



# Financial Rights

LEGAL CENTRE

## CLCQLD Presentation: DFV: Debt and Insurance

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This presentation is for information only.  
You must seek legal advice in relation to any particular circumstances.

## What do we do?

We are a community legal centre specialising in financial services, particularly in the areas of consumer credit, banking, debt collection and insurance.

We operate five advice lines Monday to Friday.

<b>10am-1pm</b>	<b>Credit &amp; Debt Legal Advice (NSW &amp; QLD)</b>	<b>1800 844 949</b>
	<b>Insurance Law Service (national)</b> <b>(dial 1 for Natural Disaster or DFV related insurance queries)</b>	<b>1300 663 464</b>
<b>9.30am-4.30pm</b>	<b>Caseworker Hotline (from QLD)</b>	<b>(02) 8204 1325</b>
	<b>National Debt Helpline (NSW)</b>	<b>1800 007 007</b>
	<b>Mob Strong Debt Help (national)</b>	<b>1800 808 488</b>

We provide referrals to local financial counselling services.

Available for casework assistance including negotiations, written legal advice and representation in EDR schemes, courts and tribunals in credit, debt, banking and insurance

# Outline

- What is financial abuse?
- Legal defences
- How can you assist your clients?
- Remedies, Banking Code of Practice and ABA Guidelines, EDR
- Bankruptcy
- Family Violence and Insurance
- When to get specialist legal advice; and Resources

## Why financial abuse?

- 11.5% of Australians experience financial abuse:
  - 7.1% of men
  - 15.7% of women (source: 2017 study by RMIT)
- Only 2 in 5 people who experience financial abuse recognise it as such. Only 1 in 3 people tell anyone about it (usually a friend or relative) (source: Gendered Violence Research Network, UNSW)
- Among women who have sought help from domestic violence services, up to 90% have experienced financial abuse (source: WIRE, 2014)
- There is often a spike in violence against women during major crises and disasters (source: Our Watch, 2020)
- There have been increases in financial abuse reported during Covid (source: Australian Banking Association, 2020)

## What is financial abuse?

- Financial abuse is a “form of family violence that negatively impacts a person financially and undermines their efforts to become economically independent”
- Financial abuse includes, but is not limited to:
  - Controlling behaviour that denies a person financial autonomy
  - Withholding or threatening to withhold essential financial support
  - Coercing a person into particular financial arrangements
  - Using control of finances or debt to prevent a person leaving a relationship

## Some Important Terms

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- Co-borrower
  - Guarantor
  - Director's guarantees/  
insolvent trading/personal  
liability (small business)
  - Credit report
  - Mortgage
  - Consumer lease

## Is the victim liable to pay?



The victim of financial abuse is not automatically liable for his or her partner's debts (whether married or not).

However, if the victim:

- has signed a contract as a co-borrower or guarantor, or
- was a director or partner in a small business, or
- is the recipient of a service (e.g. Netflix),

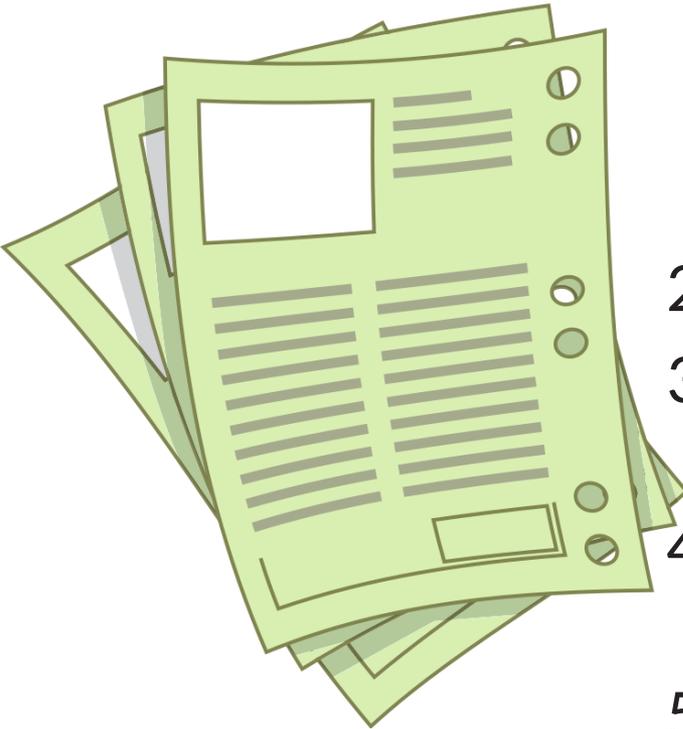
he or she may become liable for a debt.

## What can the victim do?

If he/she has signed the contract, there may be a way out:

1. If the lender/service provider knew of or facilitated duress (threats or force used by the partner to make the victim sign) or undue influence
2. Other legal defences
  - 1) Unjust contract
  - 2) Unsuitable loan (responsible lending)
  - 3) Signed up as a co-borrower where really a guarantor
  - 4) Statute of limitations
3. Compassionate release

## Documents you will need



1. Application form, unsuitability assessment and supporting information that was relied on (s132 NCCP)
2. Signed credit contract (s185(1)) NCC)
3. Credit related insurance contracts (s185(1)) NCC)
4. Any notices given under the NCC e.g. default notices (s185(1)) NCC)
5. Account statements (s36(1) NCC)
6. Payout figure (s83 NCC)

## Things to ask your client

Assess whether the lender/broker should have been aware of signs of abuse e.g.:



- Who gave instructions
- Silence
- Fearful, unfocused or withdrawn
- Confused, reluctance to discuss funds
- Disclosure of ADVO



## What Outcome/ Remedies are available?

- Full or partial waiver
- Counter-offer of a lump sum reduced payment
- Refund
- Waiver of interest and/or fees; Hold on fees and interest
- Severing liability/ agreement to release from liability
- Cancellation of account
- Financial hardship period of reduced or no repayments (can be for 3-6 months)
- Repayment plan
- Check credit report for any default listing, ask for removal of disputed listing if issue has been resolved



## What to look for in the documents?

- Contact information accurate or only partner's email/phone number?
- Income accurate?
- Is there no income or only Centrelink?
- Were enquiries made about income and expenses?
- Debts or liabilities: listed or inaccurate?
- Did the Lender verify your client's financial situation?
- What contact was there between the Lender and your client?

ABA Industry Guideline: Section 4.11: Preventing and responding to Family and Domestic Violence

Financial Rights Legal Centre “Your Credit Report” Fact Sheet:  
<https://financialrights.org.au/factsheets/your-credit-report-factsheet/>

Obtaining your free credit report:

- Equifax: [mycreditfile.com.au](https://mycreditfile.com.au)
- Illion: [illion.com.au](https://illion.com.au)
- Experian: [experian.com.au](https://experian.com.au)



# Banking Code of Practice & Industry Guidelines

## Banking Code of Practice

### CHAPTER 14

*38. We are committed to taking extra care with customers who are experiencing vulnerability, including:*

- a. family or domestic violence;*
- b. financial abuse;*

*We may become aware of your circumstances only if you tell us about them.*

*40. If you tell us about your personal or financial circumstance, we will work with you to identify a suitable way for you to access and undertake your banking.*

## **Australian Banking Association (ABA) Industry Guidelines:**

1. Preventing and responding to family and domestic violence (FDV)
2. Preventing and responding to financial abuse

# External Dispute Resolution (EDR)

## Australian Financial Complaints Authority (AFCA)

AFCA approach paper “Joint Facilities and Family Violence”



**Pros:** Free and independent; Speed; Easy for consumers;

**Cons:** Technical arguments; Remedies; No compassionate grounds; Monetary limits

## Other EDR schemes:

- Telecommunications Industry Ombudsman (TIO)
- Energy and Water Ombudsman (EWON)

## Case Study: Annie



- **2013:** Annie's ex-husband took out an In-Store credit card with ZZZ in her name
- **2014:** she became aware of this credit card
- **2014:** Annie gave birth to her second child. Annie and her older child (2 years old) were severely assaulted by the ex-husband and he left
- **For 6 years** Annie paid the creditor \$295 per month
- **2020:** The creditor said the card was cancelled and the debt cleared
- Shortly after, Annie received a letter demanding she continue making payments and a direct debit was taken from her account

**Annie: What were we able to do?**

- We negotiated with the creditor
- We lodged in AFCA and attended a conciliation
- After the conciliation the creditor agreed to refund all payments made by Annie in the sum of \$7,191.19

Some of the most obvious errors identified:

- i. Wrong contact details for Annie, including address and reference
- ii. Annie's email address was the email for her ex-husband.
- iii. Annie stated as having worked full-time for 18 months.
- iv. She had never engaged in any paid employment.
- v. Weekly income significantly overstated
- vi. Monthly expenses significantly understated

## Case Study: Julia

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- Julia inherited an unencumbered house in QLD from her mother
  - A few years later, Julia's now ex-husband, who was physically, emotionally and financially abusive arranged for Julia to meet with a broker
  - She signed documents including what she now knows to be a loan agreement and mortgage over her property
  - Julia was referred to us whilst living in crisis accommodation following a serious illness
  - Her ex-husband had left her and made off with the funds
  - The inherited property was vacant with a mortgage

**Julia: What were we able to do?**

- Contacted the bank raising concerns of the loan unsuitability
- The bank agreed to reduce the balance by \$100,000 and freeze interest for 6 months
- The bank conducted an internal review and determined at least part of the loan was used for Julia's ex-husband's sole benefit
- We requested a further review and release of the entire debt
- The bank subsequently agreed:
  - To waive the entire \$240,000 debt
  - Pay Julia compensation
  - Release the mortgage over Julia's property



## Bankruptcy



- **When should an FDV victim consider bankruptcy?**
  - Can't afford to pay debts; has been unable to dispute debts; has no assets to sell
- **What if the FDV victim's partner is going bankrupt?**
- **What is the FDV victim finds out the partner is bankrupt?**
  - If there is property, the client may have a number of options:
    - A property settlement under the Family Law Act
    - A negotiated arrangement (based on family law)
    - Disputing the amount of equity there is in the property
    - Disputing the size of their share on other grounds

The sooner the matter can be settled with the trustee in bankruptcy the better

# Family Violence and Insurance

- Insurance industry update:
  - The General Insurance Code of Practice 2020
  - Guide to helping customers affected by family violence

[https://codeofpractice.com.au/2020/10/ICA001\\_COP\\_Guide\\_OnScreen\\_SP\\_RG\\_B\\_10.1\\_Family\\_Violence.pdf](https://codeofpractice.com.au/2020/10/ICA001_COP_Guide_OnScreen_SP_RG_B_10.1_Family_Violence.pdf)

  - Insurers to implement a FDV policy publicly available on their website
- When may caseworkers run into insurance issues?
  - consumer credit insurance eg. credit card insurance
  - car insurance, home and contents insurance
  - motor vehicle accidents
  - natural disaster claims eg. bushfires, storms/floods
  - small business insurance
  - life insurance eg. income protection
  - insurance in superannuation (TPD claims)

## Insurance Case Study: Maria

- Maria was in a financially abusive de facto relationship with Richard;
- They had two children and Maria is a stay at home mum;
- The parties separated and agreed Maria and the children live in the home;
- The matrimonial home and its home and contents insurance policy was in Richard's sole name;
- **2020:** there was a house fire
- Maria and her children escaped to crisis accommodation
- Richard claimed on the insurance policy to repair the home;
- But refused to claim for temporary accommodation for Maria and the children;
- The Insurer said she was not a policy holder.



## Maria: what were we able to do?

- Called the Insurer
- Argued Maria was third party beneficiary, tenant in the property and equitable owner
- Argued Insurer was assisting furtherance of Richard's financial abuse
- Insurer's FDV policy promised to recognise vulnerable customers
- Lodged complaint with AFCA
- Maria given 2 weeks accommodation + longer term arrangement until repairs completed





## When to Get Specialist Legal Advice?

1. When your client is served with Court documents e.g. Statement of Claim
2. It appears the debt is more than 6 years old – “statute barred” debt
3. It appears the loan was unsuitable or shouldn’t have been obtained in your client’s name
4. A suitable arrangement with the creditor can’t be reached
5. If you or the client is contemplating lodging in AFCA
6. Call us for urgent legal advice if:
  - a default notice has issued (esp. if on a mortgage)
  - there is a default judgment
  - your client is being garnished
  - your client’s assets/ savings are being eroded quickly
  - Court proceedings have commenced
  - Any Court orders you are unsure of – writ for levy of property, notice to vacate
  - bankruptcy notice, Creditor’s Petition, sequestration order has been made

AFCA Approach – Joint Facilities and Family Violence

<https://www.afca.org.au/what-to-expect/how-we-make-decisions/afca-approaches>

ABA Banking Code of Practice 2021 & Industry Guidelines

<https://www.ausbanking.org.au/banking-code-of-practice-2021-release/>

<https://www.ausbanking.org.au/financial-abuse-prevention/>

ACCC Debt Collection Guideline for Collectors & Creditors

<https://www.accc.gov.au/publications/debt-collection-guideline-for-collectors-creditors>

General Insurance Code of Practice & Guide to helping customers affected by family violence

<https://codeofpractice.com.au/>

Individual banks' DV guidelines

- CBA <https://www.commbank.com.au/support/dv-assistance.html>
- Westpac <https://www.westpac.com.au/about-westpac/sustainability/our-positions-and-perspectives/difficult-circumstances/experiencing-family-violence/>
- NAB <https://www.nab.com.au/about-us/social-impact/customers/domestic-and-family-violence>
- ANZ <https://www.anz.com/resources/5/b/5bae397a-1706-41ae-a020-4284f5a3072b/financial-vulnerability.pdf>



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