

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

Submission by National Legal Aid

June 2024



National Legal Aid

Acknowledgement of country

National Legal Aid acknowledges Aboriginal and Torres Strait Islander people as the traditional custodians of the land and waters. We acknowledge and pay respects to their Elders, past and present. In our work, we are committed to advocating for the rights of Aboriginal and Torres Strait Islander people and communities.



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About National legal Aid

Introduction

National Legal Aid (NLA), representing the Directors of the eight Australian State and Territory Legal Aid Commissions (LACs), welcomes the opportunity to make a submission to the Parliamentary Joint Committee on Corporations and Financial Services' Inquiry into the Financial Services Regulatory Framework in Relation to Financial Abuse.

Who are we?

LACs are independent, statutory bodies established under respective State or Territory legislation. They are funded by State or Territory and Commonwealth governments to provide legal assistance services to the public, with a particular focus on the needs of people who are economically and/or socially disadvantaged.

NLA aims to ensure that the protection or assertion of the legal rights and interests of people are not prejudiced by reason of their inability to:

- obtain access to independent legal advice;
- afford the appropriate cost of legal representation;
- obtain access to the federal and state and territory legal systems; or
- obtain adequate information about access to the law and the legal system.

NLA brings together the practice experience of Australia's eight LACs. Each LAC provides a wide range of services to people experiencing circumstances of disadvantage. Services include legal advice, legal task assistance, ongoing legal representation and advocacy, information, legal and non-legal referrals, community legal education, and social support services.

NLA always seeks to offer policy input that is constructive and is based on the extensive experience of LAC lawyers in the day-to-day application of the law in courts, tribunals, and Ombudsman schemes. LAC lawyers who work in civil law and family law have deep experience providing specialist advice and representation to vulnerable clients experiencing domestic and family violence, including financial abuse. We believe that this experience provides valuable knowledge and insights into the operation of the justice system and can contribute to government policy development. In suggesting policy options, NLA endeavours to enable government to pursue policy objectives in the most effective and efficient way.

Summary of recommendations

Recommendation 1

The Australian Banking Association Family Violence Guideline and the Australian Financial Complaints Authority Approach to Joint Facilities and Family Violence should comment on appropriate outcomes where a victim is a sole borrower of a loan entered into fraudulently or coercively. In these circumstances, the victim should be released from the contract.

Recommendation 2

Clause 40(j) of the Insurance Council of Australia's Guide to Help Customers Experiencing Family Violence should also specify that where domestic and family violence warning signs are present and one policy holder is not engaging, the insurer should take active steps to contact the non-engaged policy holder.¹

Recommendation 3

Clause 24(l) of the Insurance Council of Australia's Guide to Help Customers Experiencing Family Violence should include a positive statement that flexibility extends to payment of additional benefits, such as temporary accommodation.²

Recommendation 4

Any guidelines for responding to clients experiencing financial abuse should apply to all lenders, not just banks.

Recommendation 5

Any guidelines for responding to clients experiencing financial abuse should apply to debt collection agencies where they are collecting debts that have led to financial abuse.

Recommendation 6

Financial institutions should be required to release victims of financial abuse from consumer credit loans, where the victim did not receive any benefit from the loan, and refund any repayments the victim was coerced into making, where the financial institution did not comply with its responsible lending obligations and the lending facilitated financial abuse by the perpetrator. Any evidence of the loan should also be removed from the victim's credit report.

Recommendation 7

The Australian Banking Association Family Violence Guideline and the Australian Financial Complaints Authority Approach to Joint Facilities and Family Violence should comment on

¹ This recommendation is not supported by Legal Aid Queensland.

² This recommendation is not supported by Legal Aid Queensland.

appropriate outcomes where a victim has entered into a business loan or guaranteed a business loan under coercion or in circumstances of fraud. In these circumstances, the victim should be released from the contract. Additionally, provisions should be made for the loan to be converted to a consumer credit loan, where the business loan has in fact been used for consumer credit purposes, in order for the victim to be protected by the responsible lending obligations.

Recommendation 8

Credit reporting bodies should develop guidelines for responding to financial abuse as well as a streamlined process for removing fraudulent entries on victims' credit reports. The guidelines should acknowledge that credit reporting bodies have authority under the *Privacy Act 1988* (Cth) to amend the credit report in fraudulent circumstances.

Recommendation 9

Industry could consider developing guidelines to encourage recovery of items subject to hire-purchase contracts.

Recommendation 10

Financial institutions should offer banking products which provide access to third parties in a way that is safe for the account holder/consumer, and products with additional checks, to consumers who would prefer this option.

Recommendation 11

Financial institutions should improve the verification process of digital signatures, for example by contacting the applicant by phone to confirm the email address to send the digital signature to.

Recommendation 12

Financial institutions should provide more comprehensive training and supervision of staff working on financial abuse matters.

Recommendation 12

Consistent funding should be provided for well-resourced legal and financial counselling services with expertise in assisting victims to resolve financial abuse issues.

Comments on Terms of Reference

Terms of Reference 1: The prevalence and impact of financial abuse, including: (a) the approaches taken by financial institutions to identify, record and report financial abuse, and any inconsistencies arising therein; (b) the impact of the shift of financial products to online platforms; and (c) any other contributory factors.

Prevalence and impact

Financial abuse is a common form of domestic and family violence (**DFV**) experienced by clients seeking assistance from Legal Aid Commissions (LACs). Perpetrators seek to control a victim's³ money, finances, and ability to access economic resources. Over the past five to ten years, LACs have observed an increase in clients seeking assistance for digital financial abuse, including coerced debt, unauthorised transactions and identity theft.

Financial abuse often results in victims accruing large debts and a negative credit listing, which can exclude them from accessing financial products and other essential goods and services such as housing and phone contracts. It may undermine the victim's knowledge and capacity to manage their own financial affairs. It often prohibits victims from leaving abusive relationships⁴ and hinders their attempts to recover and re-establish their lives, sometimes for many years.

Victims also carry the burden of dealing with banks and other financial lenders to establish that they have experienced financial abuse and seek moratoriums or hardship arrangements.

It is also difficult to provide legal advice to clients fleeing violent relationships when they do not know their family's financial situation. For example, it is difficult to assess eligibility for legal aid or advise on family law property settlements.

Types of financial abuse involving financial institutions and the impact of online platforms

More recently, many financial abuse matters that LACs assist with involve the misuse of online platforms. A common scenario is for the perpetrator to apply for a loan, such as a personal loan or credit card, using a lender's online application form. Typically, the loan is for the perpetrator's benefit, and is solely in the victim's name, making the victim solely responsible. The perpetrator either coerces the victim into applying for the loan or uses the victim's name and identification documents without the victim's knowledge.

In the latter case, the perpetrator tends to use their own contact details, such as an email address and phone number, on the online application form. The perpetrator then receives the loan paperwork and contract to their contact details, which often requires an online signature. The lender

³ People who experience financial abuse and other forms of domestic and family violence have different preferences for how their experience is described. In this submission the term victim is intended to include victim-survivors.

⁴ It is often the victim-survivor who carries the financial burden of fleeing a violent home. Legal Aid NSW's Domestic Violence Unit has assisted clients who have chosen to remain in violent relationships because they have not had the financial autonomy or capacity to leave.

inadvertently notifies the perpetrator when the loan funds have been disbursed and the perpetrator then quickly arranges to withdraw the funds from the victim's account. Many of our clients first hear about the loan in their name when the lender pursues them for the outstanding debt, or when they notice unusual activity on their internet banking.

LACs observe that perpetrators often exploit Buy Now Pay Later schemes (**BNPL**) to fraudulently accrue debt in the victim's name because of the ease of applying for this form of credit and the minimal checks at the commencement of a BNPL contract. The prevalence of BNPL contracts in the context of family violence has been identified as a growing trend.

In a 2022 report, Good Shepherd notes that BNPL products are liable to financial abuse because accounts can be easily opened and operated online from a victim's phone using basic personal information.⁵ The ease with which a person can apply for a BNPL contract and the minimal checks at the commencement of a BNPL contract can be particularly impactful in circumstances of DFV. The impending regulation of BNPL⁶, which will bring it within the Credit Law and therefore responsible lending provisions, is a positive step.

Other common forms of economic abuse experienced by our clients include:

- A perpetrator making transactions on joint accounts for the perpetrator's benefit only, but leaving the victim to be jointly and severally liable for the debt.
- Misuse of the victim's bank card and pin, either after the victim has voluntarily given these to the perpetrator or was coerced into doing so. This often occurs in caring relationships, for example by adult children against their elderly parents. LACs have also assisted vulnerable young people who have been exploited in this way by trusted friends or carers. Banks are generally reluctant to provide a remedy if the victim voluntarily shared their bank card and pin, and police can be reluctant to intervene if relatively small amounts of money are involved.
- Misappropriating funds after the perpetrator has set up internet banking on behalf of the victim. For example, LACs have assisted older persons whose younger relatives have set up internet banking on their behalf, either ostensibly for the older person's benefit or without their agreement or knowledge. The perpetrator then transfers money to their own account. The victim may not fully understand how to use online banking.
- Misappropriating insurance payouts. The perpetrator takes an insurance payment made under a joint policy for their own benefit and without the agreement of the other party. In some instances, the perpetrator lodges the insurance claim online and receives payment, without the victim/joint policy holder's knowledge.
- Misleading or coercing the victim into taking out a consumer loan, or providing a guarantee for a consumer loan, for the perpetrator's benefit; or taking out a sham business loan, or providing a guarantee for a sham business loan, in order to negate protections offered to borrowers and guarantors of consumer credit. There are often warning signs that the victim does not properly understand or willingly agree to the transaction, which are discussed further below.

⁵ Good Shepherd report, 'Safety net for sale: The role of Buy Now Pay Later in exploiting financial vulnerability', November 2022, p.14.

⁶ Buy Now Pay Later Regulatory Reforms [Buy Now Pay Later regulatory reforms | Treasury.gov.au](https://www.treasury.gov.au/bnpl-reforms)

- Family loans to help purchase a property which are not documented nor repaid, leaving the victim without adequate economic resources to meet their needs. Inheritance impatience may be a factor where the perpetrators are family members and consider that the economic resources or property will be inherited eventually so they are entitled to access it prior to death. In these circumstances, family members are sometimes asked to be guarantors for car loans or other credit transactions. When the child defaults the loan company pursues the guarantor. In some cases, there appears to be little, or no enquiry made as to the financial resources of the guarantor.
- Abuse of registered Power of Attorney documents whereby the attorney can access funds in bank accounts for their own personal use and not for the benefit of the victim.

Case study: Carolina's story

Carolina came to Australia on a refugee visa. She has four children. She does not speak, read or write English. Carolina obtained a home loan from a major bank to purchase her home. Carolina's adult son asked for help in getting his own home loan. Carolina agreed to help her son get a loan in his own name and understood that it would not impact Carolina's own mortgage.

Carolina's son had in fact arranged for Carolina's mortgage to be refinanced and applied for additional credit.

Carolina and her son attended a bank branch together and met with a bank representative. The bank did not provide Carolina with an interpreter, speak to Carolina separately, suggest she obtain her own legal or financial advice, or adequately explain to her the terms of the refinanced loan.

Carolina's home loan was increased by hundreds of thousands of dollars, which her son withdrew from the home loan's offset account. Carolina did not receive any benefit from the increased loan amount and was not able to pay the higher loan repayments.

Case study: Jasmine's story

Jasmine and Malik were married for 3 years. Jasmine was born in Pakistan. During their marriage, Malik forced Jasmine to take out a car loan and credit card, both solely in her name. Malik promised to make all the repayments for the car and the credit card.

Malik worked for cash and used Jasmine's credit card. During the marriage he made repayments for the car and credit card.

However, after separation, Malik stopped paying for anything related to the car or credit card. Jasmine was referred to a financial counsellor within Legal Aid NSW's Domestic Violence Unit, as she had been unable to make the repayments for the car and was being pursued by the lender. Jasmine considered selling the car, but it was worth less than what was owing.

Jasmine was concerned that her credit history was going to be impacted and that she would not be able to apply for housing or other finance. She felt trapped.

Case study: Jess' story

Jess, an Aboriginal woman, experienced significant DFV including coercive control, financial abuse and physical abuse perpetrated by her partner Kieran, an Aboriginal man.

Kieran controlled Jess' finances. He kept possession of her bank card. He accessed Jess' bank account and transferred money to his own account without Jess' consent.

Jess received an email from a buy now pay later provider confirming that her account had been set up. She didn't set up an account and doesn't have the log on details to access the account, but the transactions are connected to her bank account.

Using financial systems communications to harass and abuse

Some victims have raised with LACs that the offender is using very small funds transfers (say 5 cents) to send a message to the victim in their statement, often where other modes of communication have been shut down, such as blocked on mobile phone and social media, or because of protective orders. These have included abusive name-calling and threats of harm. Victims have had varying responses, some suffering great emotional distress and fear that the offender can still abuse them and use financial institutions to do it; some relieved that the offender could now be so easily proven to have committed an offence, because the records of financial transactions are so detailed and reliable.

A Commonwealth Bank program has been developed to respond to the sending of abusive messages in transaction descriptions.⁷ As far as we are aware, this alerts the bank to the abuse, and the offender can face internal consequences and be blocked from making further transfers.

However, victims of family violence may differ in how they would choose to deal with the offenders' behaviour, for example:

- The offender is blocked from transferring anything at all, and the victim need not be aware he has tried. This avoids the victim being made fearful by the offender's ongoing behaviour.
- The abuse is reported directly to local police, who can issue a protective order or charge with a breach of a protective order. The victim may or may not want to be informed of the attempted contact.
- The victim is informed of the messages and can obtain that evidence to support charges and/or protective orders if they choose, or rely on the conduct to seek orders in family law proceedings. Some victims prefer to know what the offender is doing so as to better understand the current risk level.

NLA considers that victims of family violence should be given options for how they wish to respond to abuse.

⁷ <https://www.commbank.com.au/content/dam/commbank-assets/support/docs/T332-Abuse-transaction-flyer.pdf> Further enquiries were made, but no information was available within the timeframe.

Other contributory factors

Economic abuse not directly involving financial institutions

This submission focuses on economic abuse experienced by LAC clients that involves financial institutions. LAC clients also commonly experience other forms of economic abuse that do not involve financial institutions including:

- Economic control, where one partner controls all financial decisions. Victims are left with little to no financial autonomy, making it difficult to leave the abusive relationship.
- Withholding financial information: Abusers keep victims in the dark about household finances or their personal income. Victims are unable to make informed financial decisions or plan for their future.
- Manipulation of benefits: Abusers take control of victims' government benefits or social security payments. Victims lose access to essential financial support, leading to increased dependency on the abuser.
- Victim solely responsible for financial needs of family: The offender may refuse to engage with any financial institutions or billers, only criticising and further abusing the victim if the victim is unable to meet the expenses with the available income and does not provide the extra income that the offender demands. This can occur alongside mental health issues or disability, where even after separation a victim feels responsible for meeting the needs of the offender. Stretched medical and support services can lean heavily on the offender's family to continue to carry the burden of financial and administrative responsibility, as shown in Karen's case study below.
- Employment sabotage: Abusers prevent victims from working or force them to quit their jobs. The impact is a loss of income and professional opportunities, leading to increased financial dependence on the abuse.
- Coercing the victim to enter mobile phone plans for the benefit of the perpetrator, which may also include repayments for expensive devices. Victims often inform their LAC solicitor that they are too fearful of the perpetrator to cancel the plan.
- Treating compensation payments as disposable funds, leaving the victim or child without the financial capacity to get necessary treatment.
- Understating income to the Australian Tax Office and Child Support Agency, especially where income can be earned 'cash in hand', resulting in low assessment of Child Support or unjust Property Settlement.
- Offenders not filing tax returns, so that even where income is clear, the Child Support Agency is working from an incorrect figure. This can cause difficulties whether there is resulting overpayment or underpayment.
- Adult children living in the home of their elderly parents and not contributing to the household expenses or paying rent.

Caring relationships

Financial abuse can occur within the context of caring relationships and people with disability and older people can be particularly vulnerable.

Some people in a caring relationship may be reliant on the perpetrator for medication, physical, emotional and/or financial support making them more vulnerable to potential financial abuse. There can also be a reluctance to report financial abuse amongst people in a caring relationship, especially older people in a caring relationship, because of fear of retribution and how a relationship with a carer might be impacted.

Additional barriers for vulnerable people

There may be additional barriers for some vulnerable people in recognising financial abuse and seeking support. For example, some people with disability have difficulty verbally expressing their views or concerns, and staff from financial institutions can make inaccurate assumptions about their decision-making capacity or reliability. LACs have observed a lack of accessible resources, such as easy read guides, for people with intellectual disability on what financial abuse is and how they can get help. Some older people are unfamiliar with online platforms which perpetrators can exploit.

Case study: Jane's story

Jane is a 95-year-old woman who has dementia and lives in a retirement village. Jane's landlord raised with her community health worker that Jane risked being evicted as she was several months late paying her rent. The community health workers also noticed unpaid bills on her table, and bank statements showing 18 cents left in her account.

Jane's granddaughter Sarah, who had access to her bank card from assisting Jane to buy groceries, had set up internet banking on Jane's account over the phone. The bank's recording of this conversation showed Sarah taking the lead and that Jane did not properly understand or consent to internet banking. Jane could not use a computer or smart phone.

Jane was referred to Legal Aid NSW's Elder Abuse Service for assistance. The Elder Abuse Service obtained copies of Jane's account statements which showed that over the previous 12 months close to \$10,000 had been spent on Jane's credit card and over \$20,000 withdrawn from her account. This was a dramatic change in account activity. The Elder Abuse Service assisted Jane to report this to the police and make a complaint to the bank using its internal dispute resolution process. The bank agreed that it had not acted appropriately, and the matter was resolved in Jane's favour.

Conversely, perpetrators may have disabilities, and use their diagnoses to further control and exploit victims, making the victim 'responsible' for meeting their needs. This can occur both with genuine needs, and with controlling or exploitative 'wants'.

Case Study: Karen's story

Bill had a traumatic brain injury and was undergoing a complex assessment concerning cognitive capacity. He also had substance abuse issues, and could not be given much of his medication at a time because he would deliberately overdose. He had a history of family violence, including causing serious injury and long-term stalking behaviours with several ex-partners. He and Karen had been partners for several years, and she was responsible for keeping them housed and fed and taken to appointments, because Bill could not be relied upon. She managed all the finances. After several overdoses, she was asked to manage Bill's medication.

Karen also has a significant disability; her conditions worsened by stress.

Karen disclosed family violence to Bill's doctors (including physical violence and coercive behaviours), hoping that they could help him not commit family violence, which he blamed on his mental health. Karen tried several times to leave Bill, but – as she understood it – Bill's doctors told her that it was her responsibility to keep looking after Bill and she had to keep him alive, regardless of his violence towards her. This continued even after a protective order was issued

against Bill. For months after she managed to leave (again) she was in frequent face-to-face contact with him to give him his medication and help him manage his money.

Impact of disasters

Disasters such as floods and bushfires can exacerbate drivers of DFV and increase the likelihood, complexity, and severity of abuse.⁸ This extends to financial abuse and coercive control. Financial institutions that typically respond to disasters, including insurers and credit providers (through financial hardship applications) should ensure that their staff are adequately trained to identify and respond to DFV during and after disasters.

Approaches taken by financial institutions to identify, record and report financial abuse

Industry codes and guidelines

Most primary industries like major banks, insurers and external dispute resolution schemes have developed guidelines and industry codes on how matters involving DFV are considered. However current guides are largely predicated on at least some paper forms, or a face-to-face or telephone interaction between lender and borrower. They do not adequately respond to economic abuse perpetrated through misuse of online platforms or where the victim is purportedly the sole borrower.

Victims still often require legal assistance to identify and advocate under industry codes and guidelines. Engaging with the dispute resolution process to be released from a debt can be an overwhelming process for the victim, and a painful reminder of the abuse and violence suffered. It is not uncommon for a victim who is raising issues of financial abuse with the lender to be referred to the lender's 'fraud team' and to be asked questions as part of a fraud investigation. This can be a worrying and confusing experience for a victim and is not a trauma-informed response.

Lenders often require victims to provide evidence that they have reported fraudulent loans to police. LAC clients experience varying police responses and often encounter difficulties obtaining a police event number. In some instances, police decline to make a report and inform the victim that the matter is a civil or family law issue. Some clients have had to attend a police station multiple times or attend different police stations to obtain an event number.

We welcomed the introduction of the Australian Financial Complaints Authority (**AFCA**) Approach to Joint Facilities and Family Violence, the Australian Banking Association Family Violence Guideline (**ABA Guideline**) and the Insurance Council of Australia's Guide to Help Customers Experiencing Family Violence (**Insurance Council Guide**). These documents set best industry practice on various

⁸ NSW Council of Social Services, *Aftershock: Addressing the Economic and Social Costs of the Pandemic and Natural Disasters (Report Two – Domestic and Family Violence)* September 2022.

<Aftershock: Addressing the Economic and Social Costs of the Pandemic and Natural Disasters – Report Series - NCOSS - NSW Council of Social Service>

D Parkinson, 'Investigating the Increase in Domestic Violence Post Disaster: An Australian Case Study' (2019) 34(11) *Journal of Interpersonal Violence* 2333. <<https://doi.org/10.1177/0886260517696876>>

D Parkinson & C Zara 'Under fire: violence in the aftermath of Black Saturday' (2012) 2 *DVRCV Quarterly* 13. <<http://search.informit.com.au/documentSummary;dn=977736142570877;res=IELFSC>>

matters relating to DVF, including maintaining the security of customer information once DFV has been identified and resolving economic abuse involving joint debt.

The ABA Guideline and Code of Banking Practice state that in circumstances of DFV where the victim and partner are co-borrowers, the victim can be released from the loan contract if commercially viable. The AFCA Approach Paper deals only with joint accounts, not where there is only one borrower.

The ABA Guideline and Code of Banking Practice do not address how banks should respond or the legal outcome where a loan has been entered into fraudulently or coercively and the victim is the sole borrower, which is one of the most common forms of economic abuse experienced by LAC clients.

Recommendation: *The Australian Banking Association Family Violence Guideline and the Australian Financial Complaints Authority Approach to Joint Facilities and Family Violence should comment on appropriate outcomes where a victim is a sole borrower of a loan entered into fraudulently or coercively. In these circumstances, the victim should be released from the contract. Any evidence of the loan should also be removed from the victim's credit report.*

Some non-bank lenders are not covered by industry codes and do not have their own internal policies. LACs also observe that some lenders purposely structure loans to avoid the consumer credit protection laws.

Recommendation: *Guidelines for responding to clients experiencing financial abuse should apply to all lenders, not just banks.*

Insurance Council Guide

As with other online financial applications, online insurance claim processes can be misused by perpetrators of financial abuse. This emphasizes the importance of contractors engaged by insurers (such as assessors) who meet with customers being appropriately trained to identify and respond to DFV, as required by clause 25 of the Insurance Council Guide.

We consider that the Insurance Council Guide could better respond to financial abuse with several amendments, including:

- clause 19(g) which includes an example of a sign that may indicate a customer is affected by DFV “when someone is reluctant to involve the other joint policyholder when making changes to the policy, making a claim or seeking Financial Hardship help.”

We note that insurers should be mindful that this could present as either the victim or perpetrator being reluctant to involve the other joint policyholder and train their staff accordingly.

- clause 40(j), which states “before the insurer pays a claim, it should try to make sure it is paying the appropriate party or parties — this can be a particularly complex area in cases of family violence and family law property disputes.”

Recommendation: *Clause 40(j) should also specify that where DFV warning signs are present and one policy holder is not engaging, the insurer should take active steps to contact the non-engaged policy holder.*

This amendment would reduce the ability of perpetrators of financial abuse misappropriating insurance claims. LACs have assisted clients who have discovered that the joint policy holder has unilaterally arranged payment of a claim and withheld the funds, as well as clients who have been

concerned to leave abusive relationships until claims have been finalised so that they are not cut out of the process. Pamela's and Sana's stories below are examples of this conduct.

- Clause 24(l) which states “understand the need for flexible arrangements for, and responses to, customers affected by family violence”.

Recommendation: *Clause 24(l) should include a positive statement that flexibility extends to payment of additional benefits, such as temporary accommodation.*

This would explicitly acknowledge that customers and third-party beneficiaries are able to independently access temporary accommodation benefits where DFV is present. This includes being able to access the benefit separately from the joint policy holder, or being able to claim under the policy in a policy holder's name where the policy extends to family members.

Case study: Pamela's story

Pamela is an elderly woman who separated from her violent ex-husband. Pamela's ex-husband continued to live in their jointly owned caravan a year after separation, until a flood significantly damaged the caravan and their shared contents. Although Pamela was a joint policy holder on the caravan, annex and contents insurance policy, her ex-husband successfully made a unilateral claim and directed the funds to be released into his personal bank account. Pamela sought legal assistance after she became aware that the premises had been demolished and she could not reach her ex-husband to discuss a fair distribution of the settlement funds.

Case study: Sana's story

Ashwin and his wife Sana were joint policy holders on their home insurance policy when their home was damaged by a flood. Ashwin and Sana sought legal assistance from Legal Aid NSW to lodge a complaint with the Australian Financial Complaints Authority, after their insurer's settlement offer failed to cover the cost of repairing their home.

During this process, Ashwin's wife Sana privately disclosed that she had been subject to psychological, financial, verbal and physical violence from her husband. She indicated that she wanted to leave the relationship but felt that she could not leave until the insurance matter was finalised, and the house was repaired and sold. Ashwin and Sana were referred to another solicitor as the disclosure of DFV raised a conflict of interest for Legal Aid NSW.

Other industries

Other industries employ different policies in responding to DFV. For example, the telecommunications industry implemented an Industry Guideline Assisting Consumers Affected by Domestic and Family Violence. The TCP Code is under review currently and consumer advocates have called for more robust protections for victims of DFV.

The Energy and Water Ombudsman NSW has a position statement on DFV.

The debt collection industry has debt collection guidelines which have some clauses about responding to victims of DFV.

Recommendation: Any industry guidelines for responding to clients experiencing financial abuse should apply to debt collection agencies where they are collecting debts that have led to financial abuse.

Terms of Reference 2: The effectiveness of existing legislation, common law, and regulatory arrangements that govern the ability of financial institutions to prevent and respond to financial abuse, including the operation of: (a) the National Consumer Credit Protection Act 2009; (b) the Privacy Act 1988 (Cth); (c) the Australian Securities and Investments Commission Act 2001; (d) the Insurance Contracts Act 1984; (e) legislation and statutory instruments for superannuation; and state and territory laws and regulations.

Overview of current laws

The *National Consumer Credit Protection Act 2009* (Cth) (**NCCPA**) and the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) are the main laws that protect financial services consumers. The NCCPA does not provide specific protections for victims of financial abuse. The ASIC Act has protections against unconscionable conduct against consumers, however this is a high bar to prove, and the usual scenario of online financial abuse is difficult to fit within its elements.

The *Insurance Contracts Act 1984* (Cth) and the *Insurance Contracts Regulations 2017* (Cth) do not contain specific protections for consumers impacted by DFV or financial abuse. The main source of guidance for insurers and consumers comes from the General Insurance Code of Practice and the Insurance Council of Australia's Guide to helping customers affected by family violence" (**Insurance Council Guide**). We have discussed improvements to the Insurance Council Guide above.

Non-compliance with responsible lending obligations

The NCCPA requires credit licensees to comply with the responsible lending conduct obligations. The key requirement is that credit licenses must not enter into a credit contract with a consumer, suggest a credit contract to a consumer or assist a consumer to apply for a credit contract if the credit contract is unsuitable for the consumer.

However, in our experience banks often miss opportunities to identify financial abuse by failing to comply with this obligation. Lenders frequently do not comply with their duties to inquire with the victim about their financial situation, even when presented with customer information that is inconsistent, contradictory or indicated that the victim (if the victim had been applying for the loan) could not afford to repay the loan without substantial hardship.

In these cases, had the lender complied with its responsible lending obligations, the lender may have become aware that the victim did not apply for the loan contract or was coerced into doing so, and the application may have been declined at the outset.

Case study: Lena's story

Lena is a single mother of three children. One of her children has a disability and requires ongoing support. Lena has been diagnosed with depression. When Lena left her violent marriage, her ex-husband used Lena's name to enter into multiple personal loans online with different lenders without Lena's knowledge or consent. Lena found out about the loans when she noticed that large sums of money were transferred into her account by the lenders and transferred out of

her account almost immediately by her ex-husband. Lena did not receive any benefit from the loans. Lena is now being pursued by several lenders for tens of thousands of dollars. The loans are overdue and Lena has overdue repayments and default listings noted on her credit report which lower her credit score.

Lena came to Legal Aid NSW for help. When we reviewed the loan application documents, we found that Lena's ex-husband had included false information on the applications, including that Lena did not pay rent, that her salary was higher than it was and that she did not have any children. Lena's bank statements, which were available to the lenders, showed a different story. The bank statements showed that Lena had a regular rent expense, earned a lower wage, was repaying multiple Buy Now Pay Later and wage advance products, indicating financial hardship, and paid for childcare regularly.

NLA considers that regulations or industry guidelines should specify the remedy where the lender failed to comply with its responsible lending obligations, whether the loan application process indicated DFV or not, and where the lending decision facilitated financial abuse by the perpetrator.

NLA considers that an appropriate remedy is for the victim to be released from the loan, and any evidence of the loan removed from the victim's credit report. If the victim was coerced into making repayments to the loan, these should be refunded.

Recommendation: *Financial institutions should be required to release victims of economic abuse from loans and refund any repayments the victim was coerced into making, where the financial institution did not comply with its responsible lending obligations and the lending facilitated financial abuse by the perpetrator. Any evidence of the loan should also be removed from the victim's credit report.*

Case study: Nicole's story

Nicole entered into a car loan under pressure and coercion from her ex-partner. Nicole's ex-partner wanted to purchase a new car for his own use. He told Nicole that he was unable to apply for a loan in his own name because of his credit rating, and pressured Nicole to apply for the loan in her name. Nicole feared that her ex-partner would retaliate if she didn't agree. She felt that she didn't have a choice, and this was a pattern throughout their relationship. Nicole was taken to the car yard on one occasion to view the vehicle and sign paperwork. She does not recall being asked any questions about her finances or her reasons for purchasing the vehicle. She instructs that much of the paperwork had already been completed and she was only asked to sign the loan documents, without explanation of key terms of the loan. LANSW was able to negotiate an outcome where Nicole was not liable for the outstanding loan amount.

Business loans

LACs have assisted clients who have experienced financial abuse involving business loans, such as being forced to take out a business loan for the benefit of a DFV perpetrator. The Banking Code of Practice and ABA Guideline and AFCA's Approach to Family Violence apply to small business loans. However, the responsible lending obligations do not apply to small business loans. As noted above, the Code and Approach do not give guidance as to the remedy where a victim has entered into a business loan or guaranteed a business loan under coercion or in circumstances of fraud.

Recommendation: *The Australian Banking Association Family Violence Guideline and the Australian Financial Complaints Authority Approach to Joint Facilities and Family Violence should comment on*

appropriate outcomes where a DFV victim has entered into a business loan or guaranteed a business loan under coercion or in circumstances of fraud. In these circumstances, the victim should be released from the contract. Additionally, provisions should be made for the loan to be converted to a consumer credit loan, where the small business loan is a sham, in order for the victim to be protected by the responsible lending obligations.

Case study: Clara's story

Clara is a mother of 2 young children. She was born in China. Clara and her children moved out of their family home because her ex-partner, Ben, was financially controlling and physically, emotionally and verbally abusive. There is an Apprehended Domestic Violence Order against Ben for Clara's protection and associated criminal charges.

When they were together, Clara took out a mobile phone plan for Ben in her name. Clara also took out a business loan in her small business name for Ben's benefit. All the utilities in their former family home remain in Clara's name.

Despite moving out of the house, Ben continues to financially abuse and control Clara. Ben refuses to take over the mobile phone plan, business loan or household utilities. He has not transferred funds to help Clara with ongoing payments under the mobile phone plan or repayment under the business loan. He told Clara that he is not going to take over the utilities accounts and she must continue to pay as she is the one who moved out. Clara is too scared of how Ben may react to report the mobile missing and stop the phone plan or to stop paying the utilities.

Clara has amassed large debts and is struggling financially to meet the payments. She is worried about the negative impact to her credit rating and her ability to access future finance.

Clara has been referred to Legal Aid NSW's Domestic Violence Unit financial counsellor for advice and advocacy.

Remedy to remove inappropriate information on credit report in circumstances of financial abuse

A poor credit rating from financial abuse can preclude DFV victims from accessing credit and is a significant hurdle to financial recovery. Currently extensive advocacy is required to remove fraudulent or inappropriate credit default listings (where a loan is given) and credit enquiries (where a credit inquiry was made but the loan was not granted) from a victim's credit report. These marks on the credit report lower the victim's credit score and are a reminder of the violence and abuse the victim suffered. NLA considers that a more streamlined approach is required.

NLA considers that credit reporting bodies have the authority to remove credit listings and inquiries in circumstances of fraud under section 20Y of the *Privacy Act 1988* (Cth) (**Privacy Act**). However, credit reporting bodies often inform LACs that they cannot or will not remove an inquiry unless authorised by the credit provider. This approach is very onerous and requires the victim to request that multiple credit providers contact multiple credit reporting bodies. For example, a recent client of Legal Aid NSW had 14 enquiries on her credit report and was forced to contact each individual credit provider herself to ask them to instruct the credit reporting company to remove the fraudulent enquiries.

Section 20Y of the Privacy Act isn't prescriptive about how credit reporting bodies should satisfy themselves that a credit entry is fraudulent, and any guidelines should not impose additional burdens

on victims. NLA suggests that key features of a streamlined process for correcting credit reports could be:

- Credit reporting body confirm with victim which listings are fraudulent, and if the victim has any other names which the perpetrator could have used for fraudulent activity.
- Credit reporting body ask for information from victim to satisfy them that there is fraudulent activity (this should be a trauma-informed request by trained staff), for example an Apprehended Violence Order or a report to the police.
- If the credit reporting body is not satisfied of fraud without contacting credit provider, the credit reporting body should make those inquiries within a reasonable time.

Case study: Ingrid's story

Ingrid is a single mother of two children. She is divorced from a partner who inflicted significant sexual, physical, verbal and financial abuse on her and her children, for which he was imprisoned. Ingrid was left with thousands of dollars of debt when she realised her ex-partner had signed up for loans in her name for his benefit. He told her "You will never be rid of me."

Ingrid requested a copy of her credit report from a credit reporting agency. Ingrid's credit report showed that her ex-partner had tried to obtain credit or other utility services from dozens of businesses in Ingrid's name unsuccessfully, and these enquiries were still listed on Ingrid's credit report. The credit reporting agency refused to assist Ingrid to remove these enquiries and asked her to contact each individual business herself to ask the business to direct the credit reporting agency to remove the enquiries.

Recommendation: *Credit reporting bodies should develop guidelines for responding to financial abuse and a streamlined process for removing fraudulent entries on victims' credit reports. The guidelines should acknowledge that credit reporting bodies have authority under the Privacy Act to amend the credit report in fraudulent circumstances.*

Hire-Purchase agreements and proactive support

Some, but not all, victims of DFV in Tasmania have found that hire-purchase companies have helped to support them: the victim had been coerced to purchase household necessities such as refrigerators or washing machines in their sole name during the relationship, could not afford to buy the items up front, and entered into hire-purchase agreements. The victim then fled the former home and found themselves with an ongoing payment for an item which the offender refused to allow them to collect and move to their new home, though often it was needed for the children as well as the victim. On several occasions when this has been requested by the victim, because of the form of ownership and right to possession created by the contract, hire-purchase companies have attended the former home (with police if necessary), re-taken the item and delivered it to the victim's new premises for the contract to continue. This being action by the company rather than the victim, it was observed to reduce the expected reaction of the offender towards the victim. It also helped overcome reluctance of police to become involved where something might involve family law property settlement and/or a civil matter.

Recommendation: *Industry could consider developing guidelines to encourage recovery of items subject to hire-purchase contracts.*

Terms of Reference 3: Other potential areas for reform, such as prevention, protection, and proactive systems, including: (a) existing financial product design; (b) emerging financial products; (c) employee training; (d) culturally appropriate responses; and (e) any other appropriate response, for example, mandatory reporting.

Proactive systems for flagging potential financial abuse

NLA considers that financial institutions should increase their focus on flagging and addressing potential financial abuse that occurs within their systems and products.

This should include stricter monitoring of unusual transactions or changes in spending habits, for example through fraud detection technology, and a process for confirming if the customer authorised the transactions.

Other steps financial institutions could take to prevent and detect financial abuse include:

- More closely monitoring accounts that have switched to a new mode of banking, for example where internet or phone banking has recently been set up, or the customer has been issued with a new card.
- Clearly explaining consequences of joint accounts to customers, with best practice that this is in person especially for large loans or mortgages.
- More thoroughly assessing drawdowns against mortgage equity.
- Ensuring older customers understand the financial products or changes they are signing up for, particularly when this is done through phone or internet banking. For example, asking the customer to explain the product or change in their own words instead of seeking yes or no answers.
- Taking additional steps to safeguard the accounts of customers who raise concerns about financial abuse with the bank. For example, where one account in a bank has been flagged then the bank should take steps to flag all the other accounts held by the parties and future accounts. This process should not create unnecessary burdens for the victim in engaging with the financial services system.

Product design

Financial institutions should offer lower technology banking products and products with additional verification requirements to consumers who prefer this option. For example, as explained in the case study below, a client of Legal Aid NSW was unable to obtain a bank card without the PayWave function which was being used to steal her money.

Case study: Ivy's story

Legal Aid NSW's Elder Abuse Service assisted Ivy, an elderly woman who experienced financial elder abuse from her adult daughter. Ivy's son repeatedly stole her bank card, and used the PayWave function to purchase goods.

Ivy reported this to the bank and asked for a card without a PayWave function. The bank told Ivy it could not provide a product without PayWave.

Ivy's son stole the card again and accrued a debt of nearly \$2,000. Ivy reported this to the police and the bank. The police declined to charge the son and the bank initially refused to reimburse

Ivy, telling her that 'as a family member used the card to process the transaction, the disputed transactions are a matter to be resolved between Ivy, the family member involved and the Police'.

Legal Aid NSW assisted Ivy to resolve this matter through the bank's internal dispute resolution process, and Ivy was reimbursed for the full amount.

In the case study above, Ivy was dependent on another person doing her shopping and paying her bills, but she did not require or want a Power of Attorney to manage these tasks. By developing products which support autonomy for vulnerable consumers, while also allowing safe third-party access, banks may reduce the risk of financial abuse to consumers supported by a carer. An example of such a product might be a debit card without PayWave functionality which has safe third-party access.⁹

Banks should also offer joint accounts which require approval by both parties for withdrawals over certain amounts and separate passwords for each account holders and inform customers of these options.

Recommendation: *Financial institutions should offer banking products which provide access to third parties in a way that is safe for the account holder/consumer, and products with additional checks, to consumers who would prefer this option.*

NLA considers that banks and other financial institutions should improve the verification process of digital signatures to reduce fraud. For example, the financial institution could contact the loan applicant to confirm which email address to send the digital signature request to, rather than just relying on the email address provided in the online application form.

Case study: Wendy's story

Our client Wendy is in her late thirties. She has three children under 7 years old and works part time.

Wendy's ex-partner, Jay, set up a separate email account and used Wendy's personal details to apply for a credit card and personal loan in Wendy's name. Jay applied for the loans online and digitally signed the applications. Wendy was not aware of the loans until she received debt collection notices from the financial institution. She did not benefit from the funds.

The financial institution refused to waive the loans because the applications were digitally signed. Because of her financial hardship, Wendy was not able to travel overseas to visit her family in her home country.

Recommendation: *Financial institutions should also improve the verification process of digital signatures, for example by contacting the applicant by phone to confirm the email address to send the digital signature to.*

Employee training

⁹ See NatWest, Royal Bank of Scotland and Ulster Bank have today announced the introduction of a new 'companion card' as an example: [Companion card launched for carers supporting vulnerable customers | NatWest Group](#)

NLA considers that there are areas where financial institutions could provide more comprehensive training and supervision of staff working on financial abuse matters. This includes:

- how to identify and respond to elder abuse. This could include case studies on the experiences of older customers who have suffered elder abuse and how enduring power of attorney and power of attorney documents operate.
- how to detect financial abuse at the loan application phase, including online loan applications.
- identifying and understanding trauma, including understanding the shame that can be associated with financial abuse and how that impacts willingness to disclose the abuse.
- the burden on victims of untangling financial abuse and seeking to be released from loans or hardship arrangements.

We also consider it beneficial for the same staff member to assist customers to resolve financial abuse matters where possible.

Recommendation: *Financial institutions should provide more comprehensive training and supervision of staff working on financial abuse matters.*

Action to support survivors of economic abuse to re-establish their lives

NLA suggests that banks should consider developing financial products to assist victims of DFV to recover financially. For example, this could include no interest loan products and small business startup funding. Governments should also consider scholarships to enable victims to retrain or upskill and return to the workforce.

NLA also suggests that government and partner financial institutions evaluate their shared equity schemes and how they could be enhanced to support victims of financial abuse and other forms of DFV. For example, this should include ensuring maximum property prices noted in the scheme are realistic in current markets and allowing the participants to 'buy out' the other purchaser of a jointly owned or mortgaged property purchased with assistance of the scheme.

Terms of Reference 6: The funding and operation of relevant advisory and advocacy bodies

NLA considers that consistent funding is required for well-resourced legal and financial counselling services with expertise in assisting victims to resolve financial abuse issues.

Recommendation: *Consistent funding should be provided for well-resourced legal and financial counselling services with expertise in assisting victims to resolve financial abuse issues.*