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Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
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Parliament House
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To whom it may concern,

FINANCIAL SERVICES REGULATORY FRAMEWORK IN RELATION TO FINANCIAL ABUSE

We appreciate the opportunity to provide a submission to the Inquiry into the Financial Services Regulatory Framework in relation to Financial Abuse.

ABOUT THE INDIGENOUS CONSUMER ASSISTANCE NETWORK (ICAN)

ICAN provides consumer education, advocacy, and financial counselling services to people across north and far north Queensland. The majority of our clients identify as First Nations peoples and our vision is "Empowering Indigenous Consumers".

BACKGROUND TO SUBMISSION

The people our services work with are strong, resilient, and knowledgeable about their lives and communities. However, structural barriers and an uncompetitive marketplace in remote and regional communities create conditions in which exploitation occurs. The cost of living is unacceptably high, with basic food and necessities costing significantly more than in cities and large regional centres. Employment is limited, and regional centres are susceptible to significant events such as pandemics, industry downturns and climate disasters. Housing is limited and costly, and the consequent rate of homelessness and overcrowding is unacceptably high. Cars are essential items in the family home as they are the only form of transport and pose a significant upfront and ongoing expense. The significant number of bank closures in rural, regional and remote Australia has created significant barriers to accessing essential banking services for people in this region.

It is against this backdrop that our financial counselling and financial capability teams are supporting people who have experienced or are experiencing financial abuse. We note that this abuse may be between intimate partners or between broader family relationships.

Our submission focuses on those sections of the Terms of Reference that our financial counselling service has the most knowledge of or experience in. We have had the benefit of reading the draft joint submission by the Economic Abuse Reference Group (EARG) of which we are a member. Where we are silent on sections of the Terms of Reference it is because we generally agree with and adopt the recommendations of the EARG submission. Our submission is directly informed by our financial counselling team and focuses on their experiences in advocating on behalf of victim-survivors. We refer to other submissions and reports for recommendations on what should be done. In particular,

we refer to the report by our registered training organisation, ICAN Learn, undertaken with support from the Commonwealth Bank of Australia titled: *A Path Forward for First Nations People Experiencing Financial Abuse* as this provides an important practical framework to prevent and effectively respond to First Nations' peoples experience of financial abuse. This report will be published in coming weeks.

Our case studies are provided on a de-identified basis and none of the names used are real. We have withheld some information to maintain our clients' confidentiality, privacy and safety. Key facts demonstrating the issues remain.

Prevalence of financial abuse

Our service, like numerous other financial counselling services around the country experiences high demand from people who are victim-survivors of family violence. Within the high number of people we see who have experienced family violence, financial abuse is a common feature and often the reason the person requires our assistance.

Identification, recording and reporting of financial abuse

In dealing with financial services through our daily casework, our financial counsellors experience significant inconsistencies between (and even within) financial institutions around how they identify, record and report financial abuse. There are also differences between the responses that a financial counsellor will get from a financial service provider compared to the response that a victim-survivor themselves will get from a financial service provider.

> *Sandra is an older woman with one son, Thomas and five grandchildren. She ignores a lot of her son's abusive behavior because she wants to be connected with her grandchildren. Unfortunately, Thomas takes advantage of this. Thomas demands money and when Sandra doesn't have any, he will use the access he has to her email to set up Buy Now Pay Later and Telco accounts in her name, get products and then sell them for cash. Our work with Sandra is ongoing as she is not in a position to protect against the financial abuse she experiences.*
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> *When ICAN discusses the financial abuse with the financial service providers and even when we provide a copy of the Protection Order which identifies the risk of financial abuse, we receive mixed responses. Some are eager to assist, waive the debt and remove any reference from Sandra's credit reports. Others will offer to waive the debt <u>and</u> make a hardship note on her credit report and others will put a long-term payment arrangement in place and continue to put details of this on her credit report without any reference to hardship, making the account appear like it is the fault of the consumer that the contract has fallen into arrears.*
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> **Case Study**
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> *Lisa was with her partner off and on for over ten years and they had one child, living in a rural community. Daniel did not work and would spend much of his days at the local pub using Lisa's eftpos card while Lisa worked. Daniel used Lisa's details to access her bank and email account to set up loans from SACC providers and also a lender who used her car as security against the personal loan. Lisa had bought the car a few years earlier from an inheritance and she didn't know it was being used as security for any finance.*

Daniel's abuse escalated and although Lisa knew he was taking money out of her account, she stopped looking as it caused her increased stress and anxiety. When the physical abuse escalated and the hospital called in the police, Lisa broke down and sought help. While she was in hospital, the creditor who had an encumbrance on her car contacted her. In response Lisa sent an email stating that she was in hospital 'with a DV situation'.

A default notice and a notice of the creditor's intent to take possession of her car was ultimately issued and Lisa organised to pay the creditor with money borrowed from family because she didn't know what else to do. The hospital assisted Lisa to contact ICAN and a financial counsellor asked for a hold on payments. Due to the pressure of the notice to repossess, Lisa, through her financial counsellor, had to take the matter to AFCA. During the course of communications with the creditor, it claimed that the email from Lisa did not reflect the fact she was experiencing DV and that the creditor was not on notice of the DV until it was raised by the financial counsellor.

After a prolonged dispute, the creditor eventually agreed to waive the balance of the debt but only after many hours of the FC's time in investigating and conveying the complaint through a financial abuse lens which drew attention to the many red flags which the creditor ignored.

Shift to Online Platforms

In the majority of financial abuse matters that we see, the abuser has taken out loans or obtained credit in the victim survivor's name through online platforms. These are almost always through third-tier lenders that operate online rather than via 'shopfronts'. Small and Medium Amount Credit Contracts and unregulated credit through Cigno and Buy Now Pay Later all feature prominently in our financial abuse casework and are all generally obtained through online transacting.

These lenders ensure the online process is as easy as possible with minimal 'friction' in the application process. Conversely, however, they make the process of making a complaint and obtaining a resolution on behalf of the victim-survivor as difficult as possible with significant barriers built into the internal dispute resolution process. They will regularly claim that they had no ability to identify the abuse yet demand significant evidentiary documentation of the abuse in order to resolve the matter.

The shift of financial products to online platforms has significantly impacted the ability of financial firms to identify financial abuse because the usual financial abuse 'red flags' are no longer visible to the financial firm. For example, in the AFCA Approach to Financial Elder Abuse, only **3** out of the **15** financial abuse red flags can be observed through online activity. These are:

1) engage in financial activity that is unusual, erratic or uncharacteristic;
2) adding a person to the account followed by the balance being transferred out;
3) suddenly register for internet banking when prior financial activity has been branch based and there has been no preliminary contact with the financial firm.[1]

Even within the above list, the activity can generally only be observed by the deposit-taking institution and not other financial firms that the abuser may be taking advantage of, such as, Buy Now Pay Later and Superannuation companies. In AFCA's *Guide to Joint Debts and Family Violence*, none of the 'warning signs' of financial abuse that financial firms are advised to be aware of can be identified through online transacting[2].

[1] AFCA, *The AFCA Approach to Elder Abuse*, p.5
[2] AFCA, *The AFCA Approach to Joint Accounts and Family Violence*, June 2022, p.6

Furthermore, entities do not undertake reasonable or sufficient checks to understand the borrower and require minimal evidentiary documentation about the applicant at the time of lending. The lack of oversight of the transaction is then used by the financial firm to deny culpability for fraud, unjust, unconscionable and/or irresponsible lending.

Failures by financial service firms to identify red flags or respond to financial abuse appropriately

Even where there are opportunities for greater oversight of a transaction and red flags for financial abuse are identifiable to financial firms during the transaction process, these may be ignored by the financial firm. This is particularly the case with used car lenders and small, high cost lenders which target people in the most vulnerable financial circumstances.

For instance, lenders which require the provision of bank statements before approving credit gain insights into the person's spending which can raise red flags and which should lead to further inquiries about the person's situation. In our experience, however, the lenders rarely undertake this further inquiry.

While there are significant inconsistencies in how all financial service providers respond to family violence and financial abuse, it is the response of debt collectors, car finance companies, second tier lenders and smaller lenders, including SACC providers, Buy Now Pay Later and consumer lease providers that have the poorest response to family violence and create some of the greatest harm to our clients who are experiencing family violence.

We have many examples of debt collectors and high-cost lenders and consumer lease providers demanding police reports and copies of intervention orders to evidence the domestic violence before they will consider waiving debts. Our financial counsellors often have to engage in long-winded negotiations with these entities to get the smallest of debts waived. Our complaints about breaches of responsible lending laws and fraud are frequently met with a hardship response such as placing a moratorium on the account. This response fails to provide the remedy accorded by the law and prolongs the harm caused to the victim-survivor. Self-advocacy by victim-survivors with these entities is rarely possible and in many cases our clients have long given up trying to engage with the creditor by the time they come to us.

Case study

Julie had experienced years of financial abuse at the hands of her partner who regularly accessed her bank account without her knowledge. Julie needed a vehicle to gain greater autonomy and ensure she could transport her children to school and medical appointments. She applied for a car loan and submitted her last 90 days of transactions to verify her declared income and expenses. The bank statements revealed many transfers from her account to her partner's account, significant cash withdrawals and spending on activities that did not appear consistent with Julie's declared spending. These transactions and the inconsistencies with the declared spending should have been a red flag for further inquiry by the creditor. Instead, the creditor presumed this was discretionary spending and that Julie would have the ability to prioritise the loan repayments. It therefore approved the loan. Julie had no power to make the changes necessary to comply with the payment schedule and nor was Julie fully aware of the extent of her partner's use of her bank account and financial resources.

Julie managed to escape the relationship and ultimately stop his access to her account so she had more control over her money. However, Julie was still at risk of losing the car due to ongoing

financial hardship and it was only with the support of her financial counsellor that she became aware of the extent of the financial abuse. Her financial counsellor was able to assist in negotiating with her creditor for a long-term payment arrangement and for the loan to be reduced to principal only.

Case study 2

Petra was in a long-term relationship with Barry. Over time, Barry slowly took over the finances for the household. He had access to her bank accounts and her email. Barry completed three applications for credit cards in Petra's name alone and used the available credit for his own benefit. All of the creditors received bank statements as verification documents and none questioned the spending, the transfers to Barry's account or checked that it was her completing the applications. No phone calls were made directly to Petra and nobody checked if the phone number was hers or if the email was one she used. Nor did they question the fact that the contact details on her credit report were different to the ones provided.

When the debts became unmanageable, the debt collection activity became intense and when court action seemed imminent, Petra became aware of the debts and ongoing credit contracts. Although Petra advised all of the creditors that these debts arose through financial abuse, they still refused to consider long-term resolutions until a financial counsellor became involved. It was only when our financial counsellor advocated that two creditors agreed to waive the debts after the written outline of events had been provided and the last agreed to partially waive the debt and put in place a long term arrangement on the remaining balance.

Additional Contributory Factors

Bank Closures

In addition to the above challenges, the closure of bank branches across regional and remote Australia has significantly reduced the opportunity for financial abuse to be identified and/or prevented.[3] Local bank branches have played a role in identifying financial abuse, with staff, particularly in smaller towns and communities, having trusted relationships with customers they know and can flag concerns with or seek support for when abuse is identified. Staff could identify and talk to customers about suspicious transactions. They could observe the relationships between customers and identify red flags as envisaged by the AFCA approaches. Staff could also assist victim-survivors to set up new accounts if required. In this way, bank branches have played an important role in both preventing and identifying financial abuse.

However, with the rapid and widespread closure of bank branches across regional Australia, the ability to know and understand their customer and respond accordingly has seriously impaired this oversight role within the financial services industry.

Case Study

We recently assisted an older woman in a small community whose daughter had been engaging in significant financial abuse of her mother for many years. The daughter had set up phone banking and online banking under her mother's (our client's) name so that she could transfer funds to her account whenever she wanted. The daughter would steal her mother's keycard when she wasn't looking or get her son to do it. The daughter would buy food with her mother's money

[3] See ICAN's submissions for the Senate Inquiry into Bank Closures in Regional Australia

but would not share any of the food and the mother would have to buy her own. It wasn't until we were asked to help her understand what was happening with her finances and contacted her bank with her that she became aware that she had phone and online banking set up. During this call, an immediate hold was placed on the account until she could consider her options.

The next day Telstra mobile coverage dropped out and neither our financial counsellor nor our client were able to contact the bank to unblock the account. We had to find a local community service with a landline available for us to call the bank. The bank then set up red flags on our client's account to ensure further questions were asked to identify our client. However, our client knew that her daughter would be able to answer these same questions. Our client therefore wanted to set up another bank account, which the daughter wouldn't know about and couldn't touch. However, for this to happen, the bank advised she would have to visit the nearest branch which was almost 300 kilometers away. Our client had no transport and the only means she had of getting to the bank was to ask the one person she was trying to protect herself from, her daughter, to take her there.

Lack of Awareness around financial abuse

There is now a widespread, general understanding of family violence within the community. However, financial abuse as a form of family violence is far less understood. This lack of awareness means that financial abuse continues to operate with limited attention or identification. In our work with victim-survivors, they themselves rarely identify the abuse as family violence. Shame and the general reluctance that people across Australian society can feel around talking about their finances with others further hide the existence and experience of financial abuse. It is only through building rapport and highlighting that financial abuse is a form of family violence that a victim-survivor may start to talk about what is actually happening for them. [4]

For financial abuse to be addressed, significantly more is needed by governments, financial institutions and the non-government sector to bring attention to this form of family violence.

Case Study

Myra was married to John and they lived in the house which Myra bought prior to their relationship. After they met, John would shower Myra with gifts, dinners, weekend trips away and about a year after they met, John asked Myra to marry him. When Myra agreed, John said they would need a loan for the wedding and honeymoon but his credit history wasn't good so he strongly encouraged her to get a loan. Myra was so caught up in the situation that she got a substantial personal loan which paid for the small wedding which she believes cost less than a quarter of the loan amount.

Over the next three years, John spent the balance of the loan and also encouraged Myra to take out further loans which she did not entirely receive benefit from. One loan broker did ask Myra if she thought John was abusing her. Because John had never hit Myra, she said no. Subsequently, the loan application was processed and approved.

It was only when the line of credit dried up that John started to act aggressively, putting holes in walls and making threats. Myra told John to move out with the assistance of police. It was only after she started to speak with a counsellor that she realised that she had been a victim of

[4] ICAN Learn, (2024) *A Path Forward for First Nations People Experiencing Financial Abuse* – this report can be made available to the committee upon request

financial abuse for many years. By then, she was significantly in debt and needed to sell her house to clear her debts so she could start over.

The effectiveness of existing laws and regulatory arrangements that govern the ability of financial institutions to prevent and respond to financial abuse, including the operation of:

We witness the many ways financial abuse is facilitated within the financial services industry and across many other essential service industries such as telecommunications, energy and government services. The prevalence of financial abuse in our casework demonstrates that more needs to be done within the current regulatory framework to identify and prevent financial abuse and respond appropriately to it. We refer to the submission of the EARG for recommendations regarding existing laws and regulatory responses.

A whole of system perspective is needed and future law reform across the consumer protection system should be undertaken with specific and careful consideration of how the reforms may impact people experiencing financial abuse as well as any unintended consequences for people experiencing other forms of vulnerability. We acknowledge the complexity of this task which cannot be done without the insights of services working on the ground with victim-survivors of family violence and other people experiencing vulnerable circumstances. These services need to be adequately funded and resourced to provide their expertise and knowledge.

Other potential areas for reform, such as prevention, protection, and proactive systems - Culturally appropriate responses and employee Training

Culturally appropriate responses to financial abuse require an understanding of the customer's cultural identity and experiences, how these shape their relationships and their approach to managing their money and resources. However, the increasing movement to digitalising the customer's engagement with financial services significantly diminishes the opportunity for financial services to take a genuine, person-centered approach that understands and responds meaningfully to their individual customers' experiences.

For this reason, having a diverse and inclusive workforce and ensuring all staff across all departments within financial services have cultural awareness, safety and humility training becomes all the more critical. It is not enough that staff in certain teams that respond to customers experiencing vulnerability receive this. All aspects of a financial services' business needs to be informed by and responsive to the diverse experiences of their own workforce and their customer base.

One of the consequences of a financial services system that is increasingly disconnected from its customers' experience is that under-resourced community services that have culturally-centred approaches to working with people are over-relied upon by financial services to support their customers' engagement.

Culturally appropriate responses to the experiences of First Nations peoples

ICAN and its registered training organisation, ICAN Learn, have recently undertaken work to understand financial abuse within First Nations communities. From this, we have developed a practical framework to support organisations to provide culturally appropriate responses to financial abuse experienced by First Nations peoples. This work highlights the sharing economies that operate within many First Nations families and communities and the critical importance of these in strengthening and supporting peoples' financial and social wellbeing. The value and strength of

family sharing in providing "individuals and families an important social asset that better enables them to, for instance, manage finances in lean times"[5] cannot be understated. Equally important to understand is the significant complexity for people in managing the social relationships underlying sharing economies within a colonial system that fails to understand or account for diverse cultural values and norms. An understanding of how a First Nations person views themselves in relation to their broader family and community and how they manage "their social economy, kinship and cultural obligations", is necessary to providing culturally appropriate responses to First Nations peoples' experiencing financial abuse.[6]

Case Study

During a financial capability training session that ICAN undertook for young people entering the workforce, one of the participants asked for personal financial counselling assistance. The young person was distraught because now they were earning a regular, solid income, they were being asked by family members for money. They sought strategies for managing these requests from the financial counsellor. It was quickly identified by the financial counsellor that the family members asking for money were the young person's elders and therefore they held a higher standing within the family structure than the younger person. This meant that the young person was afraid that if they said no to the repeated requests for money, there would be repercussions for her within the broader family. The financial counsellor was herself a First Nations woman from the same region and understood the cultural complexities and nuances of the situation. The financial counsellor was able to provide her with strategies for not only managing her new income source but also strategies for how to manage the family relationships without angering the young person's elders.

In a subsequent financial capability session, the participant later reported that not only had she successfully set up the banking products that she required, the strategies that had been provided helped her to manage the family dynamics. She was really excited to let the financial counsellor know that she had been able to save enough money to take herself on a day trip to a tropical island and still have savings left over.

The service provision had therefore involved supporting the young person to navigate the banking and employment system to find suitable products to meet their needs, while at the same time understanding the complex social relations of the participant's family structure and First Nations family structures more broadly.

At a broader level, ASIC, through the work of its Indigenous Outreach Program, has provided key learnings for the financial services industry in relation to how First Nations peoples engage with the financial services system. Embedding the learnings from the *Indigenous Financial Services Framework* is an important first step for financial services in engaging appropriately with First Nations peoples.

Conclusion

There is a critical need to improve the financial services regulatory framework to better identify, prevent and respond to financial abuse. We know all too well the unacceptable harm that is caused

[5] Buckland, J. & Daniels, C. (2024). *A study of local economic abuse in First Nations communities with special focus on Australia and Canada*. Indigenous Consumer Assistance Network.
[6] ICAN Learn, (2024) *A Path Forward for First Nations People Experiencing Financial Abuse* – this report can be made available to the committee upon request

by systems that fail to appropriately respond to victim-survivors of family violence. The financial services system has an important role to play in reducing this harm.

Thank you for the opportunity to provide this submission.

Yours sincerely,

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