specifically though we need to examine ways to ensure that victim-survivors can have more rights around varying insurance contracts in the multiple situations outlined above.

A number of solutions have been proposed in the UK,<sup>55</sup> with respect to similar issues with financial abuse and life insurance there. These should be taken into consideration in the Australian context.

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## **Recommendation | Life Insurance**

- 30. Establish a mechanism (or mechanisms) for joint policies to be cancelled or replaced with individual policies to reduce the risk of harm to the victim-survivor of economic abuse. This could include insurers adopting standard clauses in terms and conditions that enable one party to end life insurance policies over their life or**

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<sup>55</sup> Surviving Economic Abuse, [Life insurance and economic abuse - The challenges faced by victim-survivors of economic abuse in accessing and ending life insurance protection](#), 2023

to convert them to some form of own life policy. It could potentially involve commitments made under the Code of Practice.

31. Prevent perpetrators from taking life insurance policies out in joint names without one party's expressed consent or knowledge. This could insurers committing under the Code of Practice or contractually to confirm all parties' consent to a policy being set up in their name, and adjustments should be made to ensure all parties are able to access this information and provide consent.
  32. Life insurers should commit to set up life insurance cover on a single life basis, placed in trust where appropriate. Trustees should be made aware of their duties and responsibilities, including economic abuse awareness.
  33. Incorporate the Life Insurance Family and Domestic Violence Policy guide into the Code and the Code be made contractually enforceable.
  34. Amend the Code to oblige insurers to consider products the lens of someone experiencing financial abuse (incorporating an inclusive design approach as advocated in ISO Standard 22458).
  35. Noting that the immediate aftermath of leaving a financial abusive situation can take some time to recover from, insurers can commit to considering what reasonable temporary payment hardship reforms could be made to ensure ongoing cover.
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# The role of government agencies in preventing and responding to financial abuse

Financial Rights wishes to raise issues with respect to one government agency in their engagement with the financial services sector and victim-survivors: the Australian Financial Security Authority (**AFSA**).

AFSA is the administrator of the personal insolvency system. It needs to have greater focus on identifying and addressing financial abuse.

Victims of financial abuse enter bankruptcy or another form of insolvency as a means of resolving debts accrued in the course of the abuse. While we have examples of this, we don't have any sense of the scale of this problem.

Applying for bankruptcy can be initiated via a debtors petition (around 91% of personal of bankruptcies were initiated this way in 2022-23), or result from a sequestration order.<sup>56</sup> Given that we know that victims of financial abuse are often saddled with extensive debt they can't afford, we would expect that for some people it is the only way to reconcile the debt – despite the stigma attached to bankruptcy.

AFSA's existing Vulnerability Framework references financial abuse just the once, and like many other guidance documents across other sectors, relies on self-identification of vulnerability as the main method for identifying people who need extra support<sup>57</sup>. Most of the framework is built around supporting AFSA staff to build compliance with bankruptcy obligations, rather than helping to identify people entering insolvency because of financial abuse.

AFSA is in the process of reviewing its approach to vulnerability, and Financial Rights is one of the stakeholders involved in that process. At this stage it is unclear whether AFSA process will be enough to address concerns about use of the personal insolvency system as a tool of financial abuse, or whether reforms will be needed in the *Bankruptcy Act*.

There are changes that AFSA could make to help identification of financial abuse easier for victims. For example, an explicit question could be introduced to the bankruptcy application form asking whether the debtors has debt that doesn't belong to them, or if any debt was incurred under duress or whilst in an abusive relationship. AFSA could then refer the matter for specialist independent assistance, for example to a financial counselling agency, to

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<sup>56</sup> AFSA, [Bankruptcies by debtors' petition and sequestration order](#)

<sup>57</sup> AFSA, [Vulnerability Framework 2022-25](#) p5



consider if any of the debts could be disputed or negotiated with a creditor and potentially avoid the bankruptcy.

More investigation is needed understand the experience of people who enter insolvency as a result of financial abuse. AFSA could also work with experts to look for examples of patterns in bankruptcies where financial abuse has later been found to be a factor. There is certainly an opportunity for AFSA to be far more curious to understand how someone has reached the point of bankruptcy and whether another pathway might be appropriate.

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## Recommendation | Government agencies

36. Build mechanisms into the personal insolvency process to help identify and redirect insolvency applications to AFSA that are potentially the result of financial abuse.

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## The funding and operation of relevant advisory and advocacy bodies

Untangling financial abuse requires knowledge of complex specialist financial law, and is outside the usual skill set of generalist legal centres, or services specialising in other areas of law. An increase in funding to provide assistance for these complex cases is a practical way to help people rebuild their lives after financial abuse, which we know can be incredibly taxing on an individual.

“My client was stunned when I told her we had resolved all of her debts. She assumed she would eventually have to apply for bankruptcy and worried that her small amount of savings would prevent the bank from releasing her from her debts. When I sent her closing letter, she emailed to let me know she is out of the relationship and feels she has a chance for a new life.”<sup>58</sup>

Having casework assistance is nothing short of life changing for those fortunate enough to receive it, and an increase in funding would assist in remedying the economic impacts of financial abuse. This is timely because the government is currently working through its response to the review of the National Legal Assistance Partnership.

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<sup>58</sup> Financial counsellor at Financial Rights, June 2021

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## Recommendation | Funding

37. Increase funding for Community Legal Centres to provide casework services to help people experiencing financial abuse.
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## Concluding Remarks

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact Financial Rights on (02) 9212 4216.

Kind Regards,



Karen Cox  
Chief Executive Officer  
Financial Rights Legal Centre  
Direct: (02) 8204 1340  
E-mail: [Karen.Cox@financialrights.org.au](mailto:Karen.Cox@financialrights.org.au)

# Appendix A: Summary of Recommendations

## All financial services

### Introduce legislative obligations on all financial institutions to protect vulnerable customers

1. Introduce clear obligations on all financial institutions (including the credit and banking sector) to protect vulnerable customers
2. Give ASIC rule making powers, equivalent to the UK's Financial Conduct Authority

### Make all financial products safer

3. Amend the design and distribution obligations to require the design and distribution of financial products to prevent or impede financial abuse.

### Report on financial abuse

4. Financial institutions should be obliged to report on the volume of financial abuse instances annually and publish investigations into the root cause.

## Credit and Banking

### Introduce appropriate friction to lending process

5. Require credit providers to introduce appropriate friction points that could expose financial abuse throughout the lifetime of the loan including at the on-boarding stage.

### Regulate Buy Now Pay Later as credit

6. Parliament pass the Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024 and regulate BNPL as credit. The Bill should be amended to require Low Cost Credit providers to have regard to any signs that a consumer may be at risk of financial abuse.

### Remove the Point-of-Sale exemption

7. Implement Commissioner Hayne's and the Senate Standing Committees on Economics' recommendations to remove the exemptions from consumer credit regulation.

### **Improve access to credit and banking services**

8. Long term financial literacy and capability funding for First Nations communities is needed to help build financial skills and help protect people against financial abuse. This includes funding for community based financial workers.
9. Ensuring access to cash and in-person financial services where people bank in person is another important preventative to financial abuse for First Nations consumers.

### **Extend consumer protections to those who rely on Bank@Post**

10. Ensure Bank@Post is required to meet the requirements of the Banking Code of Practice.

### **Strengthen hardship requirements**

11. The hardship provisions of the Credit Act should be reformed to:
  - a. Make disclosure of family violence an automatic trigger for admittance into creditors' hardship programs
  - b. Prescribe particular circumstances where creditors will need to consider debt waiver.
  - c. Introduce the ability to access hardship for joint debt without the consent of the other co-debtor.

### **Empower victim-survivors in dealing with joint accounts and loans**

12. Require banks to introduce simplified processes to separate joint accounts from abusive ex partners without notification.
13. Return to the original opt-in consent rules for joint account holders to access and share joint account data via the Consumer Data Right.
14. Joint loans should not be allowed where one debtor receives little or no benefit.

### **Extend protections to small business owners**

15. Extend consumer protections with respect to financial abuse to people who run small to medium enterprises.

### **Empower financial services to record and use information with respect to vulnerability**

16. Ensure all financial service providers have systems and processes that can capture and flag consumers in vulnerable circumstances including financial abuse.
17. Require banks to introduce simplified processes to separate joint accounts from abusive ex partners without notification.

18. Return to the original opt-in consent rules for joint account holders to access and share joint account data via the Consumer Data Right

## Credit Reporting

19. Credit reporting regime needs to embed flexibility into the regime to ensure victims of financial abuse are not penalised by the regime.
20. The credit reporting framework should mandate the inclusion of a mechanism for splitting joint accounts.
21. Require credit providers to inform a survivor/victim of the options available
22. ASIC's 2022 No Action letter should be made permanent

## General Insurance

23. Clarify the duty of utmost good faith to include meeting obligations towards customers experiencing vulnerability – including those experiencing financial abuse.
24. Amend the Insurance Contracts Act to provide insurers more leeway to deem a joint insurance policy to be a composite policy in certain situation including upon separation or divorce of co-insureds, or in situations where a victim-survivor's claim would ordinarily be denied due of a wilful act or breach by a perpetrator.
25. Require general insurance products to include a standard 'conduct of others clause' to enable insurer discretion where 'malicious damage' exclusions disadvantage a victim-survivor.
26. Address the Matthews case which effectively penalises an 'innocent' co-insured where the other party has failed to disclose relevant information to the insurer.
27. Key elements of the Insurance Council Family Violence Guide should be included in the General Insurance Code in such a way that empowers the CGC to assess subscribers meeting the content expectations of a family violence policy and compliance with their commitments made under those policies
28. The General Insurance Code should be strengthened and include commitments to meet best practice standards including:
  - a. introducing a large button to navigate quickly away from a financial abuse page to another website for safety reasons
  - b. flagging (with consent) those customers impacted by family and domestic violence
  - c. ensuring communication preferences (including gender preferences) are considered, and
  - d. assuring customers that their family violence situation will not hurt their claim
  - e. preventing perpetrators being able to cancel insurance policies with an insurer without the knowledge or consent of a victim-survivor

- f. not requiring notification or consent to the other joint policyholder when assessing financial hardship of a victim-survivor
  - g. fast tracking hardship request and support
  - h. not notifying claims (or seeking consent on a claim) from a co-policyholder where family violence is involved
  - i. including a term in insurers' terms and conditions that make financial abuse an unacceptable customer behaviour, with consequences for those who misuse insurance products or services.
29. Include the Code as part of the Terms and Conditions of the contract - making all clauses in the Code enforceable

## **Life Insurance**

30. Establish a mechanism (or mechanisms) for joint policies to be cancelled or replaced with individual policies to reduce the risk of harm to the victim-survivor of economic abuse. This could include insurers adopting standard clauses in terms and conditions that enable one party to end life insurance policies over their life or to convert them to some form of own life policy. It could potentially involve commitments made under the Code of Practice.
31. Prevent perpetrators from taking life insurance policies out in joint names without one party's expressed consent or knowledge. This could insurers committing under the Code of Practice or contractually to confirm all parties' consent to a policy being set up in their name, and adjustments should be made to ensure all parties are able to access this information and provide consent.
32. Life insurers should commit to set up life insurance cover on a single life basis, placed in trust where appropriate. Trustees should be made aware of their duties and responsibilities, including economic abuse awareness,
33. Incorporate the Life Insurance Family and Domestic Violence Policy guide into the Code and the Code be made contractually enforceable
34. Amend the Code to oblige insurers to consider products the lens of someone experiencing financial abuse (incorporating an inclusive design approach as advocated in ISO Standard 22458)
35. Noting that the immediate aftermath of leaving a financial abusive situation can take some time to recover from, insurers can commit to considering what reasonable temporary payment hardship reforms could be made to ensure ongoing cover.

## **Government agencies**

36. Build mechanisms into the personal insolvency process to help identify and redirect insolvency applications to AFSA that are potentially the result of financial abuse.

## **Funding**

37. Increase funding for Community Legal Centres to provide casework services to help people experiencing financial abuse.