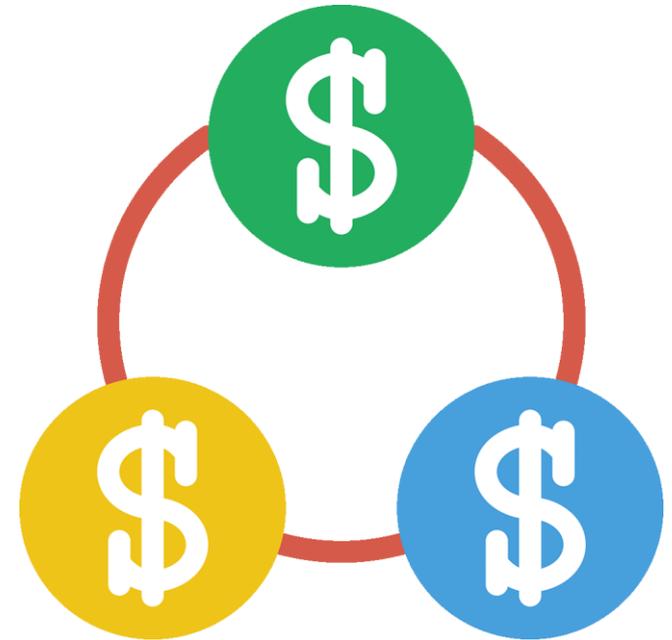


# Credit, Debt and Consumer Law

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# Outline

1. Financial Hardship
2. Responsible lending
3. Payday lending and consumer leases
4. Joint Debts in Family Violence Situations



# Financial Hardship

1. For credit products and loans – see section 72 of the National Credit Code. This requires Banks to reasonably consider a consumer's circumstances and their request for financial hardship.

2. Can ask for things like,

- (a) Reduced payments
- (b) Time to sell the property
- (c) Time to resolve family law issues

If the credit provider says no to hardship, clients can lodge a complaint with Australian Financial Complaints Authority AFCA

[www.afca.org.au](http://www.afca.org.au)

# Financial Hardship

A complaint to AFCA is free for consumers.

3. Be aware that Local councils and Body Corporates do not have the same legal obligations as financial service providers when it comes to considering the financial hardship of consumers.

Your clients should still apply for financial hardship with Local Councils and Body Corporates but the reality is that it can be harder to obtain.

# Responsible Lending

## Chapter 3 National Consumer Credit Protection Act

Lenders are required to provide the borrower with a loan that is not unsuitable for their needs.

They are required to assess their income and expenses and whether they can make the repayments on the loan without undue financial hardship.

What type of results do consumers get if they can show this?

# Typical Credit and Debt Disputes in Family Law

1. I can no longer afford this loan or product.

This is a financial hardship complaint.

2. I have never been able to afford this loan.

This is a financial hardship and a responsible lending complaint.

# Typical Credit and Debt Disputes in Family Law

3. The relationship has broken down and whoever was paying the loan is refusing to pay it.

This is a financial hardship complaint and a discussion about surrendering the house, car or other asset.

4. I have been paying all my bills by credit card and now hit my limit.

This is a financial hardship complaint.

# Payday Lending and Consumer Leases

Payday Lending – shorter term loans at higher interest rates. Have more onerous obligations to assess a consumer's ability to make repayments on the loan.

Consumer Leases – where you lease or rent household white goods and other household furniture over a period of 3-4 years.

You end up paying 3-4 times the value of the good with no guarantee that you will own it at the end.

How do you deal with these products if a client has one?

# Family Violence and debt

1. Joint debts – where both the perpetrator and the victim are on the loan contract. Most commonly car loans and mortgages.
2. Where the victim has agreed to act as guarantor for the perpetrator's loan.
3. Where the loan is solely in the name of the victim but the asset is in the name of the perpetrator or has been taken by the perpetrator.

# Joint debts

What is joint and several liability?

- It is a contractual obligation to make a payment on a loan either together or individually.
- With a loan it means that where two people are jointly on a loan, a lender can choose to pursue each party individually to the exclusion of the other or both parties jointly for the amount of money owing on the loan.

# When loans/credit is solely in the victim's name



This is most common when the perpetrator has a default on their credit report and as a result cannot obtain a loan, even with another party acting as a guarantor.

Sometimes one party takes out the loan or credit and doesn't always receive the benefit from it, ie:

- a loan for a car taken out by the victim where the car is only used by the perpetrator of the violence
- a credit card in the victim's name which has the perpetrator as a signatory.

When clients are experiencing family violence and have a it can be difficult to prove that a 3<sup>rd</sup> party was aware or ought to have been aware about the duress or other types of pressure that forces a victim into the contract.

The third party's rights will not be affected by the pressure placed on a victim unless they are aware of it or ought to have been aware of it.



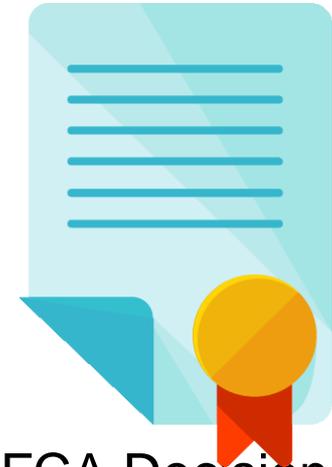
# ABA industry guideline: Financial abuse and family and domestic violence policies

- [https://www.ausbanking.org.au/images/uploads/ArticleDocuments/2016/ABA\\_Industry\\_Guideline\\_-\\_Financial\\_Abuse\\_and\\_Family\\_and\\_Domestic\\_Violence%20Nov%202016.pdf](https://www.ausbanking.org.au/images/uploads/ArticleDocuments/2016/ABA_Industry_Guideline_-_Financial_Abuse_and_Family_and_Domestic_Violence%20Nov%202016.pdf)

# ABA industry guideline: Financial abuse and family and domestic violence policies

1. Why do we care about a Guideline in Banking and Finance?

Australian Financial Complaints Authority (AFCA)  
Rules



A.14.2 When determining any other complaint, the AFCA Decision Maker must do what the AFCA Decision Maker considers is fair in all the circumstances having regard to:

- a) legal principles,
- b) applicable industry codes or guidance,
- c) good industry practice and
- d) previous relevant Determinations of AFCA or Predecessor Schemes.

# AFCA Factsheet on Family Violence

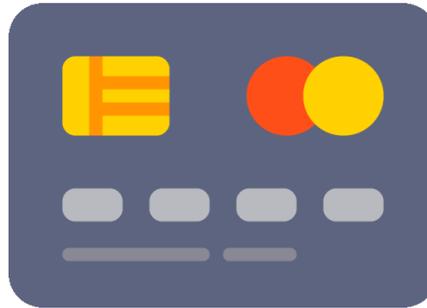
- Coming soon to AFCA's website [www.afca.org.au](http://www.afca.org.au)

# What does the ABA guideline say that could assist us to help clients?

Defines Financial abuse widely as including actions like:

- 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 property
- using control of finances or debt to prevent a person leaving an abusive relationship

(Page 2)



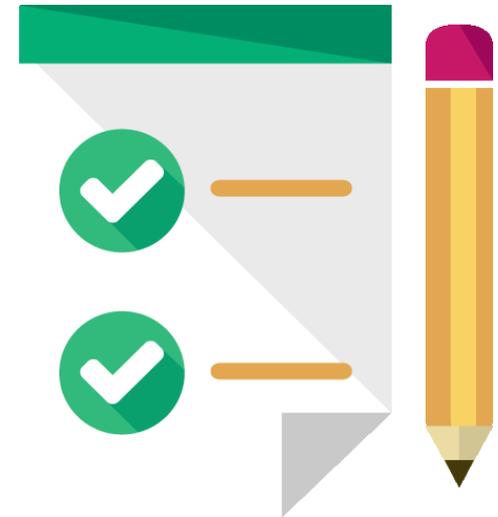
Recognises that the practical effects of financial abuse on a bank customer can include:

- 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.

(Page 3)

To manage joint accounts banks will:

- Accept verbal instructions to amend the operating instruction for the account 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.



(Page 5)

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) a bank can decide to settle a claim for the whole or part of the debt against one co-borrower (ie 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 obligation.

(Pages 5 and 6)

In addition to the current financial hardship arrangements outlined in the ABA Industry Guideline on financial hardship, banks will:

- recognise financial hardship can be caused by family and domestic violence or by a person leaving an abusive relationship
- allow hardship to be sought on a loan by one of the co-borrowers without requiring the agreement of the other.
- Understand that family violence may be the reason the victim does not want to get the agreement of the co-borrower to the hardship proposal.

- fast track hardship requests where family and domestic violence has been disclosed as an issue,
- 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.



- provide customers with ongoing assistance and case management. ie regularly contact the customer to see if further assistance is required.
- provide any documents that the customer is entitled to access without charge.



Guideline also recognises:

- the potential impact of credit reporting and default listing
- the duty of banks to exercise the care and skill of a diligent and prudent lender
- the importance of supporting employees suffering from family and domestic violence.

# Initiatives by particular banks

- Commonwealth bank - <https://www.commbank.com.au/support/dv-assistance.html>
- National Australia Bank - <https://www.nab.com.au/about-us/corporate-responsibility/customers/domestic-and-family-violence/experiencing-domestic-violence>
- Westpac - <https://www.westpac.com.au/about-westpac/inclusion-and-diversity/Inclusion-means-everyone-matters/anti-family-violence/>



**Any questions?**