

# Industry Guideline

## Preventing and responding to family and domestic violence

### 1. Purpose of the industry guideline<sup>1</sup>

Family and domestic violence<sup>2</sup> is a whole 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 a form of family and domestic violence.
- Outlines how financial abuse can affect a bank's relationship with their customer.
- Outlines a framework to enable banks to provide consistent arrangements to support their customers who may be affected by family and domestic violence.

This guideline reflects good industry practice, and the ABA encourages members to use the principles in this guideline to put in place internal processes, procedures, and policies.

The guideline acknowledges that banks play a role in working with customers to support them with their banking needs where they are affected by family and domestic violence. However, it is not the role of banks to deal with the broader implications of family and domestic violence.

### 2. About this guideline

The **Banking Code of Practice (the Banking Code)**<sup>3</sup> sets out the standards of practice and service in the Australian banking industry for individual and small business customers, and their guarantors. The Banking Code provides safeguards and protections not set out in law. It complements the law and, in some areas, sets higher standards than the law.<sup>4</sup>

This guideline compliments the provisions of the Banking Code that requires member banks to take extra care with vulnerable customers<sup>5</sup>, including those experiencing family or domestic violence. The Banking Code notes that a bank may only become aware of the customers vulnerability if the customer tells their bank about it.

In this context extra care includes training staff to act with sensitivity, respect, and compassion, and working with customers to find a suitable way to undertake their banking. Banks will also be respectful of confidentiality, make communications easy, provide guidance to help customers to maintain and regain control of finances, and make referrals to external support where appropriate.

Other requirements in the Banking Code relevant to family and domestic violence include:

- Not approving a new loan, or an increase, where the co-borrower does not receive a substantial benefit, unless the bank has taken reasonable steps to ensure the co-borrower understands the

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<sup>1</sup> This industry guideline does not have legal force or prescribe binding obligations on individual banks. While the ABA's industry guidelines are voluntary, this industry guideline has been developed with input from, and agreed to by, member banks.

<sup>2</sup> 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. Financial abuse is a form of family and domestic violence.

<sup>3</sup> The Banking Code "Introduction: What is the Banking Code of Practice" <https://www.ausbanking.org.au/campaigns/new-banking-code/#The%20Banking%20Code%20of%20Practice>

<sup>4</sup> The Banking Code Part A introduction: What is the Banking Code of Practice?

<sup>5</sup> The Banking Code Chapter 14

risks associated with entering the loan; has taken into account the reasons why they want to be a co-borrower; and is satisfied they are not experiencing financial abuse.<sup>6</sup>

- Ending liability for as yet to be drawn loan amounts in certain circumstances<sup>7</sup>.
- Protections for guarantors including limiting liability, requiring banks to provide certain information, and requiring that banks allow a minimum of three days for a review of the guarantee unless additional requirements are met<sup>8</sup>.
- Changing joint accounts authorities, at the request of one party, for all to approve withdrawals<sup>9</sup>.
- Assisting a co-borrower experiencing financial difficulty, without involving the other person initially, if requested<sup>10</sup>.

The ABA has developed two guides relating to financial abuse, *Preventing, and responding to financial abuse* and *Preventing and responding to family and domestic violence (FDV)*. The first focuses broadly on financial abuse of customers, which may be by family members or others. The second focuses on family and domestic violence, particularly intimate partner abuse. The ABA recognises that financial abuse by a family member is a form of family and domestic violence, and that there are some common themes in both guidelines. The ABA guidance *Responding to requests from a power of attorney or court appointed administrator*<sup>11</sup> is also relevant.

The new aspects of this guidance are to be implemented within 12 months of release. Matters carried forward from the previous guidance (November 2016) should already be implemented.

### 3. Background

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

Over 2 million Australians have experienced physical or sexual violence from a current or previous cohabiting partner since the age of 15, with women three times more likely than men to experience violence from a current or former cohabiting partner<sup>12</sup>. People with a disability and indigenous people are more likely to experience domestic and family violence. Family and domestic violence is a leading cause of homelessness. There is limited data specific to financial abuse, though 63% of women experiencing high financial stress also have a history of financial abuse<sup>13</sup>.

As well as physical and sexual violence, family and domestic violence includes threatening and coercive behaviour, emotional, psychological, or financial abuse.

#### 3.1 What is financial abuse?

Financial abuse can be a “form of family violence that negatively impacts a person financially and undermines their efforts to become economically independent”<sup>14</sup>. 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 behaviour<sup>15</sup>. The abuse is generally long term and may continue after an individual has left an abusive partner.

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<sup>6</sup> The Banking Code clauses 53-57

<sup>7</sup> The Banking Code clause 56

<sup>8</sup> The Banking Code chapters 25-29

<sup>9</sup> The Banking Code clause 139

<sup>10</sup> The Banking Code clause 159

<sup>11</sup> [https://www.ausbanking.org.au/wp-content/uploads/2019/05/Industry\\_Guideline\\_Responding\\_to\\_requests\\_from\\_a\\_power\\_of\\_attorneys\\_or\\_court-appointed\\_administrator2.pdf](https://www.ausbanking.org.au/wp-content/uploads/2019/05/Industry_Guideline_Responding_to_requests_from_a_power_of_attorneys_or_court-appointed_administrator2.pdf)

<sup>12</sup> Australian Institute of Health and Welfare 2019 page 8 <https://www.aihw.gov.au/getmedia/b0037b2d-a651-4abf-9f7b-00a85e3de528/aihw-fdv3-FDSV-in-Australia-2019.pdf.aspx?inline=true>, with 1 in 6 (17%, or 1.6 million) women and 1 in 16 (6.1%, or 548,000) men had experienced physical and/or sexual violence from a current or previous cohabiting partner.

<sup>13</sup> 63% of women who were experiencing high financial stress and 24% of women with a disability or long-term health condition had a history of economic abuse, compared to the population average of 15.7% <https://theconversation.com/revealed-the-hidden-problem-of-economic-abuse-in-australia-73764>

<sup>14</sup> 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.

<sup>15</sup> MacDonald, F., *Spotlight on Economic Abuse: a Literature and Policy Review*, Good Shepherd Youth & Family Service and Kildonan Uniting Care, 2012.

While women and children are more often affected, 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, study or access benefits.
- Withholding or threatening to withhold financial support reasonably necessary for the maintenance of a partner and/or dependent child.
- Coercing a person to relinquish control over assets, take out a loan, credit card, or guarantee a loan in their name for the benefit of the controlling partner, or guarantee a loan.
- Preventing a person from participating in decisions about household expenditure or the sale or disposal of joint property.
- Using control of finances or debt to prevent a person leaving a relationship.
- Demanding all expenditure by a person be justified and evidenced.
- Using the transaction description free-text field in electronic transfers to harass / intimidate or abuse a person.
- Restricting or monitoring a person's access to mobile phones and the internet.
- Stealing, taking, or 'borrowing' a person's money, debit or credit cards, possessions or property without their knowledge or consent.
- Forcing a person to pay for someone else's expenses (e.g., utilities, household maintenance, and other expenses).

The difficulty of obtaining financial independence is often the most significant barrier to leaving a family and domestic violence relationship, and a lack of financial independence often results in a person returning to that relationship<sup>16</sup>.

An ex-partner may use the financial and legal system to manipulate and control the other party and prolong the financial abuse.<sup>17</sup> 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.

## 3.2 Recognising potential financial abuse

It is challenging for a bank to know if someone is being affected by family and domestic violence or whether they are a perpetrator of it. Every customer's situation is unique, and banks are obliged to protect their customer's privacy.

When a bank is aware of family and domestic violence, 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 family and domestic violence once it has been disclosed by the customer. Banks are committed to exploring further ways to work with stakeholders to proactively identify family and domestic violence and assist customers affected by it.

Some customers may be unaware that they are affected by, or may be reluctant to disclose, family and domestic violence.

ABA member banks have obligations under the Banking Code to take extra care of customers who are experiencing vulnerability.<sup>4</sup> To provide extra care for a customer experiencing vulnerability, all banks should be aware of the potential signs of family and domestic violence, which may include when a customer:

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<sup>16</sup> Fiona Macdonald "Spotlight on Economic Abuse: a Literature and Policy review (report: Good Shepherd Youth & Family Service and Kildonan Uniting Care 2012)

<sup>17</sup> Smallwood, E., Stepping Stones: Legal Barriers to Economic Equality After Family Violence Report, Women's Legal Service Victoria, 2015.

- 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.
- Has their income or social security payment paid into another person's account.
- Has received abusive or threatening comments in the free text fields of bank transaction descriptions.
- 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 court order (refer to **Appendix 1** for the types of relevant court orders in each jurisdiction across Australia).

### 3.3 Understanding that family and domestic violence may increase due to external events

Research shows there is often a spike in family and domestic violence during major crises and disasters (this may include natural disasters, economic or financial crisis, and pandemics).

During previous natural disasters (flood, drought, and bushfires) some banks observed delays in reporting financial abuse as people secured their immediate needs and addressed their safety first. During the COVID-19 pandemic some banks observed a spike in reports of family and domestic violence as well as changes to the way customers report it. This may be a result of customers being more closely monitored by their partners during 'lock down' periods.

### 3.4 Understanding why it can be difficult for customers to seek help or report family and domestic violence

Family and domestic violence 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 their family), may feel ashamed or that they will not be believed by the bank. In some cases, they may not realise that they have been affected by financial abuse. Banks should be sensitive to their customer's circumstances and assist them to make an informed decision.

Family and domestic violence is a sensitive issue, and it is important that bank employees act with respect, sensitivity, and compassion and refrain from making moral or legal judgement about their customer.

### 3.5 Recognising customers may be under significant stress

Banks should have procedures in place to help employees recognise when 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.

### 3.6 Understanding the effects of financial abuse

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

- Being left with sole responsibility for joint loan repayments following a relationship breakdown.
- Poor credit history.
- 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.

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

## 4. Principles for good industry practice

### 4.1 Develop internal bank guidelines and procedures

Banks should develop internal guidelines and procedures to assist employees identify and respond to instances where employees may be concerned that a customer may be affected by family and domestic violence.

In doing so, banks should consider seeking input from family and domestic violence community sector experts and those with lived experience.

### 4.2 Provide specially trained staff

Banks should have specially trained teams and / or specialist staff to work with customers recognised as affected by family and domestic violence, for example, additional training for the bank's escalation, financial hardship, and collections teams (or equivalent).

Frontline staff, managers and supervisors should be provided with information, support, and training so they can recognise and respond to potential family and domestic violence and escalate matters to the specialist team or staff as appropriate.

Banks should have clear internal referral pathways to specialist support staff or teams, for example from front line, complaint, fraud, investigations, and collections/hardship staff.

### 4.3 Protect customer confidentiality and safety

Banks should:

- Ensure a customer's contact information is kept secure and confidential (including from any joint account holder/s or co-borrowers). For example:
  - Customer contact details should not be communicated or disclosed to others without authority.
  - Where a customer is recognised as affected by family and domestic violence:
    - Identify safe ways to communicate with the customer, for example ask the customer to nominate a safe time to talk or a way for the bank to get in touch (such as by phone, email, SMS, or a phone message). What is safe may change, so where practical, the bank should continue to ask the customer about the safest way to make contact.
    - Work with the customer to identify any other accounts which may reveal their personal information, such as a child's bank account, and then work with the customer to identify changes required.
    - Record customer information (such as email, address, phone numbers) separate from other joint account holders.
    - Not require the customer to make direct contact with any other joint account holders.
    - Consider whether their actions or requirements could exacerbate a threat to the customer's safety.
    - Inform customers about the circumstances and nature of information that must be shared with their joint account holder/s so they are aware and can plan accordingly. 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 (which may include information such as the time, merchant and location of the transaction).
  - Where feasible, provide a 'quick exit' button on webpages relating to family and domestic violence.

## 4.4 Respond to abuse in transaction descriptions

Banks should have procedures in place to respond to inappropriate language or abuse in the free text description fields of electronic transactions, where they become aware of it. For example, procedures may include:

- A process for customers to report issues to their bank, and for banks to report inappropriate content to the sender's bank.
- A provision setting out acceptable use and consequences of inappropriate use in the account terms and conditions or an acceptable use of service policy.
- Increasing customer awareness of inappropriate transaction descriptions and how a customer can report issues to their bank.
- Working with the customer to identify changes to their banking arrangements to address the issue considering their individual situation. For example, quickly opening a new bank account where transactions can be automatically transferred without the offensive descriptions.

When determining responses, banks should ensure they consider their obligations with respect to the transmission of payment messages. For example, those outlined in *the New Payments Platform Regulations and guidance note regarding inappropriate content in NPP Payment Messages*.

## 4.5 Report family and domestic violence to the relevant authorities, when appropriate

Banks should have processes in place to respond to emergency situations, and to ensure their staff can meet mandatory reporting requirements. For example:

- Responding to an immediate safety concern for the customer, their family members or bank employees.
- Where required, fulfilling mandatory reporting requirements of states and territories regarding a person who is likely to or has caused harm in certain circumstances. Refer to **Appendix 2** for details of state and territory requirements, current at time of publishing.

## 4.6 Make it easier for customers to communicate with the bank

Banks should:

- Minimise the information that a customer is required to provide and the number of times a customer discloses the same information. Where possible and particularly in complex situations, customers should have consistency in speaking to one staff member or a single contact point (such as a specialist team).
- As a preventative measure, ensure that from the outset all parties to a joint arrangement can individually access statements. For example, by using their personal log-in to access statements electronically or by receiving them at an address that differs from co-borrowers.
- Provide copies of customer account documents, separately from joint account holder/s on request, without charge where considered appropriate, to assist in resolving matters or for legal purposes<sup>18</sup> (including financial hardship notices). A customer affected by family and domestic violence may not have access to their bank records and documentation.
- Have simple document request processes in place, these may include, for example:
  - An on-line request process for all documents or a submission portal or email address to send requests to.
  - A timeframe for providing documents (where they will be provided).

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<sup>18</sup> In accordance with the Banking Code Chapter 37



- A list of document types that may be requested.
- Clear responsibility for providing the documents.
- Appropriate customer authentication and secure delivery.
- Asking customers how they would prefer to receive the documents, and where possible, accommodating the request (for example: mail, email, collection from branch).
- Make it easy to 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, for example:
  - Clear and simple processes for appointing an agent or representative while complying with the bank's privacy obligations under the law.
  - Providing a direct telephone number for the relevant area of the bank, where possible.

Note that banks may apply the *ABA debt management firms guiding principles*<sup>19</sup> in determining whether it is reasonable to contact a customer directly.

- Seek to make communications with customers as clear as possible, particularly when aware that a customer is experiencing vulnerability, or has limited English<sup>20</sup>.
- Provide customers with access to a qualified, independent interpreter to assist with communication where appropriate.

## 4.7 Refer customers to external support

Where appropriate banks should provide customers with details of external support organisations<sup>21</sup> for further assistance. It is the customer's choice whether they seek help or not. Referrals should be made on a case-by-case basis as appropriate, and within any relevant bank frameworks – this may include a professional financial counsellor, community legal centre, or specialist family and domestic violence service.

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

## 4.8 Help the customer regain control of their finances

### 4.8.1 Assist customers in setting up a bank account of their own

In many cases an important step towards financial independence can be the customer having a bank account of their own.

Banks should support customers to, where appropriate:

- Change their access codes (for example: Personal Identification Number, passwords or contact details).
- Open a new bank account suitable for their needs.
- To the extent it is able to do so, use alternative identification to open a bank account where the customer does not already have an account with the bank, and the usual identification documents are not available or changes in address are not consistent with documentation<sup>22</sup>.

<sup>19</sup> Refer ABA webpage: <https://www.ausbanking.org.au/for-customers/debt-management-firms/> and the DMF Guiding Principles at <https://www.ausbanking.org.au/wp-content/uploads/2020/12/ABA-Guiding-Principles-to-DMFs-2020.pdf>

<sup>20</sup> In accordance with the Banking Code chapter 13: being inclusive and accessible

<sup>21</sup> In accordance with the Banking Code clause 41d

<sup>22</sup> Refer AML/CTF Rules Instrument 2007 Part 4.15 <https://www.legislation.gov.au/Details/F2019C00383> and guidance <https://www.austrac.gov.au/business/how-comply-and-report-guidance-and-resources/customer-identification-and-verification/identifying-customers-who-dont-have-conventional-forms-id>



## 4.8.2 Work with customers to manage accounts that are held jointly

Significant issues can arise when joint deposit accounts and joint liabilities are involved, as these arrangements can be used to intimidate or control individuals. While it is not the banks role to mediate or make decisions relating to family law disputes or settlements, banks can provide some assistance to customers where there are joint arrangements.

Where a customer with one, or more, joint account/s has been recognised as affected by family and domestic violence, banks should:

- Work with each of the parties to a joint arrangement separately, and where reasonably possible, not require one party to contact or obtain consent from the other account holder/s.
- Work with the affected customer to identify any other accounts that may require changed arrangements. For example, a child's account where the perpetrator could access the affected customer's personal information (such as their address).
- Advise customers:
  - Which of their joint accounts allow funds to be withdrawn by one person.
  - That if they are the primary holder of a credit card, they are solely liable for transactions made by additional cardholder/s on their credit cards.
  - To seek independent legal or financial advice regarding the options available to them (and provide external referrals where appropriate).
  - They can request the bank change account authorities to require all account holders to approve withdrawals, but that this may restrict their ability to make withdrawals
- Accept verbal instructions to amend the operating instruction to require all account holders to approve withdrawals<sup>23</sup> or place a hold on the account.
  - The bank may notify the other account holder/s of a change in operating instructions, and if it does, it should ensure the requesting customer understands this before the bank acts on the instruction.
  - Require the authorisation of both parties to amend the operating instructions to 'any to operate' or remove the hold.

## 4.8.3 Work with customers to manage liabilities in cases of financial hardship

Banks should:

- Accept a financial hardship request from a joint borrower without the consent of the other co-borrower.
- Where possible, subject to customer safety considerations, notify the other borrower.
- Obtain the consent of all to formally vary a joint loan, provided it is reasonable and appropriate to do so<sup>24</sup>.
- Review circumstances where a borrower or guarantor says they:
  - Were coerced into the credit obligation, and they have received limited or no substantial benefit from the credit obligation<sup>25</sup>.
  - Did not know they were responsible for a credit obligation, including a joint debt, a debt or credit card, or credit card limit increase, in the individual's name or as a guarantor.

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<sup>23</sup> In accordance with the Banking Code clause 139

<sup>24</sup> Note that banks are subject to legal notice obligations in respect of joint account holders under NCC Hardship provisions

<sup>25</sup> Under the Banking Code Chapter 17 a bank will not lend to a co-borrower unless they will receive a substantial benefit from the loan or they have taken reasonable steps to ensure the borrower understands the risks, understands the difference between being a guarantor and co-borrower, considered why the customer wants to be a co-borrower and are satisfied the customer is not experiencing financial abuse.

In certain circumstances a bank may make a commercial decision to release one co-borrower wholly or partially from a joint debt.

#### 4.8.4 Disputes between account holders

Banks recognise that requiring all parties to approve withdrawals from joint accounts and/or drawdowns on joint loan facilities, may preserve assets where parties are in dispute until they resolve their dispute, for example, through the family court.

In determining whether a bank, of its own volition, or as a result of one party requesting a change of signing authority, should require all account holders to consent to withdrawals, banks should consider each case individually with regard to the specific circumstances. For example, customer safety, the amount of funds at risk, the customer's access to other sources of funds, and whether the restriction would apply to all, or a proportion of the account to enable the customer to meet day to day living expenses without needing the others consent.

### 4.9 Recognise family and domestic violence as a factor contributing to financial hardship

Banks provide specialised hardship arrangements to assist customers during times of financial difficulty with requirements set out in the National Credit Code and the Banking Code<sup>26</sup> (including to assist a joint account holder experiencing financial difficulty without involving the other person initially, if requested<sup>27</sup>).

In addition, banks should:

- Recognise that financial hardship can be caused by family and domestic violence including a person leaving an abusive relationship.
- Ensure policies regarding the assessment of a hardship request involving joint borrowers are clear and appropriate. For example:
  - Not requiring the customer to contact or obtain consent or information from the co-borrower/s, when the bank is aware of family and domestic violence.
  - Being aware that reluctance to obtain consent from a co-borrower in relation to a hardship request may indicate family and domestic violence.
- Not require an intervention order as evidence of family and domestic violence when assessing a financial hardship application (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, or alternative arrangements, 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.
  - Debt waivers for small amounts of unsecured credit where the customer has not received a benefit or is experiencing significant financial difficulty.
- 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.

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<sup>26</sup> The Banking Code, Part 9

<sup>27</sup> The Banking Code clause 159

## 4.10 Collections arrangements

Where a bank is made aware that a customer's debt involves family and domestic violence:

- The debt should not be sold onto a third-party debt collection agency.
- If the debt has already been sold to a third-party collection agency, and the bank becomes aware of the family and domestic violence, banks should work with the collections agency to provide the best outcome for the customer (which may include repurchasing the debt) assessed on a case-by-case basis.

Note, the Banking Code<sup>28</sup> requires that collection agents or representatives comply with the ACCC and ASIC Debt Collection Guidelines. In addition, banks should comply with the *ABA Industry Guidance: Sale of Unsecured Debt*<sup>29</sup>.

## 4.11 Understand the potential effect of credit reporting and default listing

Banks are aware of the potential effect of credit reporting on a customer's ability to re-establish financial independence. Banks have an obligation to provide accurate information if they are reporting credit, default information, or repayment history information to credit reporting bodies.

Banks will work with a customer to review their circumstances and should not enter negative credit information if a customer is affected by family and domestic violence, so far as the bank is able to avoid doing so under the law<sup>30</sup>.

Where the bank is aware of family and domestic violence and a formal hardship arrangement is in place, the credit report will not reflect missed repayments for the duration of the arrangement.

Banks are committed to exploring further ways to work with stakeholders on credit reporting for customers identified as being affected by family and domestic violence, to allow them to move forward.

## 4.12 A responsible approach to lending

Banks recognise they can help limit the potential impact of financial abuse on their customers.

The Banking Code<sup>31</sup> requires lenders to take a responsible approach to lending.

Part 5 of the Banking Code, outlines provisions for not approving a new loan, or an increase to a loan, where the co-borrower does not receive a substantial benefit unless the bank has taken reasonable steps to ensure the co-borrower/s understand the risks of the loan, why they want the loan, and are satisfied they are not experiencing financial abuse.

Banks should make all reasonable efforts to ensure all co-borrowers understand:

- Their liabilities, rights, and obligations under the arrangement.
- The different forms of signing authorities and the bank's position if a change is required later.

Where a bank suspects that financial abuse may be occurring, it should make further enquiries. For example, asking the customer questions (when they are alone, if it can be done safely), regarding their understanding of the lending transaction, and whether they are entering it of their own free will.

The bank retains its discretion to decline a loan application or to make changes to the loan.

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

Banks should consider proactive measures to ensure that, over time, customers remain aware of their arrangements. For example, where possible, by providing visibility of:

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<sup>28</sup> The Banking Code chapter 43

<sup>29</sup> <https://www.ausbanking.org.au/wp-content/uploads/2019/11/Industry-Guideline-on-the-Sale-of-Unsecured-Debt-November-2019.pdf>

<sup>30</sup> Privacy Act 1988, *National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019* (yet to be passed into legislation), and the *National Consumer Credit Protection Amendment (Mandatory Credit Reporting) Regulations 2020*

<sup>31</sup> The Banking Code clause 49

- Whether drawdowns may be made on the account.
- Whether one or more co-borrowers are required to approve transactions.
- How to change to two-to-sign and how that works.
- How to get account statements and correspondence separately.

### 4.13 Provide appropriate employee training and awareness of policies

Bank training programs should focus on equipping employees, appropriate to their role, with the knowledge, skills, sensitivity, competencies, and information to help customers who may identify as being affected by family and domestic violence.

Training should include helping employees:

- Be aware of the prevalence and practical effects of family and domestic violence on a bank customer.
- Recognise the potential signs of financial abuse (refer **section 3.2**) and have an appropriate and sensitive conversation with a customer or refer the customer to a specialised area who can give further guidance (refer **section 4.2**).
- Understand the potential effect (positive and negative) that a bank's actions can have on a family and domestic violence situation.
- Understand the strict need for confidentiality, independence and respect for the customer's privacy.
- Understand the significant safety risks for those affected (including other family members) by family and domestic violence and the heightened safety risks at, and following, separation or return to the home.
- Understand the need for flexible arrangements and responses for customers affected by family and domestic violence.
- Understand the legal and procedural implications of court-issued family and domestic violence orders (refer to **Appendix 1** for a list of the relevant court orders in each jurisdiction across Australia).
- Have referral pathways and contacts for local support services to provide to a customer, where appropriate.
- Understand mandatory reporting requirement and processes.
- Understand the internal pathways for referring customers within the bank.
- Who may be emotionally affected by the experiences of customers.

Training should be relevant to the employee's role, for example:

- Frontline employees receive general information and instructions about internal procedures, and training on emergency procedures and how to escalate to a team leader, manager, or specialist area where a matter is sensitive and may require immediate assistance or further review.
- Specialised employees (e.g., dedicated frontline support teams, financial hardship, collections fraud investigation and complaints teams), managers and supervisors receive more detailed information, support, and training.
- Tailored training for non-customer facing teams (e.g., product, credit assessment) to raise awareness of financial abuse and how their actions could create, or exacerbate vulnerability.

Bank-wide training for all staff to understand family and domestic violence and how to support colleagues who may be affected, can be the first step for employees to understand the importance of customer focussed policies.

## 4.14 Raise customer awareness of policies and procedures

Banks can play a preventative role by educating customers about financial abuse and proactively encouraging customers to disclose family and domestic violence by promoting what bank support is available.

Banks should promote their family and domestic violence and financial hardship assistance to employees, customers, financial counsellors, community legal services, legal aid, and specialist support services. This may include:

- Guidelines and awareness-raising materials in multiple and accessible formats on financial abuse.
- Availability of financial hardship assistance and other support services that may help customers affected by family and domestic violence such as fact sheets, on-line information, and links to useful resources.
- Plain-English key information about the responsibilities of customers in relation to joint loans and accounts at key stages. For example, helping customers understand the concept of joint and several liability, and their sole liability for transactions made by any additional cardholders on their credit card accounts (at the application stage and when making changes to existing loans, hardship applications, and/or transaction disputes).

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.

## 4.15 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 effects 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 and promote internally their support policies and programs for employees who are affected by family and domestic violence including perpetrators of violence.

Banks should work with employee assistance programs to ensure they can provide support to employees affected by family and domestic violence, reflect the specific needs of the employee, and consider the nature of their role and the workplace environment.

Banks should ensure appropriate support for customer-facing staff who might be at risk of psychological affects as a result of dealing with customers experiencing family and domestic violence due to their personal circumstances. For example, bystander training, formal / informal debriefings, and care conversations such as R U Ok?

## 5. Where to go to for more information and support

### Emergency

In an emergency situation, 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/](http://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 <https://www.familyrelationships.gov.au/talk-someone/advice-line>

**Lifeline** – Provides crisis support services, 24 hours a day, 7 days a week. Tel 131 114 <https://www.lifeline.org.au/>

**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](http://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/](http://www.nationallegalaid.org/)

**Community Legal Centres (CLC)** – Provides 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/](http://www.naclc.org.au/)

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

**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/](http://www.wlsa.org.au/) or [www.familyrelationships.gov.au/](http://www.familyrelationships.gov.au/)

### Finance and Debt issues

**National Debt Helpline**– You can talk to a free and independent financial counsellor from anywhere in Australia by ringing 1800 007 007 (minimum opening hours are 9.30am – 4.30pm Monday to Friday). <https://ndh.org.au/>

### Financial information

**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](http://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>

**The National Relay Service (NRS)** - an Australia-wide telephone access service available to customers who are deaf or have a hearing or speech impairment. 24 hours a day, 7 days a week. Voice –1300 555 727TTY –133 677SMS –0423 677 767, <https://www.communications.gov.au/what-we-do/phone/services-people->

**Complaints** - Australian Financial Complaints Authority (AFCA) - an independent free and accessible dispute resolution service for consumers, without going to court. Available after the complaint has been formally raised with the bank and not satisfactorily resolved. Decisions are binding on the bank.

***Document Updated: March 2021  
(Version 2.0)***



## 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 and domestic violence.

Intervention orders are civil orders that offer protection from family and domestic 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, for example the perpetrator is simultaneously charged with assault.

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 and domestic violence orders, safety order or equivalent, and recognise what this means when dealing with customer accounts. For example, banks should not require a customer to communicate directly with an ex-partner and ensure the bank takes responsibility for separate communication. Bank staff should also be aware if a customer has not obtained an intervention order no assumptions should be made about whether the customer is experiencing FDV.

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

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

## Appendix 2: Family and domestic violence reporting obligations

In New South Wales and the Northern Territory, banks and their employees, or others in relationships analogous to employment, owe a duty to report instances of family and domestic violence to police as follows:

Jurisdiction	Requirement	Relevant legislation
New South Wales	Report information that might be of material assistance to securing the apprehension, prosecution or conviction of offender who has committed a 'serious indictable offence'.	S316(1) of the Crimes Act 1900 (NSW)
Northern Territory	Report if you believe on reasonable grounds that a person is likely to cause or has caused harm to another person in a domestic relationship, or that person's safety is in serious or imminent threat because of family and domestic violence	S 124A of the Domestic and Family Violence Act 2007(NT)