

FINANCIAL SERVICES REGULATORY FRAMEWORK IN RELATION TO FINANCIAL ABUSE

SUBMISSION TO THE PARLIAMENTARY JOINT COMMITTEE ON CORPORATIONS
AND FINANCIAL SERVICES

June 2024

INTRODUCTION

1. We thank the Committee for the opportunity to comment on this inquiry.
2. Financial abuse is a critical issue facing our community. The Australian Bureau of Statistics has estimated that, based on most recent information, 16 per cent (1.6 million) of Australian women and 7.8 per cent of Australian men (745,000) have experienced partner economic abuse.¹ The Australian Institute of Family Studies' National Elder Abuse Prevalence Study found that, in a 12-month period from 2019 to 2020, 2.1 per cent of community-dwelling people aged 65 years or older in Australia experienced financial abuse.²
3. As a bank, we have an opportunity to help identify and respond to financial abuse. We currently take several steps to do this, including through specialist teams, staff training, data analytics and referral pathways to community organisations.
4. We acknowledge, however, that there is more work to do to help identify and minimise the impacts of abuse.
5. In this submission, we outline some of our observations on financial abuse, as well as some current challenges we face and areas of possible change. We refer to 'financial abuse' as including both actions aimed at controlling or sabotaging another person's access to economic resources, as well as abuse perpetrated using financial products.

DETAILED POINTS

ANZ's approach to financial abuse

The ways in which we see financial abuse

6. Financial abuse presents itself to banks in different ways. Our customers may be victim-survivors or perpetrators of abuse. Victim-survivors can be partners (or ex-partners) of a perpetrator, but can also be parents, family members, or have a different relationship. Our customers may tell us about abuse, but they may not.
7. We can become aware of financial abuse in the following ways:

¹ 'Personal Safety, Australia', Australian Bureau of Statistics, March 2023, <https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release/#cohabiting-partner-violence-emotional-abuse-and-economic-abuse>.

² National Elder Abuse Prevalence Study: Final Report', Australian Institute of Family Studies, July 2021, https://aifs.gov.au/sites/default/files/publication-documents/2021_national_elder_abuse_prevalence_study_final_report_0.pdf; 'Elder abuse in Australia', Australian Institute of Family Studies, August 2022, https://aifs.gov.au/sites/default/files/2022-08/22-02_financial-abuse-in-australia.pdf.

- In our **in-person, chat or phone interactions** with customers. Our frontline bankers are trained to identify signs of domestic and family violence and financial abuse in these interactions.
- Through our **lending application** processes. When prospective borrowers apply for a joint loan, our lenders or brokers assess whether both borrowers will receive a substantial benefit from the loan, and, if not, must be satisfied that neither co-borrower is experiencing financial abuse. We also have processes to ensure prospective guarantors understand their obligations and to check they have not been placed under undue pressure to enter the guarantee and are not subject to abuse.
- Through analysis of our payment **transaction data**. We use data analytics to identify potentially abusive transactions that are not otherwise blocked by our payment channels (which include in-built controls to prevent the use of profane language). This involves the use of a dynamic algorithm to identify indicators of abuse by considering factors such as the size of transaction values, patterns of behaviour and the content of payment descriptions. We are also piloting the use of data analytics to help identify abuse by a person holding a power of attorney.
- When a customer makes an application for **financial hardship**. Our hardship teams may identify, based on information provided by a customer, that the customer is or has been a victim-survivor of abuse.
- Through **complaint** channels. Customers sometimes let us know they are a victim-survivor of abuse when raising a complaint, for example when disputing liability for a debt or seeking to repair an adverse credit rating.
- Through **fraud** and **scam** detection mechanisms. Our teams sometimes identify victims of fraud and scams who may be experiencing vulnerability and/or may also be a victim-survivor of abuse.

8. The types of abuse we see include abuse by a person holding a power of attorney, coercion to become a co-borrower or guarantor to a loan, threatening messages or communications, and actions that adversely affect a victim-survivor's credit rating and, in turn, their ability to sell a property or obtain new finance. These can include a perpetrator incurring debts in the victim-survivor's name or failing to make payments on a joint debt.

Responding to financial abuse

9. When we identify financial abuse, we take steps to provide appropriate support for victim-survivor customers, handle interactions with perpetrators, and, where appropriate, refer matters to authorities. These require careful consideration of the circumstances in each case.

10. Depending on the circumstances and how we identify the abuse, matters can be dealt with by frontline staff, complaints teams or specialist teams. Specialist teams provide guidance to our frontline staff, and ongoing case management for more complex or sensitive matters.
11. Support for victim-survivors can include:
 - flexible hardship arrangements for victim-survivors in financial difficulty
 - opening a new account that may assist a victim-survivor leave a harmful relationship
 - measures to help keep a victim-survivor's address and other personal information secure from an abusive party
 - assisting a victim-survivor to repair their credit rating where appropriate
 - referrals to community organisations for support, which can include psychological and financial counselling, housing and social worker support, and advice on emergency payments including the Government's Escaping Family Violence payment scheme. We have provided funding to Uniting's CareRing program to assist those in need of immediate financial assistance to escape domestic violence, and to the Fitted for Work program to assist unemployed female-identifying customers improve their employment prospects.
12. We also provide financial education to individuals impacted by family violence through our MoneyMinded program (delivered in partnership with Berry Street), and work with DV Safe Phone to facilitate mobile phone donations for victim-survivors.
13. Interactions with perpetrators might include issuing warnings, suspending digital access and, in some instances, closing a customer's accounts.
14. Specialist teams record details of financial abuse as part of their ongoing case management. When handling a matter, our specialist teams can place a note on a customer's file to alert frontline staff that may interact with the customer of any relevant information. In some circumstances, a restraint will also be placed on the customer's account to protect funds from misappropriation. A restraint allows our specialist team to investigate further and consider what actions may be appropriate.
15. We report abuse to enforcement agencies when we suspect there may be criminal activity, including by making suspicious matter reports to AUSTRAC relating to abusive transaction messages and reporting directly to police when we become aware of a threat of imminent harm. Our reports to AUSTRAC have led to some arrests and prosecutions. We have suspended or exited a small number of customers for making abusive transactions.

16. We also report concerns to statutory adult safeguarding agencies in States and Territories where we are concerned about financial abuse and are unable to engage with the customer, for example due to issues relating to cognitive capacity (where this is within the relevant agencies' terms of reference). In some cases, the agency has initiated action with the relevant State or Territory Tribunal to have a power of attorney revoked due to misconduct and another person appointed to manage the customer's financial matters.

Challenges and possible reforms

17. We face several challenges in detecting and responding to financial abuse.
18. Abuse can sometimes be difficult to identify. For example, it may not be present or easily detectable at the time a customer begins banking with us. Abuse, particularly long-term abuse, may not present any readily identifiable transaction patterns. Abuse can occur under a valid power of attorney, or one that has been revoked without notification to the bank. It can be difficult to understand when an abuser has gained access to a victim's electronic banking or physical debit/credit card.
19. When abuse is identified, determining appropriate solutions is often complex. For example, sometimes the victim-survivor and abuser will both be our customers, and share a joint debt or deposit account. Some solutions will affect both parties. Other times, a potential solution could notify an abuser that a victim-survivor has sought assistance – for example, through the suppression of repayment history information on a joint credit account, or changing an account authority to 'all to sign' on a joint bank account. There is a risk that such interventions could exacerbate abuse.
20. In other circumstances, a desired solution is not always workable under current law. For example, splitting joint debts can be difficult where each party is jointly and severally liable for the debt. An abuse victim-survivor may wish to refinance a loan into their own name, including where Family Court orders have granted them ownership of a property, but we may be unable to facilitate this while complying with our responsible lending obligations.
21. There are other times when a victim-survivor may not know or may be reluctant to accept they are being abused, and may request that we facilitate transactions that may not appear to be in their interests. If we decline to process transactions due to our concerns about potential abuse, customers may respond by transferring their banking to another financial institution.
22. There are also challenges in informing relevant agencies of potential abuse. For example, the *Privacy Act 1988* (**Privacy Act**) places constraints on sharing a customer's personal information without a customer's consent, which can restrict our ability to report financial abuse to police or adult safeguarding agencies. Victim-survivors may also be reluctant to

report family members who are perpetrating financial abuse, in particular where the victim-survivor is isolated or reliant on the abuser for care, for example in elder financial abuse cases.

23. There are some potential changes to the law and other reforms that could assist us to provide appropriate solutions and help minimise harm to victim-survivors. These include:

- Amendments to the Privacy Act to allow the sharing of a customer's personal information to relevant agencies where we have concerns for a customer's **financial safety** (including in circumstances where a customer's consent cannot be obtained). This would align with the approach adopted in the UK's *Data Protection Act 2018*, which allows for information to be shared without consent in some circumstances to protect the economic well-being of an individual at economic risk.³
- The introduction of exemptions to notice requirements in the National Credit Code (**Credit Code**) in the *National Consumer Credit Protection Act 2009* and ASIC Regulatory Guide 271: Internal Dispute Resolution (**RG271**) where these could present a risk to a customer's safety. Specifically:
 - The Credit Code requires banks, upon receiving a hardship notice from a debtor, to provide notice to borrowers of a decision whether or not to change a credit contract.⁴ In 2022, ASIC issued a no-action letter with respect to these requirements for situations where a joint debtor is or was a victim of family violence, and the family violence may be, is or was being perpetrated by other joint debtor(s) under the relevant credit contract.⁵ These changes should be made permanent.
 - RG271 requires banks to provide a written IDR response to a complainant setting out the final outcome of a complaint.⁶ In circumstances where a complainant is a victim of domestic violence and shares an address with an abusive joint account holder, sending a response to the complainant's address could present a risk to the complainant's safety. RG271 should include an exemption from the requirement to provide a written response (and an alternative mechanism for notifying complainants of an outcome) in these circumstances.

³ Schedule 1 Part 2 s 19 *Data Protection Act 2018* (UK).

⁴ See, for example, *National Credit Code* ss 72(4), 73(1), 194(4).

⁵ This can be found here: <https://download.asic.gov.au/media/d32pemom/no-action-letter-to-credit-providers-and-consumer-lessors-8-july-2022.pdf>.

⁶ ASIC Regulatory Guide 271: Internal dispute resolution RG271.53, RG271.54, REG271.56.

- The improvement of pathways for banks to **report suspected financial abuse to adult safeguarding agencies**, for example by the creation or nomination of a single agency to which reports can be directed. This would facilitate reporting of elder financial abuse.
- The introduction of **national register for enduring powers of attorney**. This would create a single 'source of truth' and reduce the risk of elder financial abuse by ensuring that enduring powers of attorney (and their revocation) can be more easily and confidently verified.

ENDS