

Industry guideline: Financial abuse and family and domestic violence policies

This industry guideline does not have legal force or prescribe binding obligations on individual banks. While the ABA's industry guidelines are voluntary, they are developed with input from, and agreed support by, member banks. The ABA encourages members to use this industry guideline in their internal processes, procedures and policies.

Purpose

Family and domestic violence is a whole of community issue and requires the collective efforts of government, communities and the corporate sector, including banks, to respond to the challenges.

This industry guideline:

- Explains that financial abuse is often a form of family and domestic violence¹.
- Outlines how financial abuse can impact a bank's relationship with their customer.
- Outlines a framework for banks to raise awareness and promote consistent arrangements to support their customers who may be impacted by financial abuse and family and domestic violence.
- Encourages best practice across the banking industry.

This industry guideline acknowledges that banks play a role in helping their customers with their financial matters, but are often not equipped to deal with the broader implications of family and domestic violence.

It provides guidance for banks to assist with developing internal policies and procedures.

Customers and other interested parties may find this guideline useful in understanding how banks have agreed to approach financial abuse and family and domestic violence.

Background

Family and domestic violence is a crime

Family and domestic violence is a crime and has devastating consequences for individuals, families and communities. It can also have a major impact on a person's financial security and wellbeing.

Financial abuse is a form of family violence

Financial abuse is a "form of family violence that negatively impacts a person financially and undermines their efforts to become economically independent"². Financial abuse is about power, control and manipulation of an individual. Financial abuse often occurs with other forms of violence, including physical violence, intimidation and controlling behaviour³. The abuse is generally long term and, for separated parties, may continue after an individual has left an abusive partner.

¹ The term 'family and domestic violence' includes 'domestic violence' and 'family violence' and has been used to reflect the fact different terminology is used across the Australian jurisdictions.

² Camilleri, O., Corrie, T., Moore, S., *Restoring Financial Safety: Legal Responses to Economic Abuse*, Good Shepherd Australia New Zealand and Wyndham Legal Service, 2015, pp.7.

³ Macdonald, F., *Spotlight on Economic Abuse: a Literature and Policy Review*, Good Shepherd Youth & Family Service and Kildonan Uniting Care, 2012.



Women are predominantly affected by financial abuse and suffer financial abuse in relationships for longer periods than men. Women are at least three times more likely than men to experience violence from an intimate partner⁴, and of those women who experience violence, 60% have children in their care⁵.

While women and children are more often impacted, financial abuse can happen to anyone regardless of gender, ethnicity, religion, culture, class or age, and in heterosexual and same-sex relationships.

Financial abuse includes, but is not limited to:

- Controlling behaviour that denies a person financial autonomy, for example, access to finances, bank accounts and financial records or the ability to work or study.
- Withholding or threatening to withhold financial support reasonably necessary for the maintenance of a partner and/or dependent child.
- Coercing a partner to relinquish control over assets, take out a loan or credit card in their name for the benefit of the controlling partner, or guarantee a loan.
- Preventing a person from taking part in decisions over household expenditure or the disposition of joint property⁶.
- Using control of finances or debt to prevent a person leaving an abusive relationship.
- Demanding all expenditure by the partner be justified and evidenced.
- Fraudulently using another person's details to obtain credit (with/without coercion).

It is not uncommon for an ex-partner to use the financial and legal system to manipulate and control the other party and prolong the financial abuse⁷. For example, not paying and defaulting on joint obligations, dragging out property settlements with the intention of causing default on joint debts and default listing of their partner, or even bankruptcy in extreme circumstances.

Guidance for banks

Financial abuse and the bank/customer relationship

It is challenging for a bank to know if someone is being impacted by financial abuse or whether they are a perpetrator of it. Every customer's situation is unique and banks are obliged to both protect their customer's privacy and not intrude into their lives. When a bank is aware of financial abuse, or suspects it may be occurring, the bank will work to support the customer wherever possible. In most instances a bank will only be aware of financial abuse once it has been disclosed. Banks are committed to exploring further ways to work with stakeholders to identify financial abuse and assist vulnerable customers.

How banks can recognise potential financial abuse

Some customers may be unaware that they are experiencing financial abuse or reluctant to disclose financial abuse. It is important that banks are aware of the potential signs of financial abuse, which may include when a customer:

- Appears or sounds distressed or scared.
- Is seen or heard to be taking instruction/s from their partner.
- Remains silent while another party does all the talking.

⁴ Australian Bureau of Statistics (2013) Personal Safety, Australia 2012, Cat. No. 4906.0, Australian Bureau of Statistics (ABS), Canberra.

⁵ Australian Bureau of Statistics (2013) Personal Safety, Australia 2012, Cat. No. 4906.0, Australian Bureau of Statistics (ABS), Canberra.

⁶ Australian Law Reform Commission/New South Wales Law Reform Commission, 2010.

⁷ Smallwood, E., *Stepping Stones: Legal Barriers to Economic Equality After Family Violence Report*, Women's Legal Service Victoria, 2015.



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- 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.
- Has their income or social security payment paid into their partner's account.
- Has concerns about protecting their personal privacy, safety or security of their accounts.
- Expresses reluctance to involve the other co-borrower when seeking a hardship variation or other assistance.
- Discloses the existence of an intervention order or equivalent (refer to Appendix 1, page 12, for a list of the relevant court orders in each jurisdiction across Australia).

Understand it can be difficult for customers to seek help or report financial abuse

Financial abuse is traumatic and disempowering. It can be very difficult for customers to disclose the abuse. Customers may fear for their personal safety (and the safety of children), may feel ashamed or that they will not be believed by the bank. In some cases they may not have realised that the financial abuse has been taking place. Banks should be sensitive to their customer circumstances and assist them to make an informed decision.

Family and domestic violence is an emotional issue, so it is important that bank employees remain impartial and objective and try not to become emotionally involved or make a moral or legal judgement about their customer.

Understand that customers may be under significant stress

Banks should have procedures in place that help employees recognise some customers may be under significant stress, in fear for their personal safety, homeless and/or residing in temporary accommodation. A customer's individual circumstances can change and banks should be flexible by reassessing arrangements to ensure they meet the individual needs of their customer.

The effects of financial abuse

The practical effects of financial abuse on a bank customer can include:

- Being left responsible for joint loans following a relationship breakdown.
- Poor credit history as a result of taking out a loan for an abusive partner.
- Limited opportunity to engage in regular employment.
- Lack of access to funds to cover essential household expenditure.
- Homelessness.
- The prospect of long-term financial hardship.
- Isolation from friends, family and other support networks.
- Psychological and physical health issues from the stress associated with poverty and an uncertain financial future.

Obtaining financial independence for themselves and any dependents is one of the most significant obstacles for individuals seeking to leave abusive relationships.



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Principles for industry practice

Develop internal bank guidelines and procedures

Banks should develop internal guidelines and procedures to respond to instances where employees may identify financial abuse:

Protect customer confidentiality and safety

- Ensure there are systems in place to keep a customer's contact information secure and confidential. For example, if a customer changes their contact details banks should have processes in place that make sure that any communication with joint-account holders does not include the contact information for the customer experiencing financial abuse or violence. Banks should discuss safe ways to communicate with a customer experiencing violence e.g. ask the customer whether it is a good time to talk or if it's safe to leave phone messages.
- Support customers to set up new accounts and/or change their access codes (i.e. Personal Identification Number, passwords as well as change their contact details).
- Not require the customer to make direct contact with their abuser. Banks need to consider whether their actions or requirements could exacerbate an existing physical threat to the customer or children.
- Inform customers about the circumstances and nature of information that has to be shared with their partner. For example, banks cannot withhold information about financial transactions on joint accounts from a party to that account, or information about a child's account if a partner has access to the account. Customers will need to be aware and make arrangements accordingly.
- If there is an immediate safety concern for the customer, their children or bank employees, contact local police or call triple zero (000).

Make it easier for customers to communicate with the bank

- Minimise the information that a customer is required to provide and the number of times a customer has to disclose the same information to the bank. Note: a customer may not have access to bank records and documentation.
- Where possible, customers should have consistency in speaking to one staff member.
- Provide copies of customer account documents without charge to assist in resolving matters or for legal purposes.
- Provide a specially trained team to work with customers impacted by family and domestic violence, for example, additional training for the bank's financial hardship and collections teams (or equivalent). Managers and supervisors should be provided with more detailed information, support and training (refer training section on page six).
- Refer a customer to a professional financial counsellor to assist with managing their financial situation, noting that support will likely be required for non-financial matters (see below).
- Work with a customer's agent or representative, such as a professional financial counsellor, lawyer, community services worker, legal aid officer or family and domestic violence specialist, and make it as simple as possible to appoint such an agent or representative while recognising the bank's privacy obligations under the law.



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- If required refer a customer to a qualified, independent interpreter to assist with communication with the bank.
- Provide a direct toll free telephone number for customer representatives similar to the dedicated financial hardship phone line provided for financial counsellors.
- Banks will not require an intervention order as evidence of family and domestic violence as part of assessing a financial hardship application. Disclosure by a customer should trigger banks' financial abuse policies and referral to the appropriate team within the bank.

Refer customers to external support

Bank employees are not equipped to provide support for non-financial matters. Where possible bank employees can suggest a customer contact external legal and support organisation (refer list of organisations outlined on page eight). It is the customer's choice whether they seek help or not, but the banks can offer to help customers to find places where they can get further assistance. This referral information will need to be kept up to date.

Some banks may offer emergency grants and external case management and support for customers impacted by family and domestic violence.

Help the customer regain control of their finances

Significant issues can arise when joint accounts and joint liabilities are involved as these finances can be used as another avenue to intimidate or control individuals.

Banks will work with their customers to manage joint accounts and joint liabilities. The bank will endeavour to work with each party to the account separately. The bank will not tell a co-borrower or joint account holder that they must contact or obtain the consent of another co-borrower or account holder, when the bank is aware of financial abuse occurring.

To manage joint accounts banks will:

- Accept verbal instructions to amend the operating instruction to 'two to operate' or place a hold on the account in circumstances where one party is concerned about joint funds or credit. Note, the bank is required to notify the other account holder of a change in operating instructions.
- Require the authorisation of both parties to subsequently amend the operating instructions to 'either to operate' or remove the hold.
- Advise their customer to seek independent legal or financial advice in relation to the options available to them.

To manage joint liabilities/debt banks will:

- Accept a financial hardship request from a joint borrower without the consent of the other co-borrower.
- In circumstances where there is a joint loan and parties are jointly and severally liable, the bank will, wherever possible, obtain the consent of all parties to any variation of the loan. Banks, however, acknowledge that this may not be reasonable in all circumstances. A bank can, therefore, decide to settle a claim for the whole or part of the debt against one co-borrower (i.e. the borrower impacted by family and domestic violence). This can have the effect of severing or apportioning the loan so the co-borrower pays only a portion (including no payment if appropriate) of the debt in return for a release from the whole of the debt. Provision of these arrangements will be assessed on a case-by-case basis.



- Depending on the circumstances, the bank can take action to pursue one co-borrower for a debt without pursuing the other borrower.
- Banks will investigate circumstances where a customer is unknowingly responsible for a credit obligation, including a joint debt, a debt in the individual's name or as a guarantor.
- Banks will investigate circumstances where a co-borrower or guarantor may have been coerced into the credit obligation, and the victim has received limited or no benefit from the credit obligation⁸.

Recognise financial abuse as a factor contributing to financial hardship

Banks provide specialised hardship arrangements to assist customers during times of financial difficulty. These arrangements will take into account the circumstances of a customer impacted by family and domestic violence. Banks will work with an individual customer who is requesting assistance and will discuss options for resolving their financial difficulty. Dealing with longer-term hardship and family and domestic violence is inherently challenging for the customer. The banking industry is committed to working with stakeholders to explore further ways it can assist.

In addition to the current financial hardship arrangements outlined in the [ABA Industry Guideline on financial hardship](#), banks will:

- Recognise that financial hardship can be caused by family and domestic violence or by a person leaving an abusive relationship.
- Ensure policies regarding the assessment of a hardship notice involving joint borrowers are clear and appropriate. For example, banks will consider a financial hardship application for a co-borrower affected by family and domestic violence without requiring the consent of the other co-borrower. This means a co-borrower may request a variation on the grounds of financial hardship and the bank will not require the borrower to contact or obtain information or the consent of the other co-borrower.
- Be aware that any reluctance to obtain consent from a co-borrower in relation to a hardship request may be the first indication of financial abuse, and take this into account when responding to any customer seeking hardship assistance on any joint loan.
- Minimise the information and documentation that customers are required to provide, noting that customers can give verbal and written hardship notices under the law.
- Fast track hardship requests where family and domestic violence has been disclosed as an issue, recognising that in some cases the statutory timeframe for responding to a hardship request (21 days) may create additional stress and safety concerns for their customer.
- Recognise that in many cases customers will require more time to manage the debt, including:
 - Longer-term arrangements such as capitalisation of arrears and other reasonable variations, as well as moratoriums, interest or fee waivers, reductions and new repayment plans.
 - More flexible arrangements for managing joint debts (refer page five).
 - Debt waivers for small amounts of unsecured credit.

⁸ A bank that subscribes to the Code of Banking Practice has an obligation to exercise the care and skill of a diligent and prudent lender. Banks will not accept a co-debtor under a joint credit facility or guarantor where it is clear, on the facts known to the bank, that the co-debtor will not receive a benefit under the facility. Banks will make all reasonable efforts to ensure both parties understand their rights and obligations.



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- Provide customers with ongoing assistance and case management. For example, banks should speak regularly to their customers to ensure the hardship arrangement remains relevant for their situation, or whether other arrangements may be more appropriate.
- Provide without charge and within a reasonable time any documents that the customer is entitled to access, in order to reasonably assist the case in support of a longer term hardship request.

Collections arrangements

Where a bank is made aware that a customer's debt involves family and domestic violence the debt will not be sold onto third party debt collection agencies.

Where a debt has been sold to a third party collection agency and the bank becomes aware that this debt involved family and domestic violence, banks will work with the collections agency to provide the best outcome for the customer. This may include repurchasing an existing debt from a collection agency. This will be assessed on a case by case basis. Note, Section 32 of the Code of Banking Practice requires that collection agents or representatives comply with the ACCC and ASIC Debt Collection Guidelines. Banks should ensure that their contracts with agents and debt purchasers include a requirement to comply with this guideline.

Understand the potential impact of credit reporting and default listing

Banks are aware of the potential impact of credit reporting on a customer's ability to re-establish financial independence.

Banks will work with a customer to review their circumstances and will not default list a customer impacted by financial abuse, so far as the bank is able to under the law. Where a customer has been default listed and the bank was unaware of the circumstances the bank will review the case for financial hardship.

Banks are committed to exploring further ways to work with stakeholders on credit reporting for customers impacted by family and domestic violence.

Exercise the care and skill of a diligent and prudent lender

Banks recognise they can help in preventing the potential impact of financial abuse on their customers. A bank that subscribes to the Code of Banking Practice has an obligation to exercise the care and skill of a diligent and prudent lender in the context of the provision of credit.

Banks will not accept a co-debtor under a joint credit facility or guarantor where it is clear; on the facts known to the bank; that the co-debtor will not receive a benefit under the facility or undue influence has been used or there is evidence of fraud.

Bank employees will make all reasonable efforts to ensure both parties understand their rights and obligations.

Where bank employees are concerned that one party is entering a contract under duress (refer to page two), the bank should take steps to ensure that the party receives independent legal advice.

If bank employees are unable to achieve a level of assurance that a person is acting voluntarily, the bank will be unable to agree to the contract.

Where there is evidence of unconscionable conduct, or other breaches, the bank will investigate the lending decision.



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Provide appropriate employee training and awareness of policies

There are a number of things banks can do to help reduce the effects of financial abuse on a customer. Bank training programs should focus on equipping appropriate employees with the knowledge, skills, competencies and information to help customers who may identify as being impacted by family and domestic violence.

Training should include helping employees:

- Be more aware of the prevalence and practical effects of financial abuse on a bank customer.
- Recognise potential financial abuse and have an appropriate conversation with a customer, or refer the customer to a specialised area who can give further guidance to financial abuse victims.
- Understand the potential impact (positive and negative) that a bank's actions can have on a family and domestic violence situation.
- Understand the strict need for confidentiality and respecting their customer's privacy.
- Understand the significant safety risks for women and children and the heightened safety risks at, and following, separation.
- Understand the need for flexible arrangements and responses for customers impacted by family and domestic violence.
- Understand the legal and procedural implications of court issued family and domestic violence orders (refer to Appendix 1, page 12, for a list of the relevant court orders in each jurisdiction across Australia).
- Have knowledge of local referral pathways and contacts for local support services.
- Who may be emotionally affected by the experiences of customers.

Training should be relevant for the type of role within the bank, for example:

- Frontline employees receive general information and instructions about internal procedures, and training on how to escalate to a team leader or manager where a matter is sensitive and may require immediate assistance or further review.
- Specialised employees (e.g. dedicated financial hardship and collections teams), managers and supervisors receive more detailed information, support and training.

Raise customer awareness of policies and procedures

Banks can play a preventative role by educating customers about financial abuse.

Banks should promote changes in their financial abuse policies and financial hardship assistance to employees, customers, financial counsellors, community legal services, legal aid and violence support services. People will be more comfortable disclosing abuse if they are aware of supportive bank policies.

This may include:

- Promoting guidelines and relevant awareness-raising materials on financial abuse with bank employees and with bank customers (including financial hardship processes, policies, procedures and systems).
- Promoting the availability of financial hardship assistance and other support services that may help customers impacted by financial abuse. For example, fact sheets and links to useful resources, such as the ABA's Doing It Tough website.



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- Providing plain-English information about the responsibilities of customers in relation to joint loans and accounts when applying for financial and credit products. For example, helping customers understand the terms and conditions when taking out a new product.

The banking industry commits to sharing information about the effectiveness of policies to support customers and employees so improvements can continue to be made across the industry.

Support bank employees who are affected by family and domestic violence

Like all employers, banks have an important role to support their employees who may be experiencing family and domestic violence. The experience of abuse can have serious impacts on a person's psychological and physical health as well as their financial situation. A consequence of this may be a deterioration in an employee's attendance and/or performance at work. Maintaining employment and financial security can also help a person leave an abusive relationship and recover from the effects of the abuse.

Banks should articulate their policies and programs to employees in relation to how they support employees who are impacted by family and domestic violence, and manage known perpetrators of violence.

Bank employee assistance programs should ensure that support is provided to employees affected by family and domestic violence. The support arrangements should reflect the specific needs of the employee and take into account the nature of their role and the workplace environment.

Review

The ABA will review the guideline annually to ensure it remains relevant and meets the changing nature of banking. If the principles or policies are found to be outdated and need refreshing, the ABA will consult with member banks and relevant stakeholders.



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Where to go to for more information

Emergency

In an emergency victims, or those witnessing violence, should call the police on 000.

Family violence support

1800RESPECT – A national family violence and sexual assault service 24 hours a day, 7 days a week. Tel 1800 737 732 www.1800respect.org.au/

Family Relationship Advice Line – Information and advice on family relationship issues and parenting arrangements after separation, 8am-8pm Monday to Friday, 10am-4pm Saturday. Tel 1800 050 321

Lifeline – Provides crisis support services, 24 hours a day, 7 days a week. Tel 131 114

Centrelink – Provides payments, social work counselling and third party referrals. Centrelink also provides crisis payments for victims of domestic violence or other extreme circumstance who have left their home and cannot return. www.humanservices.gov.au

Legal support

Legal Aid – Can provide advice on intervention orders, family law and civil / credit and debt matters. Find a legal aid commission at www.nationallegalaid.org/

Community Legal Centres (CLC) – Can provide advice on AVOs, family law and credit and debt / financial counselling and other generalist civil law advice. Find a local CLC at www.naclc.org.au/

Women's Legal Service Australia – Provides face-to-face legal advice through outreach services and runs a partnership to provide family law advice through Family Relationship Centres. www.wlsa.org.au/ or www.familyrelationships.gov.au/

All of these websites have a 'search for referral by postcode' function which directs clients to relevant local services.

Financial information

Financial Counselling Australia – You can talk on the phone to a financial counsellor from anywhere in Australia by ringing 1800 007 007 (minimum opening hours are 9.30am – 4.30pm Monday to Friday). www.financialcounselingaustralia.org.au/Home

MoneySmart – You can get guidance on general financial matters as well as specific information on protecting your money and yourself from financial abuse. www.moneysmart.gov.au/life-events-and-you/families/financial-abuse

Interpreter services

Translating and Interpreting Service (TIS) – Provides an interpreting service for people who do not speak English and for agencies and businesses that need to communicate with their non-English speaking clients. <https://www.tisnational.gov.au/en/About-TIS-National>



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About the ABA

With the active participation of 25 member banks in Australia, the Australian Bankers' Association (ABA) provides analysis, advice and advocacy for the banking industry and contributes to the development of public policy on banking and other financial services.

The ABA works with government, regulators and other stakeholders to improve public awareness and understanding of the industry's contribution to the economy and to ensure Australia's banking customers continue to benefit from a stable, competitive and accessible banking industry.

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Appendix 1: Family and domestic violence intervention orders

A family and domestic violence order (including an interim order) is generally made under a prescribed law of a state or territory to protect a person from family violence.

Intervention orders are civil orders that offer protection from family violence. A civil order means it is not counted as a criminal offence therefore the person will not have a criminal record. There can, however, be related criminal charges if the perpetrator is simultaneously charged with assault as a result of the perpetrator’s actions.

The court can make an intervention order that stops someone from having contact with a protected person, or one that allows contact but prohibits abuse and violence.

If any of the conditions of the order are breached (e.g. violence or contact with a protected person when this is forbidden), the offender can be charged with a breach of the order, which is a crime. The person will be required to attend court because of the breach and this may result in a criminal conviction.

Bank employees need to understand the implications of a court and/or police issued intervention order, family violence orders, safety order or equivalent, and recognise what this means when dealing with customer accounts. For example, not require a customer to directly communicate with an ex-partner and ensure the bank takes responsibility for separate communication.

The following table provides a list of the relevant court orders for each jurisdiction across Australia.

Jurisdiction	Instrument	Relevant legislation
Australian Capital Territory	Domestic Violence Order	Domestic Violence and Protection Act 2008
New South Wales	Apprehended Domestic Violence Orders	Crimes (Domestic and Personal Violence) Act 2007
Northern Territory	Domestic Violence Order	Domestic and Family Violence Act 2007
Queensland	Protection Orders	Domestic and Family Violence Protection Act 2012
South Australia	Intervention Orders	Intervention Orders (Prevention of Abuse) Act 2009
Tasmania	Family Violence Order	Family Violence Act 2004
Victoria	Intervention Orders	Family Violence Protection Act 2008
Western Australia	Violence Restraining Orders	Restraining Orders Act 1997