

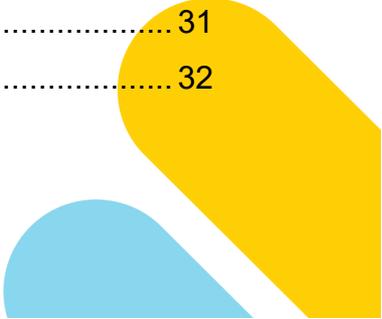
Financial Abuse

AFCA's submission to the Parliamentary
Inquiry into the Financial Services Regulatory
Framework in relation to Financial Abuse

July 2024

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Introduction

AFCA is the external dispute resolution (EDR) scheme authorised under the *Corporations Act 2001 Cth* (Corporations Act) to deal with complaints about financial products and services from consumers and small businesses. This includes complaints from consumers where financial abuse has been raised by the consumer, identified by the financial firm and/or where potential financial abuse is identified by AFCA during the course of handling the complaint.

AFCA welcomes the opportunity to provide a submission in response to the Australian Parliament's Joint Committee on Corporations and Financial Services inquiry into the financial services regulatory framework in relation to financial abuse (Inquiry).

Executive summary

This inquiry presents a powerful opportunity to apply a systems lens to financial abuse, to:

- Identify enablers of financial abuse across products and processes
- Identify actionable insights and potential interventions
- Make financial products and services harder targets for abusers
- Prioritise financial safety for all consumers across the financial system
- Mitigate the risk of harms and, where they emerge, to respond to requests for assistance in a consumer-centred and timely way
- Support victim-survivors to recover and rebuild their financial independence.

AFCA and predecessor EDR schemes have seen perpetrators engage in financial abuse across the entire financial services system. They may exploit or leverage:

- credit application processes (abuse of co-borrowers and guarantors including undue influence and coercion)
- banking product design (use and misuse of transaction and joint accounts)
- credit systems and processes (financial hardship and credit reporting)
- general insurance claims processes and the operation of policy exclusions
- powers of attorney arrangements or the superannuation framework.

The mechanisms and tactics used to perpetrate financial abuse are increasingly well understood due to decades of cumulative effort by victim-survivors, financial counsellors and advocates across NGOs, public policy practitioners and industry participants. This understanding has been elevated by the recent work of the Centre for Women's Economic Safety (CWES) on 'safety by design' in banking and general insurance¹ building on work by the eSafety Commissioner, Parliamentary reviews and

¹ [CWES Designed to Disrupt: Reimagining banking products to improve financial safety](#) (CWES Discussion Paper 1) and [CWES Designed to Disrupt: Reimagining general insurance products to improve financial safety](#)

inquiries and given practical application in financial sector industry initiatives² and financial sector code developments.³ This work challenges all financial sector participants to consider how we can progress safety by design principles in the systems and processes we are responsible for.⁴

This submission sets out AFCA's:

- complaints experience across the relevant sectors in scope of this inquiry
- observations about opportunities for prevention and disruption (in both product design and process design)
- observations about the tools and mechanisms to respond.

We recognise that responding effectively to financial abuse can be a complex and sensitive task for all participants in the financial system, including AFCA.

To shift the dial requires a systemic approach with coordinated effort and focus on products and processes to build safe, effective and sustainable responses.

Recommendations

Below we set out both high level and sector specific recommendations to improve outcomes for people affected by financial abuse.

High level recommendations

1. **A victim-survivor lens:** know your customer and adopt a human-centred (and, where appropriate, trauma-informed) response to the unique experience of customers who may be victim-survivors of financial abuse. This should include:
 - using accessible language to enable customers to access help (customers shouldn't have to use 'magic words' as a key to unlock a process)
 - recognising that the age, ability, social or cultural diversity of your customer may mean abuse is hidden or introduce particular risks or sensitivities relevant to manage in your process⁵
 - understanding that firm processes can increase stress, uncertainty or create new harms

² See respect & protect.au [Why businesses have acted](#). This sets out announcements from banks who have published new terms and conditions making it clear that financial abuse is an unacceptable customer behaviour which may result in warnings, account suspension or closure and interventions to disrupt technology-facilitated abuse through payment descriptions.

³ See Attorney-General's Department's recent [Privacy Act Review](#) and its current [Review of Australia's Credit Reporting Framework](#), Australian Law Reform Commission Report 131, May 2017, [Elder Abuse – A National Legal Response](#), and the latest reviews of the [Banking Code of Practice](#) and the [General Insurance Code of Practice](#).

⁴ See the three principles identified by CWES for a tailored Financial Safety by Design approach, [CWES Discussion Paper 1](#), p.18.

⁵ Indigenous Consumer Assistance Network (ICAN), June 2024, [A study of local economic abuse in First Nations communities with special focus on Australia and Canada](#). Also see Victorian Royal Commission into Family Violence, March 2016, [Report and Recommendations](#).

- understanding that customers may not have all the relevant documents which may impact on the timeliness and comprehensiveness of their response
 - recognising customers may be in a scarcity mindset – responding to the immediate threats and risks they face – so tailoring firm behaviour to that mindset.
2. **A product lens:** with end-to-end review of a product life cycle to understand points of vulnerability to exploitation and the ‘fixes’ to close identified gaps (or products, if known vulnerabilities cannot be effectively addressed). This includes a focus on initiatives to respond to risks at all stages of the product life cycle. For example:
- product application and assessment systems should be designed to effectively screen for undue influence and coercion (e.g. introducing positive frictions) where appropriate, to mitigate risks and ensure that all customers provide free and informed consent during the product application process.
 - hard wiring protections into product design where product origination and distribution are increasingly digitised and opportunities for human interaction, intervention and oversight are limited.
3. **A process lens:** Firms adopt and apply clear, robust and **consistent standards** (across all customer-facing teams and primary and subsidiary businesses) that are capable of reviewing, adapting and responding to changing circumstances. This includes applying the *AFCFA Approach to Joint Accounts and Family Violence* at IDR to ensure complaints are dealt with effectively as early as possible where they arise.
4. **Access to timely support and advocacy** (where required) is essential for victim-survivors to navigate safe pathways to recovery and economic independence.
5. **Designing, testing, measuring, monitoring and sharing** the results of different interventions, acknowledging that many of the lessons and actions required are not new and apply regardless of the product or service involved. This includes:
- using data to understand red-flags and identify at-risk customers
 - ensuring customers know and understand they can ask for support
 - ensuring processes are easy to use, tailored and trauma-informed
 - effectively training and supporting staff in what can be challenging work.

Accepting the challenge to re-imagine financial products and services – including the development of countervailing supports and processes where things go wrong because the status quo is not acceptable and new norms take time to embed.

6. **Coordination and collaboration is key:** Improving responses to financial abuse and customer vulnerability more generally should not be a point of competitive

advantage between firms. It is essential for firms to collaborate to lift standards and to learn from one another to make the system work better.

7. We recognise the critical role consumer advocates play, including financial counsellors and community-based lawyers:

- **supporting** people experiencing financial abuse, **identifying gaps** in the framework and **opportunities to improve it**; and
- **strongly endorse the need for sustainable funding** for these sectors.

Recommendations for the banking and consumer lending sector

- Improving lenders' responses to financial hardship in line with the recommendations in ASIC's report. This includes applying a financial abuse lens (including data analysis) to hardship applications to better identify those cases involving financial abuse and identifying potential interventions.
- Developing coordinated and comprehensive responses to identify and detect coercion, undue influence and fraud in loan applications, including clear and robust standards for the whole consumer lending sector (including non-bank lenders, consumer lease providers, BNPL providers etc) and identifying if law reform or subject matter specific regulatory guidance is required.
- Active consideration of measures identified by CWES relating to the introduction of positive frictions, shifting defaults in product design toward safety, simplifying processes for separation (built into product design at origination) and measures to promote financial independence.
- Removing barriers and frictions to accessing assistance (e.g. review of the evidence requirements, ensuring referrals to external third party representatives for additional assistance are supportive – not mandatory – requirements, review of timing requirements for document provision etc, in relevant cases).
- Timely implementation of any recommended changes to the credit reporting framework.

Recommendations for the general insurance sector

- Investment in early identification and response to financial hardship and vulnerability.
- Enhancement of claims handling and IDR – noting that for a complaint involving an insurance claim to reach AFCA, the complainant will have already been through a claims process and an internal complaints process before it can be escalated to AFCA.
- Introduction of 'conduct of others' clauses as industry standard.
- Addressing delays and frictions in processes likely to lead already traumatised customers to withdraw from claims or complaints processes.

Recommendations for the superannuation sector

- Reviewing products for vulnerability or exploitation and adopting additional security facilities such as multi-factor authentication to reduce risks to members.
- Monitoring, reviewing and updating processes given rollovers and withdrawal transactions are key points of susceptibility for financial abuse.
- Supporting fund members - at all stages of the product lifecycle from product inception through to rollover or withdrawal transactions - to reduce the risk of scams and fraud.

Recommendations relating to privacy issues

AFCA supports additional regulatory guidance for financial firms to:

- clarify the operation of their privacy obligations in the context of financial abuse, in particular the operation of relevant exceptions for disclosures under Australian Privacy Principle 6 (APP6)
- set out good practice guidance on the available mitigation steps for firms and
- encourage standardisation of processes for the verification of representatives within the firm itself and among its subsidiaries.

AFCA's complaints experience

Economic abuse affects 2.4 million Australian adults, including 1 in 6 women and 1 in 13 men, according to the Australian Bureau of Statistics 2023 personal safety findings⁶.

Defining financial abuse and family violence

Economic and financial abuse involves someone controlling your ability to get, use or keep your money or economic resources. People who use coercive control might use economic and financial abuse as part of their abusive behaviour.⁷

Financial abuse is sometimes called economic abuse. Financial abuse is a form of domestic and family violence. It often involves someone using money in ways that can hurt you. Financial abuse can also include stopping you from getting a job or forcing you to get loans you don't want.⁸

1800 RESPECT explains that domestic and family violence happens when one person in a relationship hurts another or makes them feel unsafe, and is a repeated pattern of behaviour. It need not involve physical violence.⁹

⁶ [Personal Safety, Australia, 2021-22 financial year | Australian Bureau of Statistics \(abs.gov.au\)](#)

⁷ See [Understanding coercive control and economic and financial abuse | Attorney-General's Department \(ag.gov.au\)](#)

⁸ [Financial abuse | 1800RESPECT – Financial abuse.](#)

⁹ [Financial abuse | 1800RESPECT – Domestic and family violence.](#)

The profile of complaints to AFCA

In financial year 2022-23, AFCA received 96,987 complaints from consumers and small businesses, an increase of 34% on the previous year. Of these more than 50,000 complaints relate to banking and finance (including complaints about transactions, consumer lending and small business credit complaints), more than 25,000 complaints relate to general insurance, and around 7,000 were superannuation complaints.¹⁰ From 1 July 2023 to 31 May 2024, AFCA received 97,747 complaints.¹¹

The vast majority of consumer and small business complaints are dealt with directly by financial firms at the internal dispute resolution (IDR) stage of the process. Under the financial services licensing regime, financial firms bear the primary responsibility for resolution of these complaints.¹²

The Appendix sets out AFCA's complaints process in detail. As most complaints resolve at IDR or relatively early in the AFCA process (e.g. at the Registration and Referral (R&R) stage) only a minority progress into AFCA's case management process.

This means that AFCA's data only presents a limited and partial view of the circumstances of people affected by financial abuse. More detail about this is set out in the Appendix and we step out the role of dispute resolution in the context of financial abuse on page 24 below.

The profile of financial abuse complaints to AFCA

AFCA recognises the significant barriers facing victim-survivors making and escalating complaints to AFCA. For this reason, we do not believe that AFCA's data is representative of the actual scale of abuse involving the 'weaponisation' of financial products and services.

Financial abuse can emerge in complaints across AFCA's jurisdiction, however the majority of complaints arise in relation to banking and finance.

For this inquiry, AFCA reviewed its complaints data for the period 1 July 2022 to 31 May 2024. We have included in our analysis any complaints that were explicitly "flagged" in our system as involving financial abuse by the complainant or by AFCA staff, or where the complainants' free text comments included key words such as family or domestic violence and domestic or financial abuse.¹³ In **most** cases, the complainant self-reports the issue when they lodge their complaint, or it is disclosed by an authorised representative, such as a family violence worker, financial counsellor

¹⁰ [Overview of complaints | Australian Financial Complaints Authority \(AFCA\)](#)

¹¹ Based on data as at 1 June 2024.

¹² This is set out in more detail on p.27.

¹³ These include cases where consumers proactively disclosed their experience of financial abuse in AFCA's complaints form.

or family member assisting the complainant. AFCA case workers may also flag a complaint where other facts emerge, such as the financial firm’s response at IDR.

Our analysis shows that complaints involving financial abuse at AFCA are growing over time. It also shows that complaints are overwhelmingly in AFCA’s banking, finance and consumer credit jurisdiction and presents a sobering story as to the stage at which these cases resolve (i.e. later in the AFCA process) as compared to unflagged complaints.

Overview of complaints to AFCA involving financial abuse

In the almost 2-year period of 1 July 2022 to 31 May 2024, AFCA received 2,140 complaints flagged as cases involving or relating to family violence or financial abuse (Flagged Complaints).

Chart 1: Financial abuse complaints over the relevant period

This chart shows the steady increase in the prevalence of Flagged Complaints received over the relevant period. The vertical axis shows the percentage of complaints received by AFCA that were flagged as cases involving or relating to family violence or financial abuse.

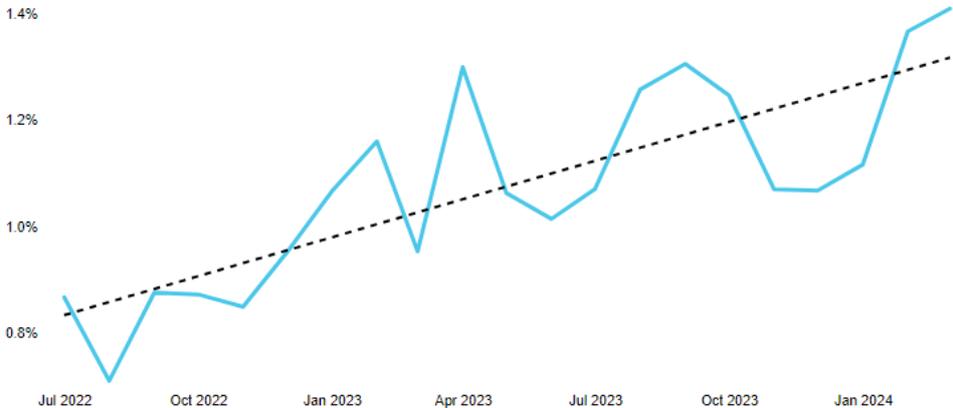


Chart 2: Top 5 product types involved in financial abuse complaints

Consumer credit is the most prevalent product line involved in Flagged Complaints, followed by transaction accounts.

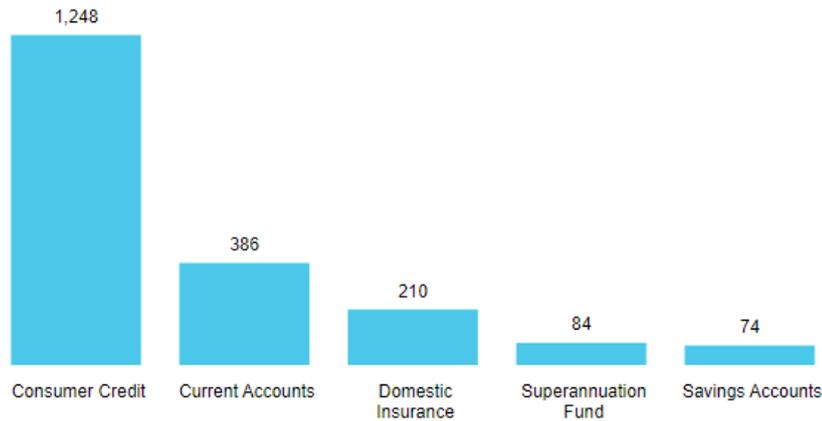


Chart 3: Top 5 products involved in financial abuse complaints

While Chart 2 shows financial abuse complaints at the level of the broader product categories, Chart 3 shows the most common individual products involved in these complaints: personal transaction accounts and consumer credit products including home loans, personal loans and credit cards.

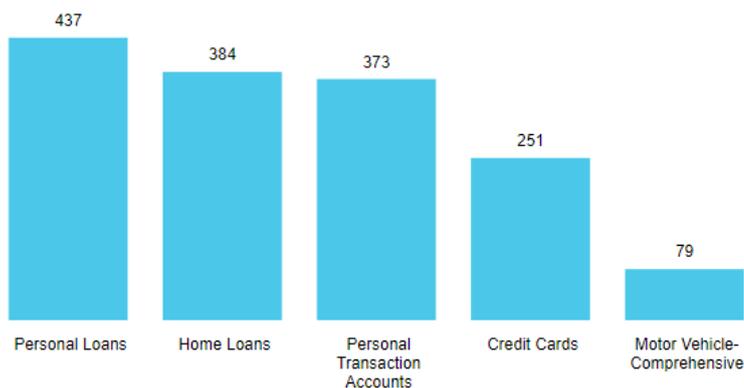


Chart 4: Issues in financial abuse complaints over the relevant period

The three issues most commonly raised in Flagged Complaints are²:

- financial firm failure to respond to a request for financial hardship assistance
- unauthorised transactions
- responsible lending.

Chart 4 illustrates how these three issues have trended over the period showing that financial firm failure to respond to requests for financial assistance and unauthorised transactions are trending upwards.

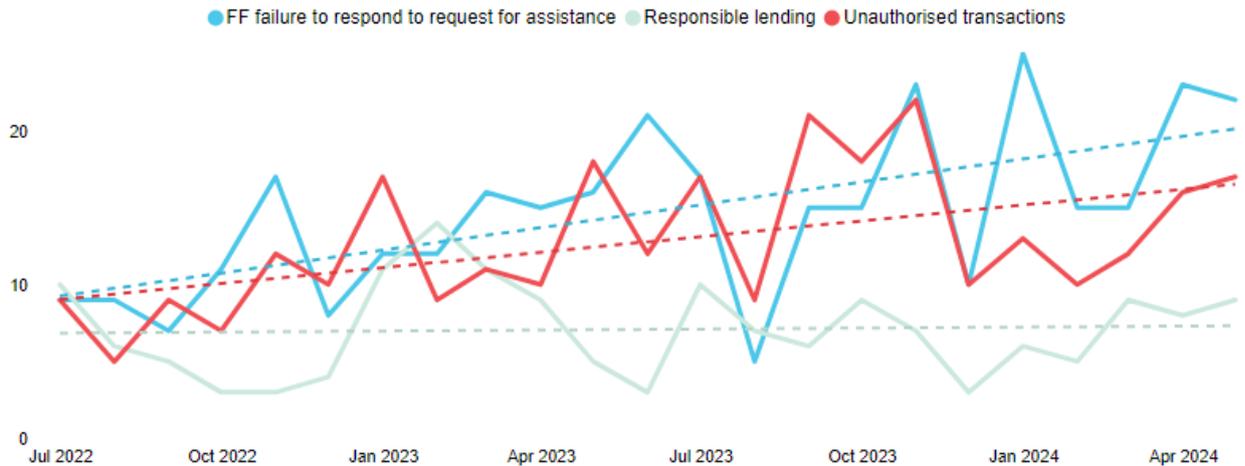
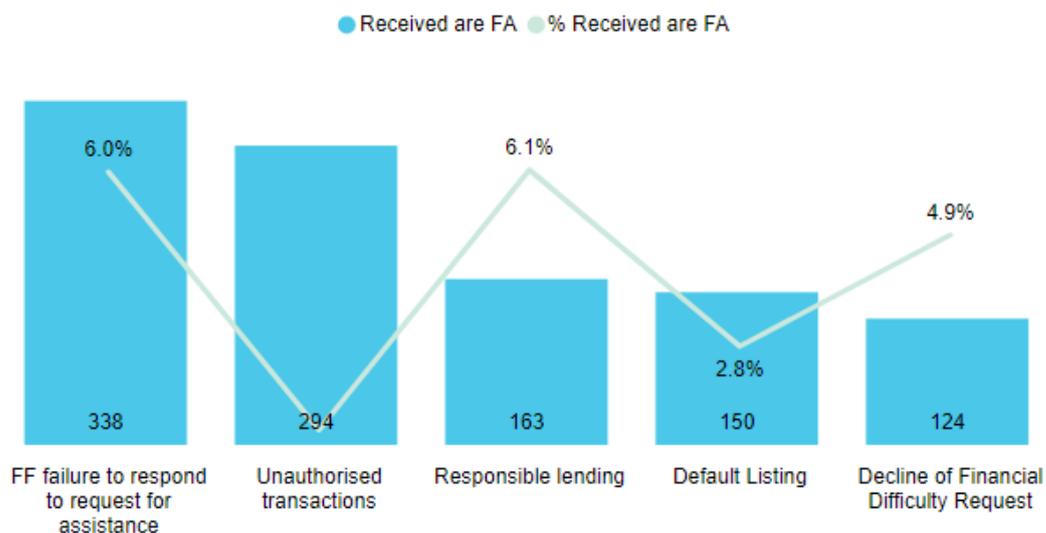


Chart 5: More detailed breakdown of issues in financial abuse complaints

Noting that a single complaint may raise more than one issue, this chart shows that issues in Flagged Complaints cluster around financial firm failure to respond to requests for assistance, responsible lending and decline of a financial difficulty request.

The bars represent the top 5 issues in Flagged Complaints received by volume. The line indicates the proportion of complaints received with this issue, that were flagged as involving financial abuse. This illustrates that failure to respond to requests for assistance, responsible lending and decline of a financial difficulty request are significantly more prevalent than other issues in financial abuse Flagged Complaints, where the average representation at closure to 1% of received complaints.

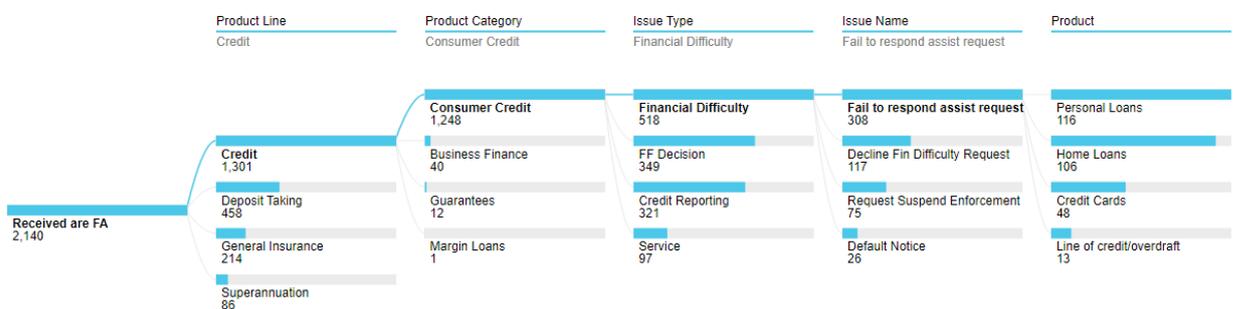


More comprehensive data about complaint issues and outcomes at IDR would be held by financial firms themselves. This should help to explain the nexus between

responsible lending, hardship, enforcement proceedings and credit reporting for people experiencing financial abuse. It shows the critical opportunity for firms not only to identify customers who may be experiencing financial abuse, but also for early intervention that could have prevented these matters being escalated to AFCA.

Chart 6: Credit complaints

This chart shows the most frequent combination of products/issues among credit complaints that were flagged as financial abuse and received in the period. The primary issue is financial difficulty, with the firm’s failure to respond to a request for assistance as the top issue for the products personal loans, home loans and credit cards.



This data shows the most common combination of issues in these consumer credit complaints and is consistent with AFCA’s experience of ongoing issues with financial firms’ failure to:

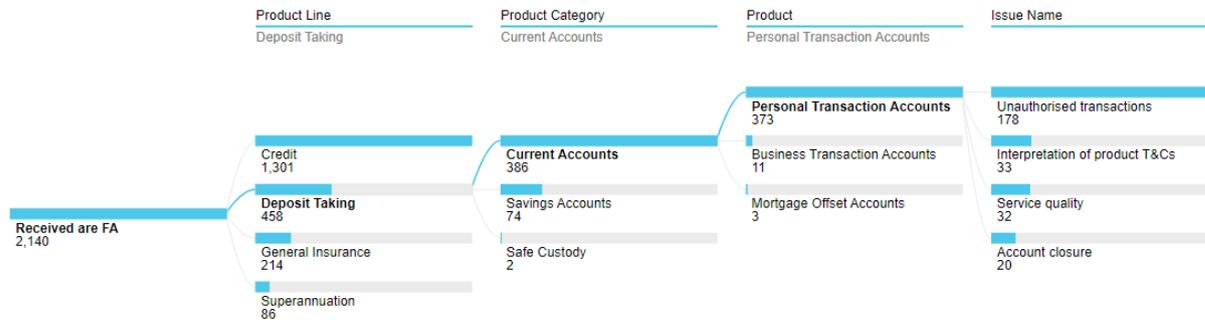
- lend responsibly and ensure loans meet each borrower’s individual requirements and objectives
- ensure each co-borrower provides free and informed consent and (for subscribers to the Banking Code of Practice) to ensure each co-borrower receives a substantial benefit from the loan and
- provide effective and tailored financial hardship assistance to borrowers experiencing financial hardship resulting from financial abuse.

AFCA continues to receive hundreds of complaints per year from victim-survivors who say they were given irresponsible loans and when hardship arose, did not receive appropriate hardship assistance. These failures compound negative impacts on very vulnerable customers.

Where there is financial abuse in the relationship between co-borrowers, AFCA expects financial firms to pursue the perpetrator as well as the victim of abuse. In our experience, however, that does not always occur.

Chart 7: Deposit taking and transaction complaints

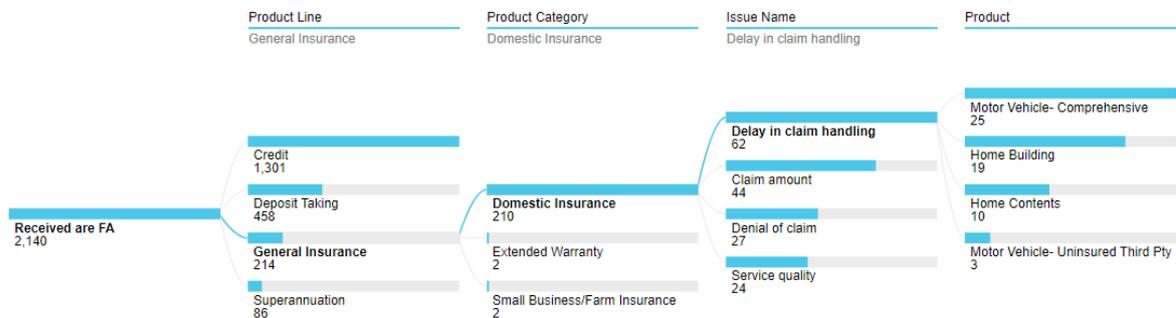
This chart shows the most common combination of issues among deposit-taking and personal transaction accounts Flagged Complaints.



Unauthorised transactions (for example, where one party has taken funds from a joint account or redraw without the other person’s knowledge or consent) is the most prevalent issue in these complaints.

Chart 8: General insurance complaints

This chart shows the most the most common combination of issues among general insurance Flagged Complaints.

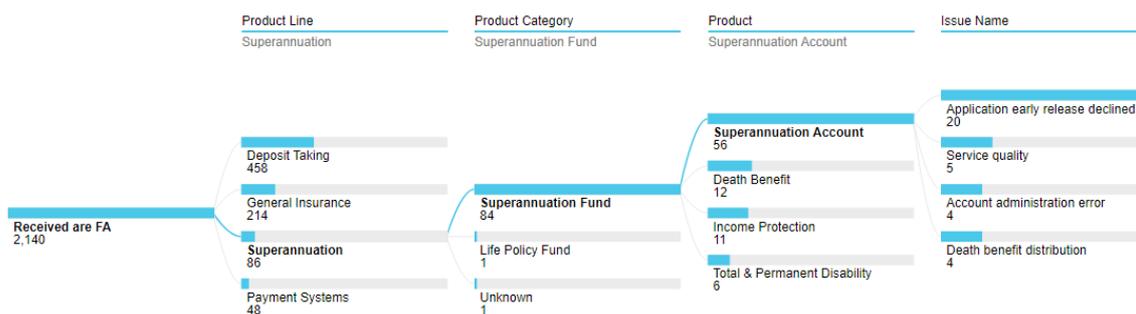


Delays in complaints handling is the top issue for these customers, suggesting that insurers are failing to identify and triage these vulnerable customers effectively at either the claims handling or IDR stage of their processes. We consider that most of these complaints should be triaged and resolved well before they result in an AFCA complaint.

An example of issues seen in general insurance Flagged Complaints is deliberate destruction of property.

Chart 9: Superannuation complaints

This chart shows the most common combination of issues among superannuation complaints that were flagged as financial abuse and received in the period.



While the cohort of these complaints to AFCA is relatively small, complaints about application for early release represent the largest group. Issues in these complaints include trustee processes and, in some cases, raise issues about policy settings for early release.

There have been consultations and debates about possible changes to early release arrangements. It has been acknowledged that early release could worsen a victim-survivor's situation. We note that, when it considered early releases in the family violence scenario, the Australian Law Reform Commission³ did not recommend major reform but suggested adjustments to make application processes more flexible.

Chart 10 A: Stages at which financial abuse complaints closed

Chart 10 A shows that Flagged Complaints are less likely to resolve at AFCA's R&R stage than unflagged complaints. This means the Flagged Complaints are more likely to progress into AFCA's case management process for resolution. The tendency of Flagged Complaints to resolve later is more pronounced in Banking and Finance complaints than in other categories of complaints received by AFCA.

This is concerning because it suggests that firms have missed an opportunity to resolve these complaints earlier, either at IDR or at the first stage of the AFCA process. Early identification and prompt resolution of financial abuse complaints removes the burden on often very vulnerable customers to escalate an unresolved complaint through AFCA's processes.

Where firms' processes for identifying and resolving these complaints are effective, we would expect many of these complaints to resolve much earlier, avoiding the need for a complaint to AFCA.

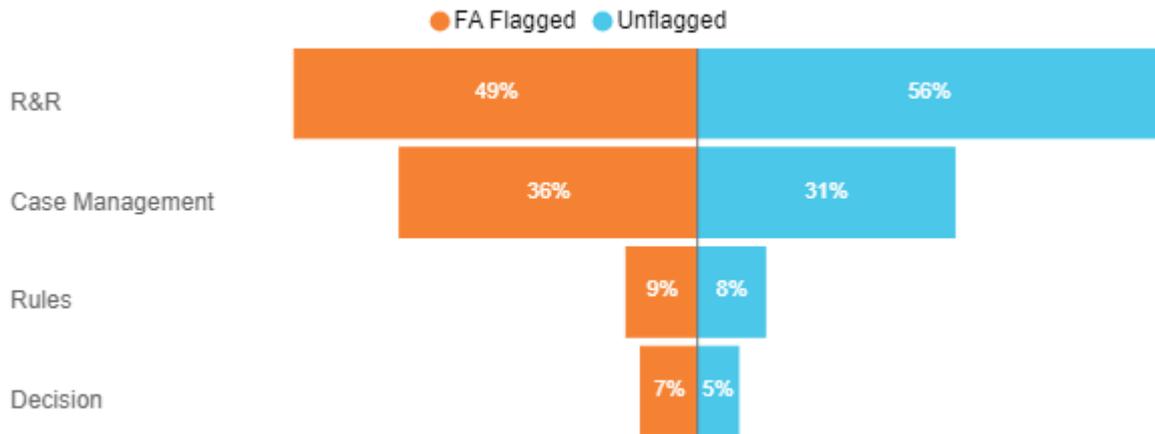
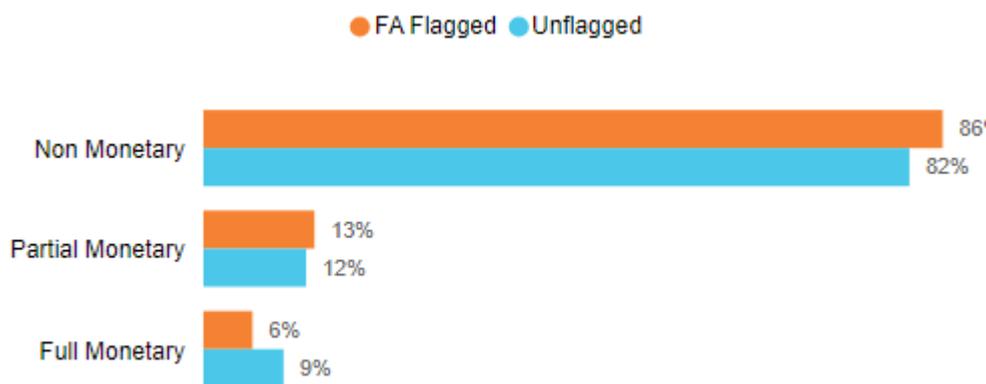


Chart 10 B: Outcomes for financial abuse complaints

Chart 10 B shows that Flagged Complaints that progress through AFCA’s case management processes are more likely to receive non-monetary outcomes when compared to all the other complaints AFCA receives. Overwhelmingly, the outcome or remedy that these complainants are seeking is relief: relief from debt burdens, more time (through deferral of enforcement proceedings), removal of default listings (to help them rebuild and establish their economic independence).



In appropriate cases, and in accordance with the AFCA scheme Rules, AFCA may award monetary compensation for non-financial loss to compensate complainants for unusual stress or inconvenience suffered because of delay or inadequate responses by financial firms. This is illustrated in some of the case studies below.¹⁴

¹⁴ See, for example, Case Studies 1 and 6. The AFCA Rules set a cap on compensation for non-financial loss. The cap, which is indexed, is \$6,300 per claim at present.

AFCA's case experience: observations and learnings

Financial abuse occurs across all products and processes in AFCA's jurisdiction.

Different products and systems may be vulnerable at different points in the process (e.g. at product inception – where frictionless lending apps can be misused to perpetrate financial abuse), through to insurance claims processes or within superannuation rollover processes.

The following section sets out relevant observations based on AFCA's experience and insights in different sectors, and identifies potential mitigants or interventions that may support more effective responses.

Banking, finance and consumer credit

CWES reported the largest proportion of examples of financial abuse which involve misuse of financial products relate to joint facilities, transaction accounts, credit cards, personal loans and mortgages.¹⁵ This is in line with AFCA's data and experience in banking, finance and consumer credit. We have seen complaints where a person:

- cannot access accounts, loan or account statements or banking apps or are reporting funds withdrawn from joint accounts
- is coerced to take out a loan in their name for the perpetrator's benefit, including providing a mortgage or other security over their own assets as security for the loan
- is joined as a co-borrower with the perpetrator for a loan that solely benefits the perpetrator, without providing free and informed consent
- is unduly influenced or coerced to provide a guarantee over their family home for the benefit of another person, often in the context of small business lending
- is seeking financial hardship relief, responding to enforcement proceedings, debt collection or negative credit reporting information on their credit file
- gives decision-making authority to a carer or family member who misuse a Power of Attorney (POA) to perpetrate financial abuse.

The following case studies are based on AFCA determinations. We have amended the case studies to reduce the potential for identification of parties.

¹⁵ CWES Discussion Paper 1, p.22.

Case study 1¹⁶: Unauthorised transaction on a credit card

The complainant, who suffered financial abuse in her marriage, instructed her bank to prevent her husband from accessing her accounts. This was not done, and the husband transferred funds through a cash advance on the complainant's credit card account.

The complainant disputed the transaction, maintaining it was unauthorised. The bank tried to contact the husband to investigate, but he did not respond. The bank released the funds to him.

AFCA concluded the bank knew or should have known the complainant was a victim of financial abuse and was a vulnerable customer.

AFCA found the bank did not respond appropriately when the complainant reported an unauthorised transaction. It did not act with the extra care and skill required when dealing with vulnerable customers. Further, it did not investigate the matter adequately.

AFCA required the bank to refund the funds transferred (with related fees and interest) and pay monetary compensation for stress and inconvenience suffered.

Case study 2: Failure to meet responsible lending obligations

A lender issued a credit card and later provided four credit increases to the card. The lender failed to make reasonable inquiries about the complainant's financial situation or take reasonable steps to verify her financial situation. The lender did not reasonably verify her income or living expenses and did not conduct its serviceability assessment reasonably.

The complainant's former partner was financially and physically abusive and controlling and had filled out the online credit application form and included inaccurate information. The lender made insufficient inquiries about purported income and did not reasonably verify information prior to providing the credit increases.

AFCA found that the complainant received limited benefit from the funds from the credit card and that the debt should be waived. AFCA also recommended that the lender contact each credit reporting bureau and request they remove all adverse repayment history information and default listings related to the credit card from the complainant's credit file.

¹⁶ Case studies have been amended to reduce any potential for identification of parties.

Case study 3: Unjust transactions in circumstances of coercive control

The bank breached its obligations under the Banking Code of Practice when it provided the loans which AFCA found were unjust transactions under the National Credit Code (NCC). The complainant was a victim-survivor of family violence and subject to undue influence. AFCA found that the bank did not take reasonable steps to ensure informed consent and should have taken further steps to understand the complainant's benefit under the loan which AFCA found to be an unjust transaction. AFCA found that the bank should compensate the complainant for the loss the loans caused her.

Case study 4: Complainant assumed significant risk but had little benefit from the loans

AFCA found a loan was an unjust transaction because it was unaffordable and unsuitable for the complainant and her former partner. Under the loan, the complainant became liable for her former partner's existing loans. Those loans were substantial and had been in default prior to the refinance. As information available to the bank suggested the complainant would receive limited benefit from the new loan, the bank breached its responsible lending obligations when it provided the loan.

The bank dealt predominantly with the former partner even though the complainant was the bank's existing customer, and the bank did not separately confirm the complainant's informed consent to this arrangement or suggest she obtain independent legal or financial advice when there was a reasonably apparent risk of undue influence.

The bank's actions exposed the complainant to the foreseeable risk that her property would be sold to repay the entire loan, which the bank ought to have known the complainant and her former partner could not afford to repay. AFCA proposed variations to the loan to fairly compensate the complainant for the loss the bank's conduct caused her without unfairly prejudicing the bank or delivering the complainant an unfair benefit or windfall compared with her pre-existing position.

Financial hardship

It is well understood that financial hardship can be the first line indicator of financial abuse or arise in the context of separation and efforts to understand and unwind joint financial commitments.

ASIC's recent Report 782, *Hardship, hard to get help*¹⁷ included two case examples that showed the compounding impacts on victim-survivors of family violence where

¹⁷ ASIC, May 2024, [Report 782 Hardship, hard to get help: Findings and actions to support customers in financial hardship \(asic.gov.au\)](https://asic.gov.au). Case examples have been edited for conciseness.

lenders failed to provide an adequate hardship response at the earliest opportunity to do so.

- Example 3618 involved a complainant, represented by a financial counsellor who was in financial hardship following her escape from family violence. The complainant could service her debts and had requested that the lender enter a serviceability period to capitalise the arrears, review the interest rate on the loan and extend the term of the loan by five years on the basis that the payments would be affordable for the customer if these changes were made. Initially the lender refused a long-term solution. Following a complaint, the lender restructured the loan along lines proposed by the financial counsellor.
- Example 5019 involved delayed referral to the specialist extra care team and failure to deal with the customer's authorised third party, a financial counsellor. Failure to identify the customer's vulnerability resulted in the customer making repeated disclosures to multiple staff members as to the family violence situation, increasing the customer's distress in dealing with the lender.

ASIC's report identified critical deficits in lenders' hardship responses including about the need to make it easier for customers to apply for hardship and communicating effectively through the hardship process to improve consumer outcomes and mitigate downstream risks and impacts on credit reports.

We consider that fair, flexible and inclusive design of hardship processes (accessible communications, call scripts, system flags, sensitively designed online forms, good call notes and staff training) can better identify and support tailored hardship responses for all customers with particular sensitivity to the proportion of hardship cases involving financial abuse.

Credit reporting

We tend to see financial abuse including family violence issues in credit reporting complaints in circumstances where:

- adverse Repayment History Information (RHI) data is recorded, typically following unaddressed financial hardship (e.g. one-party ceases payments on joint loans), affecting a victim-survivor's ability to secure new housing or other essential services.
- credit reporting is used as a weapon in family violence with credit cards opened within minutes through online portals in the name of victim-survivors without their knowledge, with every application registering on their credit score. This builds an inaccurate and potentially damaging picture of their financial health.

¹⁸ See ASIC's Report 782, p.90.

¹⁹ See ASIC's Report 782, p.121.

The impacts can be devastating, materially affecting the victim-survivor's ability to rebuild their lives.

We understand that victim-survivors who have experienced / fled circumstances of family violence (including financial abuse and coercive control) are likely to struggle to achieve financial autonomy where adverse information is recorded on their credit file. Under AFCA's fairness jurisdiction, we generally expect firms to remove adverse RHI in these circumstances. This is in line with the reporting exemptions in the *Principles of Reciprocity & Data Exchange* (PRDE) which set out a reporting exemption for credit providers in circumstances where a customer is experiencing family violence. A lack of comprehensiveness of cover both as to signatories and to the scope of the reporting exemption limits its benefit for affected victim-survivors trying to rebuild financial independence following financial abuse.²⁰

The current iteration of the Privacy (Credit Reporting) Code 2014 (CR Code) does not have any relevant provisions to respond to family violence and we support proposals to extend the code to do so.²¹

The 2021 independent review of the CR Code proposed changes to recognise that Australia's credit reporting framework needed to address domestic and family violence¹⁷. This included a recommendation to amend the CR Code to include domestic abuse as an example of circumstances beyond the individual's control.

AFCA supports interventions to respond to the intersection between credit reporting and family violence and financial abuse. Rules and processes need to be clear, comprehensive, applied by credit providers and accessible for victim-survivors and their advocates. Such measures should clearly apply to all types of credit reporting information, including financial hardship information (FHI).

Initiatives and opportunities in banking, finance and consumer credit

We are encouraged by recent commitments from financial firms to communicate, through amendments to terms and conditions, that they will not tolerate the use of their products for financial abuse and the various initiatives underway to respond.²² This includes:

- industry code commitments
- measures to prevent abuse in payment descriptions, noting that not all banks have adopted these measures as standard

²⁰ The [Principles of Reciprocity & Data Exchange](#) (PRDE) are intended to create clear standards for the management, treatment and acceptance of credit related information amongst signatories. However, the PRDE standards only apply to consumer credit information and credit reporting information and do not apply to the big four banks or Macquarie (as they are not signatories).

²¹ We also note that the Attorney-General's Department is at present conducting a comprehensive [Review of Australia's Credit Reporting Framework](#).

²² See, for example, the ['Safe and Savvy' guide](#) published by the Australian Banking Association on 15 June 2024, designed to help older Australians protect themselves from scams, fraud and financial abuse.

- pursuit of exemptions where regulatory settings act as a barrier to safe and effective responses
- adaptation of scam and fraud detection and disruption measures and in customer support.

However, more needs to (and can be) done.

Recommendations for the banking and consumer lending sector:

- Improving lenders' responses to financial hardship in line with the recommendations in ASIC's report. This includes applying a financial abuse lens (including data analysis) to hardship applications to better identify those cases involving financial abuse and identifying potential interventions.
- Developing coordinated and comprehensive responses to identify and detect coercion, undue influence and fraud in loan applications, including clear and robust standards for the whole consumer lending sector (including non-bank lenders, consumer lease providers, BNPL providers etc) and identifying if law reform or subject matter specific regulatory guidance is required.
- Active consideration of measures identified by CWES relating to the introduction of positive frictions, shifting defaults in product design toward safety, simplifying processes for separation (built into product design at origination) and measures to promote financial independence.
- Removing barriers and frictions to accessing assistance (e.g. review of the evidence requirements, ensuring referrals to external third party representatives for additional assistance are supportive – not mandatory – requirements, review of timing requirements for document provision etc, in relevant cases).
- Timely implementation of any recommended changes to the credit reporting framework.

General insurance

In a general insurance context, AFCA has seen financial abuse occur where a:

- perpetrator deliberately damages or withholds a victim-survivor's property to financially injure them. If the damaged property is co-insured with the victim-survivor, this damage can trigger an exclusion for claims occurring from the deliberate act of an insured.
- perpetrator makes changes to insurance cover for jointly insured property so that:
 - > benefits are provided directly to the perpetrator – and not passed on or distributed to the victim-survivor, and/or
 - > the victim-survivor's property becomes uninsured without their knowledge.

- perpetrator seeks to obtain the victim-survivor's personal information through the insurance policy (such as their current address or phone number).

Case study 5: Insurance claim denied in circumstances of family violence

AFCA has dealt with complaints involving the denial of an insurance claim where a person has had to leave a property for their own safety and the perpetrator has caused loss or damage to the home or contents.

In such circumstances and without a 'conduct of others' clause, AFCA is not able to find for the complainant where the insurer has fairly relied on the terms and conditions of the policy, specifically policy exclusions for theft and malicious damage cover where a perpetrator is responsible for the loss or damage.

AFCA strongly supports the CWES' call for a systemic and consistent approach to this issue and we urge all insurers to follow the lead of AAI/Suncorp and Allianz in introducing 'conduct of others' clauses in their insurance policies.

Case study 6: Abuse of a joint insured – cash settlement

The complainant and her partner jointly held insurance for the complainant's home and a second property. The insurer accepted a claim for damage to the home. The partner then instructed the insurer to resolve the claim by paying a cash settlement into his bank account and to remove the complainant from the joint insurance policy.

The insurer was made aware of the abuse and that a domestic violence order was in place. However, after receiving this information, the insurer did not try to contact the complainant to confirm the instructions given by her partner alone.

The insurer paid the cash settlement to the partner, removed the complainant from the policy and refunded all the excess premiums to him. Citing privacy concerns, the insurer refused to help when the complainant queried its actions.

AFCA concluded the insurer handled the situation poorly and failed to correct its errors. AFCA awarded monetary compensation for the complainant's financial loss and an award for non-financial loss for the additional stress and inconvenience.

Review of the General Insurance Code of Practice (GI Code)

The GI Code is currently under review. In June 2024, [AFCA made a submission](#) to the review recommending changes to improve outcomes for vulnerable people, including people affected by financial abuse. Key suggestions are outlined briefly below.

Ensure processes and services are fair, flexible and inclusive

To raise standards, AFCA suggested:

- Making processes and services more flexible, so that tailored action can be taken where there are indications a customer is having trouble or may need extra care (including in circumstances of financial abuse). Indicators may include customers having difficulty providing information to support or lodge a claim or paying an excess.
- Ensuring a customer does not need to repeatedly provide details about their financial abuse when dealing with multiple employees or agents of insurers. This repetition can amplify trauma and result in customers dropping out of important conversations and processes such as claims, requests for financial hardship assistance and complaints.
- Making it easier for a customer to appoint a representative to assist or support them and ensure insurers commit to appointments made in accordance with the new, simplified standards.

Consistent with AFCA's recommendations in this submission, we also suggested changes to the GI Code to help insurers to identify:

- barriers in processes that result in customer disengagement, friction, stress, escalated complaints or poor customer outcomes.
- opportunities for training and capacity building among staff to empower them to tailor services and provide extra care to customers where needed.

Improve identification of vulnerability

To meet community expectations, we suggest the GI Code (and other elements of the financial services regulatory framework) should define the concept of vulnerability more broadly.² We also suggest insurers should, when handling claims, anticipate claimants are likely to be experiencing some form of vulnerability.

This approach would acknowledge that the conduct of financial firms can itself amplify consumer vulnerability (in complex, hard-to-navigate or delayed processes). The approach would also reduce the customer's onus of disclosure and demand more of the insurer – who is best placed to deploy data, operational experience and organisational capabilities to identify and respond to claims that may require tailored care.

Recommendations for the general insurance sector:

- Investment in early identification and response to financial hardship and vulnerability.
- Enhancement of claims handling and IDR – noting that for a complaint involving an insurance claim to reach AFCA, the complainant will have already been

through a claims process and an internal complaints process before it can be escalated to AFCA.

- Introduction of 'conduct of others' clauses as industry standard.
- Addressing delays and frictions in processes likely to lead already traumatised customers to withdraw from claims or complaints processes.

Superannuation

Victim-survivors' superannuation savings can be a target for financial abuse. This form of abuse can be particularly egregious because the loss of these funds can be almost impossible for victim-survivors to recover from and is likely to contribute to the increasing levels of poverty experienced by older women.

AFCA received a relatively small number of superannuation complaints about unauthorised transactions where a fund member has seen money leaving their account via a withdrawal or rollover or transfer they did not request.

This form of abuse is typically perpetrated where a person known to the fund member has used their personal information to satisfy the fund's identification requirements and has then been able to access the fund member's account.

In some cases, the fund member may initially consider that they have been the victim of a scam, only to later understand that they have been a victim of financial abuse.

Further risks may arise beyond the scrutiny of the fund, for example, in the context of applications for early release of super on compassionate grounds. On current settings, these processes are administered by the ATO and providing the ATO approves the release, the fund processes the release of funds in line with its trust deed.

Similarly, a fund will release funds in receipt of a compliant application for early release on grounds of financial hardship, where the trust deed allows for this.

Analysis of funds released may shed light on the extent to which financial abuse may be a factor in the release of some members' superannuation savings ahead of retirement.

In the most extreme cases, AFCA has seen perpetrators try to claim a superannuation death benefit where the subject of their abuse has died. Where it is established that the perpetrator was responsible for the death and morally culpable, the common law rule of forfeiture—that a person who unlawfully kills another cannot acquire a benefit because of the killing—may apply in the superannuation context. However, there is no legislation and no case law that establishes this. Further, AFCA sees cases where the perpetrator has not been responsible for the death but has

engaged in abusive behaviour such that the community may expect they should be excluded from receiving any part of the death benefit.

There are also cases where a claimant has left the home shared with the perpetrator to escape abuse, and as a result no longer qualifies as a spouse for the purposes of superannuation law and does not share in the superannuation benefit paid on the death of the perpetrator.

AFCA has seen uncertainty within the superannuation industry about how the law and trustee duties operate in such circumstances.

In any event, there are many circumstances in which the current law applying in conjunction with a standard fund trust deed requires that a perpetrator receive a part of the death benefit payable when the subject of their abuse dies. For example, this can occur where the perpetrator is the only person who qualifies as a dependant for superannuation law and trust deed purposes.

We consider that this is an area requiring further consideration.

We also consider that responses in line with those relating to superannuation fraud and scams may similarly be deployed to respond to the risks of financial abuse in the superannuation context.

Recommendations for the superannuation sector:

- Reviewing products for vulnerability or exploitation and adopting additional security facilities such as multi-factor authentication to reduce risks to members.
- Monitoring, reviewing and updating processes given rollovers and withdrawal transactions are key points of susceptibility for financial abuse.
- Supporting fund members - at all stages of the product lifecycle from product inception through to rollover or withdrawal transactions - to reduce the risk of scams and fraud.

Amplifying risks: the shift to digital

Fast, frictionless, online processes deliver great benefit and convenience for many consumers. However, increasingly financial counsellors, consumer legal services and family violence services are reporting misuse and abuse in these processes.

AFCA's role is to resolve complaints which typically arise long after the damage is done. We see the complexity involved for people trying to unwind serious financial hardship and adverse credit reporting with online credit providers who may have limited customer facing staff to assist customers.

Firms operating wholly online business models need to recognise the elevated risks for some customers that may be inherent in their model and develop interventions, informed by their data and analytics to proactively identify and address vulnerabilities

in their processes—including introducing positive frictions into the online application process where appropriate, identify and respond to red flags, particularly for those in hardship and communicate about available support options. Firms need to communicate actively with victims of abuse to ensure the firms have consent to take action.

We note that some major banks' subsidiaries are increasingly offering online only products and services. We query if as the major bank becomes a 'harder target' for the perpetration of abuse with more effective interventions and customer support, this shifts risks to the lower cost online products and channels including their hardship and complaint services.

We recommend that effective interventions should consistently apply across a sector to mitigate the risk of a two-tier response to financial abuse dictated by the identity of the lender.

Privacy issues

Under the contractual obligations of AFCA membership and relevant financial services licensing obligations, AFCA obtains relevant and necessary personal information from financial firm members of the scheme and complainants for the purposes of resolving individual complaints. In our experience, privacy requirements do not present a barrier to the provision of necessary personal information to AFCA in the performance of our complaints handling role.

However, from time to time, firms do raise privacy and safety concerns in relation to information provision to AFCA in sensitive cases involving financial abuse.

Case study – financial abuse and third-party access requirements

A complainant was perpetrating financial abuse under a power of attorney (POA) and lodged a complaint with AFCA to contest the position taken by the bank to protect its customer.

In its response to the complaint, the bank provided information to AFCA supporting its assessment that the complainant was misusing the POA and perpetrating financial abuse of the bank's customer. Under AFCA's procedural fairness requirements, AFCA will generally share submissions from each party, subject to consents and an objection procedure. In this case, the firm did not consent to the information sharing and the complainant made an access request to AFCA for that information.

AFCA considered and ultimately refused the complainant's request on the basis that providing access was unlawful (due to contractual and equitable confidentiality obligations). In different fact scenarios, AFCA may consider if it is appropriate to

refuse access on the basis that to do so would seriously interfere with the privacy of another party or pose a threat to the life, health or safety of another party.

The 2022 Privacy Act Review considered the application of the Privacy Act in the context of financial abuse.²³ The Review made three relevant recommendations relating to people experiencing vulnerability including financial abuse. The Government published its response to the Review in 2023 and committed to progressing this work in 2024.²⁴

Chapter 17: People experiencing vulnerability.	Government response
Proposal 17.1 Introduce, in OAIC guidance, a non-exhaustive list of factors that indicate when an individual may be experiencing vulnerability and at higher risk of harm from interferences with their personal information.	Agree
Proposal 17.2 OAIC guidance on capacity and consent should be updated to reflect developments in supported decision-making.	Agree
Proposal 17.3 Further consultation should be undertaken to clarify the issues and identify options to ensure that financial institutions can act appropriately in the interests of customers who may be experiencing financial abuse or may no longer have capacity to consent.	Agree in-principle

Handling third party information: joint borrowers and joint insureds

In our experience, financial firms are not consistently applying privacy laws. This is evident in inconsistent responses to the handling of third-party information.

A complaint may be lodged with AFCA by one party, a co-borrower or joint insured, often following separation. The financial firm's file notes may contain evidence of family violence and of communications between the firm and the co-borrower or co-insured who is not a party to the complaint.

AFCA exercises high levels of caution in such complaints to redact personal information relevant to personal safety whilst also balancing requirements for procedural fairness.

We find that some firms have good information security processes in place and effectively communicate relevant context to the complaint that AFCA would otherwise be unaware of, while other firms simply 'dump' information on AFCA without taking any mitigation steps to manage known safety risks.

²³ [Privacy Act Review Report | Attorney-General's Department \(ag.gov.au\)](#), see p. 165.

²⁴ [Government response to the Privacy Act Review Report | Attorney-General's Department \(ag.gov.au\)](#)

AFCA supports additional regulatory guidance for financial firms to:

- clarify the operation of their privacy obligations in the context of financial abuse, in particular the operation of relevant exceptions for disclosures under Australian Privacy Principle 6 (APP6)
- set out good practice guidance on the available mitigation steps for firms and
- encourage standardisation of processes for the verification of representatives within the firm itself and among its subsidiaries.

Role of dispute resolution

Given the nature of the complaints AFCA receives, it is essential that cases involving financial abuse are identified and resolved by firms as early as possible.

Internal dispute resolution

The Corporations Act sets out a two-step process for complaints handling, a first internal dispute resolution stage where the firm has the first opportunity to resolve the complaint with their customer. If the complaint does not resolve at IDR, the consumer can lodge the complaint with AFCA.²⁵

For matters involving financial hardship or general insurance claims, a consumer will already have been through two processes, the claims and/or hardship process and IDR before the complaint can be escalated to AFCA.

Early identification and resolution of issues before they become complaints is critical to avoid further harms to already vulnerable and traumatised people. It is a poor outcome where a person has to go through two stages of a process, before AFCA, because of missed opportunities to have identified and responded earlier.

IDR data and performance: feedback loop to product and process design

Firms should be reviewing their IDR data and performance to identify indicators of financial abuse and ameliorate barriers and frictions to achieving better and more timely outcomes for customers experiencing financial abuse.

Greater transparency of firms' performance and outcomes at IDR, including of outcomes is an important feedback loop to firms to inform changes to product and process design.

AFCA's approach to complaints involving financial abuse

When lodging a complaint at AFCA, a complainant or their advocate may tick the 'special assistance' flag. This is the most common way in which AFCA becomes aware of the need for special assistance. Flagging a complaint means we can ensure

²⁵ See [ASIC's Regulatory Guide 271](#) *Internal Dispute Resolution*.

we have appropriately trained staff to manage the complaint from inception. It also means data is recorded in our systems that enables us to readily identify the volume of certain classes of complaints we receive, track outcomes and identify opportunities for further training, team member support or need for the allocation of additional resources.

Where AFCA is notified that a complainant needs special assistance, we request permission to disclose this to the financial firm, to help in the handling of the complaint. We would not disclose this information without the complainant's consent.

If a financial firm knows or suspects that a complainant is a victim of financial abuse or family violence, the firm may share its information with AFCA. A financial firm may also share concerns with us where they believe there are warning signs that we should be aware of. For example, if the firm has concerns about someone representing the complainant, they may inform us so we can approach the situation with extra care.

The AFCA Approach to joint facilities and family violence²⁶

The purpose of AFCA's Approach documents is to explain how we look at common issues and complaint types. Approach documents provide greater clarity around what to expect from AFCA processes, explain how we investigate complaints and how we make decisions.²⁷

Following the Victorian Royal Commission into Family Violence in 2015, we updated and published AFCA's Approach to Joint Accounts and Family Violence.

AFCA is committed to ensuring our Approaches remain fit for purpose, responsive to product innovation, evolving risks and change and adapt to how consumers engage with financial services in an increasingly online context.

We plan to review and refresh our Approach to Joint Accounts and Family Violence and we are also proposing to issue a stand-alone Approach to elder financial abuse. The development of Approaches and other guidance will be informed by stakeholder feedback including from firms and members of the AFCA Consumer Advisory Panel who contributed to the development of our Approach following the 2015 Royal Commission in Victoria.²⁸

²⁶ [AFCA Approach – Joint Facilities and Family Violence.pdf](#)

²⁷ AFCA Approaches are published on our website in 'Publications'.

²⁸ [RCFV – Royal Commission into Family Violence \(Victoria\)](#)

Further insights and opportunities

This submission includes sectoral specific recommendations based on our complaints experience. Informed by the evidence of consumer harms, we consider that the most effective and influential interventions relate to product and process design. Where product and process redesign demonstrate a need for law reform, those reforms should be pursued.

Know your customer and apply a vulnerability lens

Knowing and understanding your customer and applying a vulnerability lens is key. Other relevant measures beyond those set out earlier in this submission include:

- using accessible language to enable customers to access help (customers shouldn't have to use 'magic words' as a key to unlock a process)
- recognising that the social or cultural diversity of your customer may introduce particular risks or sensitivities relevant to manage in your process²⁹
- understanding that firm processes can increase stress, uncertainty or create new harms
- understanding that customers may not have all the relevant documents which may impact on the timeliness and comprehensiveness of their response
- recognising customers may be in a scarcity mindset – responding to the immediate threats and risks they face – so tailoring firm behaviour to that mindset.

It is also important to acknowledge that consumers experiencing financial abuse may be experiencing deep economic and social isolation due to language, capacity or cultural reasons and that their experience of the financial system and its processes can worsen that isolation. Constructing a bridge from a situation of financial abuse toward assistance and safety requires identification in the first instance and coordinated, collective effort to overcome.

AFCA has made numerous public submissions addressing the need for consistent approaches to hardship and for a different approach to vulnerability.³⁰

While there is not a single definition of vulnerability that applies across financial or other retail markets, there is general acceptance for a broad approach which makes clear that:

- anyone can become vulnerable at any time.
- experiencing vulnerability is a personal situation that requires extra care and often a tailored response .

²⁹ Indigenous Consumer Assistance Network (ICAN), June 2024, [A study of local economic abuse in First Nations communities with special focus on Australia and Canada](#). Also see Victorian Royal Commission into Family Violence, March 2016, [Report and Recommendations](#).

³⁰ See, for examples, [submissions made by AFCA](#) in January 2024 on the Banking Code of Practice and in June 2024 on the General Insurance Code of Practice.

- there is no exhaustive set list of prescriptive factors that amount to vulnerability.

As set out earlier, this type of approach also acknowledges that the conduct of firms can amplify consumer vulnerability (e.g. onerous evidence requirements, excessive delays in communication or poor internal protocols resulting in safety breaches).

Financial firms can be large and complex organisations with intersecting legal and compliance obligations sitting alongside code commitments relating to customer vulnerability and hardship. Business imperatives to manage compliance or other risks should not result in ‘cookie-cutter’ responses to customer vulnerability or hardship, e.g. as evidenced in ASIC’s recent hardship report.

We consider that meeting the statutory requirements of a financial services or credit licensee to act efficiently, honestly and fairly is consistent with acting flexibly, responsively and fairly to customers, particularly those experiencing vulnerability.

Potential areas for law reform or regulatory guidance

CWES identified potential reforms, including:

- Credit law reforms: need for policy consideration of National Consumer Code requirements to notify joint account holders of hardship variations to loan contracts in cases of domestic and family violence.
- Credit reporting reforms: need for guidelines that include not reporting or removal of default and repayment history information and simplification of credit reporting corrections processes. We note there is a current review of the credit reporting framework underway.³¹
- Banking code reforms: to review barriers faced by banks in cases of financial abuse to ensure proactive and protective measures to detect and intervene in financial abuse.³²

Beyond these specific examples, there may be opportunities for relevant regulators to perform thematic reviews or data collection exercises to better understand product and process risks and develop further regulatory guidance to inform and support improved standards. Where experience indicates that current measures, including industry codes may be ineffective in achieving change or that there are legislative barriers to effective responses, law reform may be required.

Industry codes and standards

Financial sector codes play a critically important role in the financial system. Codes provide guidance and set standards to be met by financial firms. They are relevant and applied at IDR (where most complaints are dealt with) and in EDR at AFCA. By

³¹ See [Review of Australia's Credit Reporting Framework | Attorney-General's Department \(ag.gov.au\)](#)

³² See CWES Discussion Paper 1, p. 7.

raising the standards that apply in addition to legislation, real improvements in consumer protection can be achieved.

Codes are most effective where they are comprehensive (capturing a whole sector) and set meaningful, concrete and enforceable standards that can be measured, monitored and reported on.

We consider that industry codes should be considered as an appropriate vehicle for setting and reviewing standards for financial firms relating to financial abuse. Beyond broad principles set out in legislation or regulatory guidance, including those relating to vulnerability and safety by design, we consider that codes can be a powerful mechanism to drive change, to strengthen standards designed to reduce financial abuse and its impact. Effective codes can:

- fill gaps in existing standards and drive improvements and consistency across sectors
- provide guidance to firms by including practical detail as well as high level commitments
- ensure standards can be enforced.

Where experience indicates that measures such as voluntary codes or guidelines are insufficient to unlikely to provide adequate safeguards against financial abuse, AFCA suggests stricter measures such as law reform must be considered.

Collaboration and sharing is key

Code development is an opportunity for collaboration and sharing as all relevant stakeholders can contribute to developing or updating the standards in a code. Codes

- can often also provide for more flexible responses to changes in markets, consumer behaviour or technology than black letter law
- are well placed to address the challenge of inconsistency and comprehensiveness, where they cover all players in a sector; and
- Code monitoring bodies provide important public transparency, accountability and enforcement where subscribers may fall short of their commitments.

Improving responses to financial abuse and customer vulnerability more generally should not be a point of competitive advantage between financial institutions. Rather it is essential for firms to collaborate to lift standards across the board, to learn from one another to make the system work better.

Appendix:

Our complaint resolution process

AFCA has a range of methods to resolve complaints. We select the method, or combination of methods, that we think is most likely to resolve a complaint fairly and efficiently.

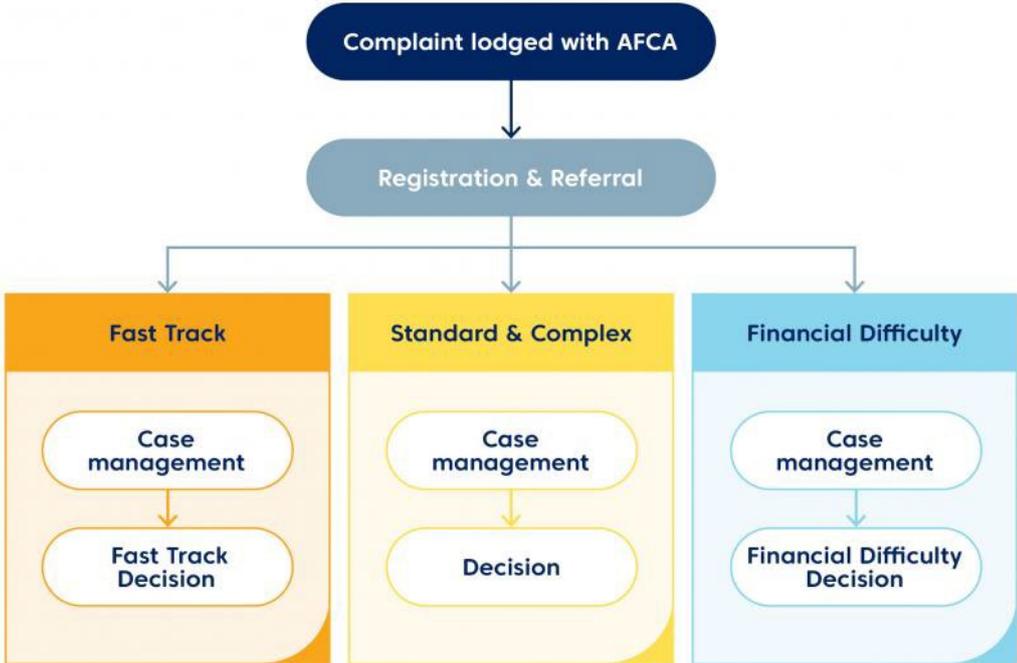
We will generally try to first resolve a complaint by informal methods, and reach a settlement between the parties through negotiation or conciliation. If this does not resolve the complaint, we may then use more formal methods, where we may provide a preliminary assessment about the merits of the complaint, or we may make a decision (called a determination).

If we make a determination in favour of the complainant and they accept it, the financial firm is required to comply with the determination and any remedy that we award. For superannuation complaints, any determination that we make is binding on both parties.

Sometimes, it may be appropriate for us to make a decision straight away, rather than try and reach a settlement through negotiation or conciliation.

Our complaint resolution process is outlined very briefly in the diagram below. Comprehensive information on our process, including a more detailed process map, is published on our website under [‘The process we follow’](#).

AFCA complaint resolution process



Our decision-making criteria

AFCA takes two different approaches in deciding complaints:

- an approach for superannuation complaints under rule A.14.1 of the AFCA Rules
- an approach for other complaints under rule A.14.2.

These approaches are explained fully in our Operational Guidelines for rules A.14.1 and A.14.2.

General decisions (in complaints other than superannuation complaints)

When deciding complaints other than superannuation complaints, AFCA must do what is fair in all the circumstances, having regard to:

- legal principles
- applicable industry codes or guidance
- good industry practice
- previous relevant determinations of AFCA or predecessor schemes.

Our Operational Guidelines for rule A.14.2 outline how we reach fair decisions. Further information on our fairness jurisdiction can be found on our website, in the section headed '[Fairness](#)'.

We highlight that, in addition to legal principles, AFCA's decisions take into account standards set through good industry practice, industry codes and guidance. Guidance may be developed by industry bodies – such as the ABA guidelines relating to financial abuse³³ – or by regulators.

Superannuation decisions

When deciding a superannuation complaint, AFCA has the powers, obligations and discretions of the trustee, insurer, retirement savings account provider or other decision maker whose decision or conduct is being reviewed. In determining whether a decision or related conduct is fair and reasonable, we may consider whether action has been consistent with any relevant industry code or best practice guidelines.

³³ See ABA industry guidelines [Preventing and responding to financial abuse](#) and [Preventing and responding to family and domestic violence](#).