Submission on financial services regulatory framework in relation to financial abuse

June 28, 2024

Parliamentary Joint Committee on Corporations and Financial Services

Financial Counselling Australia (FCA) is the peak body for financial counsellors in Australia.

To the committee secretary,

Financial Counselling Australia welcomes this inquiry into the financial services regulatory framework in relation to financial abuse. In their frontline work with people experiencing financial difficulty, financial counsellors see the impacts of financial abuse every day.

We offer the stories and insights from financial counsellors, drawn from a variety of sources, with the hope that it will contribute to the understanding of financial abuse and its harm.

Our submission highlights some key areas in which the financial systems are not working for victim survivors of financial abuse.

We welcome the opportunity to make a submission to the inquiry.

About financial counselling

Financial counsellors are qualified professionals who provide information, advice and advocacy to people in financial difficulty. There are currently around 1,100 financial counsellors working across Australia. All are based in not-for-profit, community-based organisations, from large charities to smaller community centres, as well as local government agencies and community legal centres.

Their services are free, non-judgmental, independent and confidential. They work with people in financial hardship, guiding them through their options to get back on track financially. They are paid for their work and are very different to financial planners and advisors.

About FCA

Financial Counselling Australia (FCA) is the peak national body for the financial counselling profession in Australia. We are a not-for-profit organisation that:

- Provides resources and support for financial counsellors;
- Advocates to increase access to financial counselling;
- Works to raise the profile of financial counsellors;
- Advocates for a fairer marketplace; and
- Works to improve hardship processes for people in financial difficulty.

Our vision is an Australia with fewer people in financial hardship. We carry this aim throughout our work supporting and promoting the financial counselling profession through:

- Providing resources, coordinating training and professional development opportunities, and updating and improving the Diploma qualification.
- Supporting our members, the seven state and territory financial counselling associations, to uphold the standards and professionalism of financial counselling in Australia.
- Running an annual conference bringing together key players from industry, government and the financial counselling community to share learning, provide professional development and to stay abreast of new developments.
- Supporting the network of financial capability workers who provide financial literacy education, including in remote areas.
- Working to raise the profile of financial counselling in Australia and increase access to the service.

About the National Debt Helpline and the Small business Debt Helpline

The National Debt Helpline (NDH) is a not-for-profit financial counselling service coordinated by FCA and run by ten different agencies across the country. There is a self-help website (ndh.org.au) with tips on how to manage various forms of debt and what your rights are. The website also hosts an online chat service which is staffed by financial counsellors and there is the phone line, 1800 007 007.

The Small Business Debt Helpline is run by FCA. It is a service staffed by financial counsellors specialising in small business. It's also a not-for-profit and helps small businesses and sole traders who are in financial difficulty. There is a phone service on 1800 413 828 and a chat service via the website sbdh.org.au.

Recommendations

1. A consistent approach be adopted across the financial services so that there is a minimum standard or obligation of assistance, regardless of who the provider is.

2. A central repository for key data points from financial services about financial abuse that is shared with key stakeholders.

3. Safety and flexibility should be built into joint loans and credit cards with joint facilities.

4. More friction in the digital process and organisations building in more robust verification process into a person's identity independently when making an application for debt.

5. Remove the assumption that that one partner, or ex-partner's, income will necessarily flow to the family unit from government services.

6. A requirement that organisations have a publicly available Domestic and Family Violence policy, including specific mention of financial abuse.

7. A requirement that organisations conduct awareness raising and training across all staff to better identify financial abuse.

8. A requirement that financial service organisations conduct awareness raising and training across all staff. Just like the mandatory requirement for OH&S training – financial safety training and awareness should be made mandatory.

9. Financial organisations explicitly mention financial abuse in their terms and conditions.

10. Financial organisations adopt the principles of Safety by Design in developing and modifying their products and services.
11. The ASIC Design and Distribution Obligation be modified to make explicit mention require safety by design or similar.

12. Make it explicit that organisations must take reasonable steps to identify both at risk and impacted customers.

13. Consistent and agreed upon flags developed in collaboration with industry, government, community sector and lived experience advocates.

14. Just like the mandatory requirement for OH&S training – financial safety training and awareness should be made mandatory.

15. Regular review of the DFV guidelines to account for changes in technology and other innovation.

16. Financial services be required to have more flexible hardship options that take into account the impacts of financial abuse, including timeframes for hardship.

17. Processes must be introduced by financial services that minimise the chance of victim survivors having to tell their story multiple times or that require onerous levels of proof.

18. Financial institutions should accept a customer has experienced financial abuse.

What we see - financial abuse in financial counselling case work

Whatever its cause, experiencing financial difficulty can be significantly limiting. Access to adequate funds and financial stability are integral to a persons' agency and freedom. Financial abuse describes a situation in which a perpetrator uses finances as a means of exerting power and control over a victim survivor. It is commonplace for financial abuse to be a factor for people seeking the assistance of a financial counsellor.

Financial counsellors see people:

- Who been coerced into handing over control of their assets or income, or into signing Powers of Attorney, contracts or loan documents.
- Who have debts that were raised in their names without their knowledge.
- Whose partners or ex-partners refuse to contribute to household expenses, contribute to the upkeep of dependents or pay child support.
- Who are denied access to joint funds and prevented from working.
- Whose partners or ex-partners weaponise Child Support, the ATO or Centrelink system to cause them harm, or who knowingly cause delays in the legal system to increase costs.
- Who have been unknowingly, or coerced, into becoming company directors and are, therefore, personally liable for unpaid tax debts.

In the transcript below, an experienced financial counsellor describes her experience of supporting victim survivors of financial abuse.

> *It can be difficult for financial counsellors to provide support to victim survivors. These clients often have debts with multiple organisations and there is no consistent*

approach, so you're dealing with lots of different creditors. Some of my clients have been coerced into debt or have debts they didn't know about.

Many are going through family breakdown with an ex-partner continuing to abuse them financially by not paying their child support. Some ex-partners will even deliberately damage their property, which means that the victim survivor cannot claim any insurance. The matters are very complex and need a lot of time and assistance. The clients are emotionally traumatised and going through a lot.

Sometimes, they've got young children and although they're trying to hold down a part-time job they often have to give up some of their work hours if they can't find someone to care for their kids.

Lack of reliable childcare and lack of funds also plays out when a client is going through the judicial system. Who will care for their children while they attend court for apprehended domestic violence orders? And this can happen many times. They also face crippling legal costs if they employ a lawyer to help with property settlements. Their ex-partner will often use this process as a way to inflict even more financial abuse by refusing to agree to an amicable property settlement. Many clients don't qualify for legal aid because the value of the property is above the threshold, so they're stuck in a really horrible cycle of debt separation and exclusion.

If you're lucky those lenders will be the major banks which have really good DV policies and provide assistance easily and quickly. If it's like second tier or third tier lenders, payday lenders or the Buy Now Pay Later, or it might even be mobile phones that have been purchased on a plan and put in the victim's name, you know it starts to get really, really tricky or if there falsified information to Centrelink for Family Tax Benefit, then the debt is sitting in your client's name so there can be all sorts of complexities and everyone has a different level of service and assistance and they're not always up to par. (Financial Counsellor, interview transcript, 2024)

Recommendation

A consistent approach be adopted across the financial services so that there is a minimum standard or obligation of assistance, regardless of who the provider is.

Prevalence of financial abuse

As the national peak body for the sector, one of the activities FCA carries out is to collect feedback about what financial counsellors are saying on the ground. For example, we conduct a survey of the sector every two years in which we ask them to rank and provide feedback on the hardship practices of financial institutions, including the major banks, non-major banks, non-bank lenders and debt collectors. In one question, financial counsellors were asked to describe the level of support provided by the major banks to victim survivors of domestic and family violence.

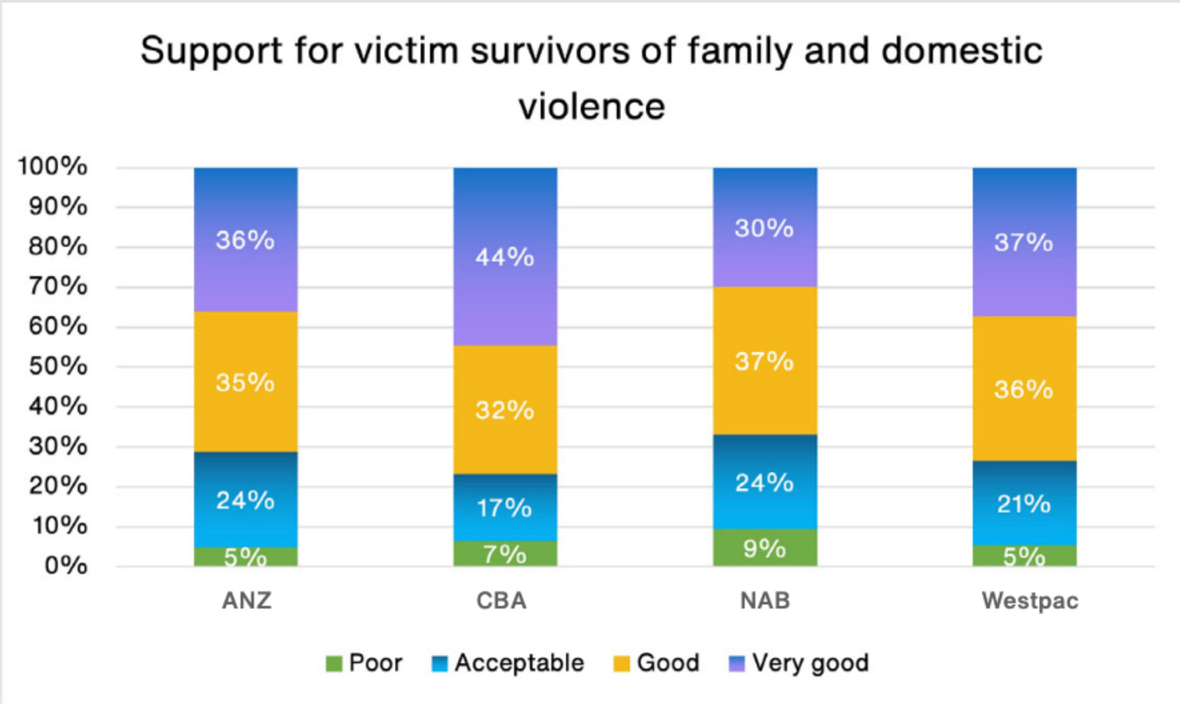

Figure1: Rank the Banks Report, 2023

Of the 1458 items of qualitative data collected in the 2023 survey, 100 related specifically to Domestic and Family Violence (DFV) or financial abuse.

We've also recently implemented a way of collecting feedback more dynamically, through an 'insights tool.' This tool is in its early stages, but of the 100 responses we have so far, about a third relate to financial abuse. Financial abuse is a commonly occurring feature of financial counselling casework.

In addition to this, over the last twelve months:

- There have been almost 1000 visits a month to information about DFV and financial abuse on the NDH website.
- Roughly 5% of outbound referrals from the NDH are to DFV services.
- Financial abuse and DFV are a key factors in 3-5% of calls to SBDH.

As one NDH service reported:

> *Of course, the number of clients impacted is likely to be much higher. We don't ask every caller whether they are impacted by family violence or financial abuse. We only record this information if it is volunteered by the client, or if there are indicators of family violence or financial abuse that prompt the financial counsellor to gently probe. (NDH service provider 2024).*

The data we have on financial abuse is piecemeal and likely to be under-reported. It's difficult for community sector organisations to gather accurate data across all organisations. Many organisations collect data but there are no consistent methods used by the entire sector. While we continue to grow this capacity, our data capabilities will always be minimal. Financial organisations, on the other hand, have enormous data capabilities. Harnessing these capabilities would provide a more accurate measure of the prevalence and forms of financial abuse.

Recommendation

A central repository for key data points from financial services about financial abuse that is shared with key stakeholders.

Key risk areas

Joint loans

Joint loans, and particularly joint mortgages, are a product that require particular care, as highlighted below:

> *There needs to be a major shake-up of how joint debt and DV is dealt with. In recent years, the ABA guidelines on dealing with joint debt have been scaled back and banks generally treat it like 'it's a legal contract. We can't disadvantage the abuser, the property has to be discharged before we make any decision' - and when an abuser feels like causing problems, discharging the property can take years. Where the victim is staying in the property and making full payment on the mortgage (often while waiting on family court procedures, which can be extended through malicious delay by their abuser), if they need to catch up on arrears, banks insist on capitalisation which require the consent of the abuser*. (Rank the Banks, Survey responses, 2023).
>
> *A shared issue with all banks is managing joint properties in domestic violence situations. It can take years to recover the property and sell, and the bank won't make promises before it's sold and often don't remember/have any process to release the victim from debt once it is sold.* (Ranks the Banks, Survey responses, 2023).

Recommendation
Safety and flexibility should be built into joint loans and credit cards with joint facilities.

Online loan applications

Taking out a loan online is quick and easy. There's hardly any friction involved in the process and very little verification of a person's identity. Financial counsellors often see instances of a perpetrator taking out a loan fraudulently or coercing a partner to take one out.

Recommendation

More friction in the digital process and organisations building in more robust verification process into a person's identity independently when making an application for debt.

Government services

Wherever there are products or services that make assumptions about the dynamics of the financial relationship between two people, these assumptions need to be examined. Victim survivors are often caught in the intersection between taxation, Child Support and Centrelink systems. As one financial counsellor said,

> *I have seen many situations where somebody either doesn't put tax returns in or misreports their tax. This affects the former or current partner's Family Tax Benefit and then they are stuck with a debt. The debt is purely in the primary carer's name, but the debt is a result of the actions of somebody else. The primary carer is just at the whim of the other person to report. They're liable for the debt, it's not a joint liability. When the other partner finally does their tax return, Centrelink finds out and then hits the primary carer with a bill. (Financial counsellor, interview transcript, 2024)*

The crux of this issue is the underlying assumption that one partner, or ex-partner's, income will necessarily flow to the family unit. This assumption leaves people extremely vulnerable to financial abuse.

Recommendation

Remove the assumption that that one partner, or ex-partner's, income will necessarily flow to the family unit from government services.

Small business

Financial counsellors describe victim survivors being put 'on the books' as an employee of a small business without their knowledge, so that it is declared that they've earned an income. They've never received the income, but it will affect their income tax, Family Tax Benefit and Centrelink payments.

Another common scenario they describe is one where a partner is coerced into a directorship and provides a personal guarantee of the debt that is incurred within that small business, including tax debts.

Sometimes small business bank accounts are in the perpetrators name and although they say they're submitting their BAS and paying their GST, they never do. The small business is a partnership so, as far as the tax office is concerned, both are liable.

CALD clients

Financial counsellors tell us how being from culturally and linguistically diverse backgrounds is even more challenging for victim survivors of financial abuse:

> *Most banking and financial services' websites and documents are written in formal English, which isn't easy to understand. Abuse can occur if a person who can't speak*

or read English is told by their partner to open a bank account in in their name and to deposit their pay into it. Quite often, the perpetrating partner will insist that he will handle all the loan applications, repayments and banking, even though the account is not in his name. Her whole autonomy is taken away and a whole level of risk is opened up but it's hard for them to know what to do about it because everything is written in formal English (Financial counsellor, interview transcript, 2024)

Consumers from culturally and linguistically diverse backgrounds not only have to face language barriers, they're often having to navigate new and different financial landscapes. This makes them more vulnerable to financial abuse.

Designing risk out

Shifting attitudes

The single, most important, factor in prevention is attitudinal shift. The shift is already underway and is taking place in two directions. First, is the recognition that financial abuse exists and is unacceptable. Second, the belief that it is incumbent on all members of our community, including players in the financial ecosystem, to do something about it.

The results of the Rank the Bank 2023 survey suggest that significant progress has been made towards this attitudinal shift over recent years, particularly in relation to the major banks and to debt collectors. However, the results also suggest there is still much work to be done in achieving consistency. This applies within hardship teams, as the same team is often celebrated by one financial counsellor and condemned by another. The comments below all relate to the same major bank.

> *Good policies for DV and illness. Staff generally show an understanding of circumstances of financial abuse. (Rank the Banks, Survey responses, 2023)*

And

> *Not many staff are compassionate when it comes to DV or trauma (Rank the Banks, Survey responses, 2023)*

These diametrically opposed responses are indicative of a sort of 'roulette' reported by financial counsellors. This is further evidenced by responses to Rank the Banks 2023 that suggest that the quality of hardship responses depends on the individual, such that financial counsellors will escalate matters to a particular staff member.

Financial counsellors also see examples where approaches to loans, particularly at point of sale, actively contribute to financial abuse:

> *A client went to get a car loan with her partner. "Something was wrong with his credit" so the loan was put only into her name, not joint names. The car was registered in his name. The client didn't know that cars couldn't be registered in joint*

> *names and hadn't questioned having the asset in joint names when the debt was only in hers. It 'all happened at the meeting' and she just went along with what was needed to get the car, feeling relief that the 'something wrong with his credit' didn't prevent them getting the car they needed. This was done at a dealer. She's not sure, but it seems likely that the registration was done by the dealer as part of the service.*
>
> *The partner was abusive, and it escalated. He took the car and used it as a tool to control her because she needed it for the baby's appointments and her work. With the car in his name, he could claim it was stolen, or wreck it, and leave her with the debt. Luckily, it was resolved through the return of the car to the dealer and the debt was (eventually) waived. My concern is that the registration was done by the dealership and that it was allowed/possible to do the rego in one person's name but the debt in another. That should not be allowed. (Financial counsellor via* FCA insights tool, 2024)

The example above suggests the dealer was either ignorant of the risks or simply only cared about getting a sale.

Recommendations

- A requirement that organisations have a publicly available Domestic and Family Violence policy, including specific mention of financial abuse.
- A requirement that organisations conduct awareness raising and training across all staff to better identify financial abuse.

Shared responsibility

There's also been a growing call for financial services to acknowledge financial abuse. The *Respect and Protect* initiative driven by Flequity Ventures, which call on financial institutions to ban the use and misuse of their products and have this written in their Terms and Conditions. Initiatives like this are pivotal in bringing about attitudinal change.

There are also calls for financial organisations to recognise their products could be misused to perpetrate financial abuse and, importantly, to mitigate that risk in product design. Along with other consumer advocates, we would like to see the Safety by Design principles developed by the ESafety Commissioner and outlined in the *Designed to Disrupt Report*, adopted by financial institutions.

Recommendations

- Financial organisations explicitly mention financial abuse in their terms and conditions.
- Financial organisations adopt the principles of Safety by Design in developing and modifying their products and services.

- The ASIC Design and Distribution Obligation be modified to make explicit mention require safety by design or similar.

Identifying abuse

As community awareness grows and lack of tolerance grows, so too does our expectation that financial organisations will proactively identify financial abuse. Financial organisations need to train their staff and create a culture in which the signs of financial abuse can be recognised. It is no longer acceptable for organisations to rely on self-disclosure.

Sometimes it’s not safe, or possible, for a victim survivors to disclose their situation. There are times when they don't have the language to describe their situation.

> *When I was in it, I was so in it that I didn’t realise it was abuse. I knew that it made things difficult for me and my children. I was scared to ask for money – even when I couldn’t pay for things that the kids needed. It was always a drama if I asked about money or what was happening with our finances, but I didn’t know it was abuse until much later. (*advocate, 2024)

The onus should not be on victim survivors to use the ‘magic words’ or self-identify. Rather, financial organisations must be alert to the signs of financial abuse. The onus should not be solely on the person to self-identify. This may include exploring the opportunity of using behavioural science analytics and AI to detect red flags in chat conversations and account activity.

The ABA Financial Abuse and Family and Domestic Violence Guidance makes this expectation explicit. The guidance gives helpful suggestions on how to identify financial abuse. However, several of the suggestions do not apply for online applications. The guidance lists:

- Appears or sounds distressed or scared.
- Is seen or heard to be taking instruction/s from another person.
- Remains silent while another person does all the talking.
- Does not understand or is not aware of recently completed transactions or loans in their name.
- Asks questions about the other account holder’s behaviour or activities.

These signs of potential financial abuse are difficult to identify in an online context. We need systems for identifying flags of financial abuse that are appropriate for an increasingly digital-only and online environment where body language and tone of voice go unobserved.

Recommendations

- Make it explicit that organisations must take reasonable steps to identify both at risk and impacted customers.

- Consistent and agreed upon flags developed in collaboration with industry, government, community sector and lived experience advocates.

- Just like the mandatory requirement for OH&S training – financial safety training and awareness should be made mandatory.

- Regular review of the DFV guidelines to account for changes in technology and other innovation.

Responses to financial abuse

Fraud

Financial organisations should have robust hardship processes in place to respond to financial abuse. However, hardship should not be the only avenue for responding to financial abuse. Situations which involve forged signature, or in which the perpetrator has pretended to be the victim survivor in an online context, should be treated as fraud and dealt with accordingly.

Hardship responses and financial abuse

When hardship is identified, a flexible and fair hardship response is imperative. The major banks ranked around seven out of 10 for overall hardship practises in the 2023 Rank the Banks report. The results for the non-major banks averaged 5.0. The results for the other lenders (finance companies, second-tier lenders) averaged 4.0. The results for debt collectors (excluding Credit Corp) averaged 5.0.

Rank the Banks indicated that the major banks have improved their hardship responses and we heard some positive feedback about the major banks responses to Family and Domestic Violence, but with 5% of responders ranking Westpac and ANZ's responses as poor, 7% ranking CBA responses as poor and 9% ranking NAB's responses as poor, there is further work to be done. This is particularly concerning as financial counsellors tend to see the best of hardship departments. If financial counsellors rated many of the lenders and debt collectors in this survey so poorly, it's highly likely people who are not represented experience poorer responses.

Siloed responses within organisations

The Rank Banks data suggests that, quite often, there will be an appropriate response to financial abuse when dealt with by the hardship team but once the issue moves outside of the team, for example to an area of the organisation dealing with business instead of personal loans, the response to family violence deteriorates.

> *Once again, generally speaking, the majority of creditors have some type of hardship (and FV) policies and departments nowadays but the Big Four are by far, easier to*

deal with. However, in saying this, if it is for business purposes/clients/accounts it is a whole other ball-game and consistent policies need to be established in order to effectively assist our complex and vulnerable client base. (Rank the Banks, Survey responses, 2023)

It's important that once a person has been identified as experiencing financial abuse, there are processes and systems in place that don't require them to tell their story multiple times, particularly when they may get very different responses or information at each telling.

Timeliness of response

Delayed responses from financial institutions compound distress and can lead to further risks for victim survivors. We receive feedback that it can be difficult to get a timely response from some organisations, with no response for weeks or months. One extreme example was shared by one respondent to Rank the Banks:

> In a DV case they took three years to process a 'voluntary surrender/repossession' where the abuser disengaged/was living in the property and not paying and the other was in full support. It caused extensive distress and credit damage to the victim.

Requiring proof

Some financial organisations are still in the practice of requiring unnecessary levels of evidence to prove financial abuse. While there are circumstances where requiring evidence is necessary, financial counsellors report they are faced with unreasonable requests for documentation to prove financial abuse or FDV and evidence to support Statements of Financial Position.

It can be particularly challenging to provide evidence in cases where the abuse is primarily financial.

> *Needs to improve DV policy and hardship options. Needs to accept that the client may not have reported the issue to the police but that it is still part of financial abuse. (Rank the Banks, Survey responses, 2023).*

The financial organisations with the most sophisticated responses to financial abuse are those where the practice is to accept DFV on face value unless there is good reason not to.

Hardship options

Many financial counsellors are concerned about the short length of hardship arrangements in financial abuse cases. As this example explains, short term arrangements are not always appropriate for victim survivors, particularly when family law proceedings are underway:

> *Dealing with mortgage arrears for a victim survivor of family violence who was involved in a long and drawn-out legal battle over a family law property settlement. It took a lot of hours of advocacy effort as only short-term periods of assistance would be approved despite being in contact to report the financial abuse and FV before the loan even went into arrears and where there was consistent effort by the victim survivor to pay reduced repayments whenever she could afford to. (*Rank the Banks, Survey Responses, 2023).
>
> *There is a lot of pressure placed on the person who is continuing to pay the debt (mortgage) while the person who is not paying and not agreeing to property settlement is allowed to continue perpetrating FV by holding up the settlement and not being required to contribute to the debt. The threat to repossess the property is not showing any understanding of the FV situation faced by many in this situation. The banks need to do better with this. (*Rank the Banks, Survey Responses, 2023).

Recommendations

- Financial services be required to have more flexible hardship options that take into account the impacts of financial abuse, including timeframes for hardship.

- Processes must be introduced by financial services that minimise the chance of victim survivors having to tell their story multiple times or that require onerous levels of proof.

- Financial institutions should accept a customer has experienced financial abuse.