

14 June 2024

Senator Deborah O'Neill
Chair
Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Senator O'Neill

Parliamentary Joint Committee on Corporations and Financial Services inquiry into Financial Services Regulatory Framework in relation to Financial Abuse

The Financial Advice Association of Australia¹ (FAAA) welcomes the opportunity to submit to the Parliamentary Joint Committee on Corporations and Financial Services inquiry into the Financial Services Regulatory Framework in relation to Financial Abuse.

As a profession, our members are here to help empower Australians to build a better financial future. We are deeply concerned for the victims of financial abuse. Financial advisers are uniquely positioned to detect signs of financial abuse due to their close relationships with clients and their families and we are keen to do all we can to stop this serious and insidious form of domestic and family violence.

In our attached submission, we make a number of recommendations to help stop or reduce the impact of financial abuse, including:

1. Take action to raise public awareness of financial abuse.
2. Creating a central source of training, information and support for affected people, including the financial professionals who are the 'frontline' in identifying this abuse.
3. Establishment of a hotline for consumers and service providers.
4. A review of privacy and whistleblower protection laws to ensure relevant information can be safely shared, where financial abuse is suspected.
5. National harmonisation of currently state-based estate planning laws.
6. The establishment of a national register of Powers of Attorney.
7. Development of a standard identification, reporting and escalation framework.

¹ The Financial Advice Association of Australia (FAAA) is the largest association representing the financial advice profession in Australia, with over 10,000 members. It was formed in 2023 following the merger of the two leading financial planning/advice bodies in Australia – the Financial Planning Association (FPA) and the Association of Financial Advisers (AFA). With this merger, a united professional association that advocates for the interests of financial advisers and their clients across the country was created.

We would welcome the opportunity to discuss the matters raised in our submission with the Committee. If you have any questions about our submission, please do not hesitate to contact either myself on 02 9220 4500 or sarah.abood@faaa.au, or George John, Senior Manager, Government Relations & Policy on george.john@faaa.au or 0420 301 501.

Yours sincerely,

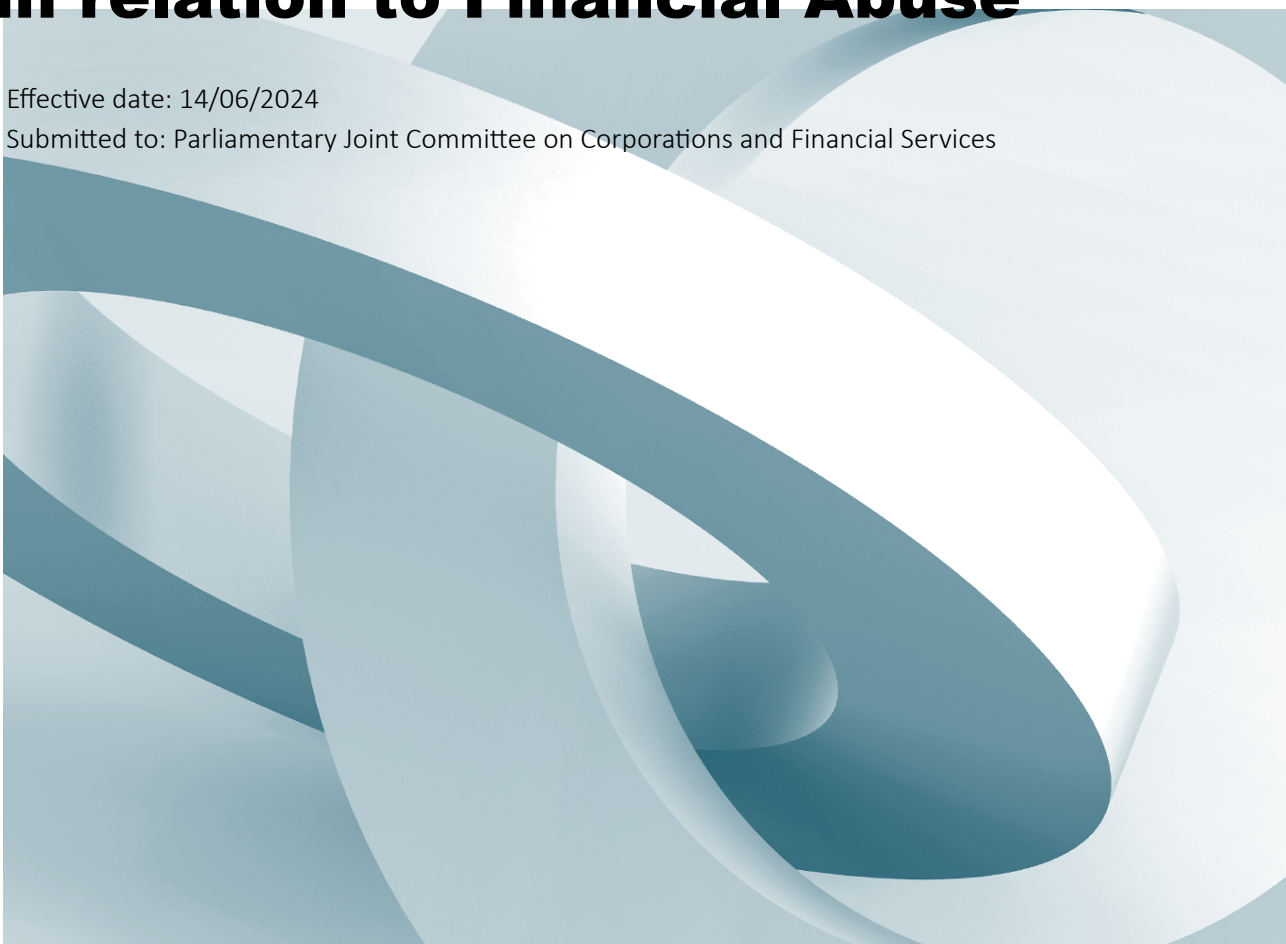
A handwritten signature in black ink that reads "Sarah Abood". The signature is written in a cursive, flowing style.

Sarah Abood
Chief Executive Officer
Financial Advice Association of Australia

Parliamentary Joint Committee on Corporations and Financial Services inquiry into Financial Services Regulatory Framework in relation to Financial Abuse

Effective date: 14/06/2024

Submitted to: Parliamentary Joint Committee on Corporations and Financial Services



Introduction

As highlighted by the member for Swan, Ms Mascarenhas MP, in her speech on 12 February 2024, financial abuse involves the misuse of financial resources to control, hurt, and undermine the independence of victims. This abuse can take many forms, from controlling access to bank accounts and forging signatures to taking out loans in someone else's name and sabotaging a person's financial security.

Financial abuse affects a significant number of Australians, with the Australian Bureau of Statistics² reporting that 1.6 million women and 745,000 men have experienced financial abuse. The widespread nature of this issue, is evidenced, for example, by Bankwest's³ findings that one-third of Western Australians have experienced or know someone who has experienced financial abuse. This underscores the urgency of addressing this hidden epidemic. Financial abuse often serves as a red flag for other forms of abuse, such as physical, emotional, and psychological abuse, making it critical to recognise and intervene early.

In the context of financial advice, our members can and have played a crucial role in recognising and addressing financial abuse. Financial advisers are often in a trusted position where they can detect signs of financial abuse that may not be immediately apparent to others. In saying this, research conducted by FAAA with members to respond to this submission shows that there is no clear method of reporting or assisting clients who are subject to financial abuse. Our submission aims to outline the key issues identified through our discussions with members and provides recommendations to address these challenges effectively. There is an opportunity to ensure that financial advisers are equipped to contribute to a coordinated response involving financial product providers, regulators, government, and consumer advocates to better protect Australians from financial abuse. Through clear guidance, training, and support, financial advisers can help protect clients and other family members from financial abuse and allow them to regain financial independence.

Issues

Recognition and Reporting of Financial Abuse

Financial abuse is often hidden and challenging to identify, making it a difficult issue to address. Many victims may not even realise they are being abused, especially if the abuse is subtle or if it occurs within familial relationships where trust is implicitly granted. Due to their close relationships with clients, financial advisers are uniquely positioned to recognise signs of financial abuse. This can include sudden changes in financial behaviour, unusual account activity, or a client's confusion about their finances. However, financial advisers may not feel confident in identifying and knowing how to report these signs without proper training and support.

Financial abuse can manifest in various ways, such as unauthorised transactions, coerced changes to wills or financial documents, or exploitation of financial resources. To this point, financial and economic abuse are

² Australian Bureau of Statistics 2021-22, *Partner violence*, ABS, viewed 31 May 2024, <<https://www.abs.gov.au/statistics/people/crime-and-justice/partner-violence/latest-release>>.

³ Bankwest Hidden Costs Report 2023, *Fear silencing women as financial abuse continues to climb*, Bankwest, viewed 31 May 2024, <<https://www.bankwest.com.au/about-us/media-centre/news/fear-silencing-women-as-financial-abuse-continues-to-climb#:~:text=More%20than%20a%20third%20>>.

recognised in both state and federal laws as forms of domestic violence⁴. However, this has not translated into recognition, reporting or protection frameworks in the financial services industry. Members noted that the financial services industry lacks clear protocols and guidelines on handling suspected abuse cases, including how to approach the client, who to report the abuse to, and what legal protections are available for both the client and the financial adviser. Enhanced education and resources for financial advisers are essential to empower them to act effectively and ethically in these situations.

Impact and Awareness

As noted above, there is likely more financial abuse among clients than is currently recognised. For this and other reasons, financial abuse will often go unreported due to various factors, including the victim's fear of retaliation, shame, or a lack of awareness that they are being abused. Our members identified several poignant examples that highlight the different forms financial abuse can take. For instance, in one case, an elderly client was coerced into signing over their assets to a relative, leaving them financially destitute. In another instance, a parent was manipulated by their adult child into changing their Will to exclude other family members, causing significant emotional and financial harm.

Additionally, the phenomenon of "financial dependence", where one partner relies heavily on the other for financial support, can lead to abuse. For example, an individual was pressured to access their superannuation early to support a financially dependent partner, leaving them with insufficient funds for their own retirement. In another, a child who had received a worker's compensation benefit was being pressured to support their parents' retirement due to their lack of retirement preparation.

Members also noted the challenge that cultural norms can have in identifying and addressing financial abuse. In some cultures, there may be strong expectations for family members to provide financial support or control the family's finances, which can be exploited to justify abusive behaviour. Additionally, cultural norms around authority and respect for elders can make it difficult for victims to speak out against abuse or seek help.

These examples underscore the importance of raising awareness about financial abuse among clients, the general public and across financial services. Increased awareness can help victims recognise abuse and seek help while also enabling financial advisers to identify and address potential abuse more effectively.

Collaboration and Challenges

Collaboration with other organisations and regulatory bodies is crucial to effectively address financial abuse. Financial advisers, legal professionals, healthcare providers, and social services must work together to identify, prevent, and respond to financial abuse. However, barriers like privacy and inadequate whistleblower protections can impede these collaborative efforts. Privacy laws, while essential for protecting individuals' personal information, can also restrict the sharing of information necessary to identify and address financial abuse. Striking the right balance between privacy protection and the need for critical information to be shared is essential. It should be considered as the Government implements the Privacy Act

⁴ Centre for Women's Economic Safety, *Economic Abuse and the law*, 2021, <<https://www.cwes.org.au/wp-content/uploads/2021/01/Fact-Sheet-Economic-Abuse-and-the-Law.pdf>>.

Review recommendations⁵. Similarly, inadequate whistleblower protections can dissuade people from reporting financial abuse. Members have expressed concerns that these laws could be ineffective in protecting a financial adviser from harassment or legal challenges from a perpetrator of financial abuse, risking both personal and professional harm.

Legal and Structural Issues

Financial abuse, unfortunately, appears to sit in a regulatory gap. There is no specific legal obligation in relation to financial services companies dealing with suspected financial abuse. There are issues with privacy, and with gaps in whistleblower laws that provide protection when information needs to be shared and protect professionals from reporting financial abuse. But even more problematic is the impact that the current estate planning framework is causing, which is leaving Australians vulnerable to financial abuse.

Complex relationships between stakeholders (clients, financial advisers, financial institutions) and estate management can lead to financial abuse. Concerning financial services, conflicts of interest can arise when a financial institution or adviser has a relationship with both a legal guardian and the client. While the Financial Planners and Advisers Code of Ethics⁶ deals with how a financial adviser must act in the client's best interest and where conflicts of interest or duty exist, a lack of similar legal obligations across other areas of financial services leaves a gap across the industry and increases the risk of financial abuse. Clear guidelines on managing conflicts of interest and ensuring transparency in stakeholder relationships are essential.

Estate and family issues, familial disputes and differing expectations among attorneys, guardians, and heirs can complicate estate planning and management. As we noted, financial advisers must be equipped to handle these complexities and provide guidance that helps prevent abuse. This includes thoroughly understanding estate planning laws, facilitating difficult conversations among family members, and ensuring the client's wishes are documented and respected. Again, although proper estate planning can help prevent financial abuse, the current state-based system is problematic.

Each state and territory in Australia has its own laws regarding estate planning, powers of attorney, and guardianship. This patchwork of regulations creates confusion and can be exploited by those seeking to commit financial abuse, particularly for older Australians who may move states to live with family or in care facilities but set up their estate planning in another state. A unified national approach would provide consistency and clarity, making it easier for the financial services industry to understand and navigate the legal landscape. To this point, we note the recent Attorney-General's Department's (AGD) consultation paper proposing reforms to achieve greater consistency in the laws for financial Enduring Powers of Attorney (EPOAs)⁷.

⁵ Attorney-Generals Department, *Review of the Privacy Act 1988*, <<https://www.ag.gov.au/integrity/consultations/review-privacy-act-1988>>.

⁶ Financial Planners and Advisers Code of Ethics 2019, Commonwealth Treasury, <<https://www.legislation.gov.au/F2019L00117/asmade/2019-02-11/text/original/pdf>>.

⁷ Attorney-General's Department, *Consultation paper: Achieving greater consistency in laws for financial enduring powers of attorney*, September 2023, <<https://consultations.ag.gov.au/families-and-marriage/epoa/>>.

As a case in point, the Australian Law Reform Commission, in Report 131: Elder Abuse - A National Legal Response⁸, has previously noted the issues that the lack of a centralised register for powers of attorney has created. Without a central database, it is challenging to verify the legitimacy of a power of attorney, track its usage, or identify potential misuse, particularly across state borders. A central register would enhance transparency and accountability, allowing for better monitoring and prevention of financial abuse. Additionally, it would provide a reliable resource for financial institutions and financial advisers to verify documents and ensure they act in their client's best interests.

Financial Products and Industry Guidance

Across financial services, different organisations often have varying protocols and thresholds for identifying and responding to financial abuse, leading to inconsistencies in handling cases. A lack of clear legal obligations in relation to financial abuse, in contrast, for example, to AML/CTF laws, has resulted in very few financial institutions having a process for handling suspected financial abuse and a lack of consistency in how financial institutions handle cases of suspected abuse.

Establishing standardised procedures and fostering inter-agency cooperation can enhance the overall effectiveness of efforts to combat financial abuse. For example, members noted that three banks had processes for flagging financial abuse (in line with the ABA's Industry Guideline, Preventing and responding to financial abuse (including elder financial abuse)⁹). Still, subsidiaries of these banks lacked the same support for at-risk individuals.

Addressing the legal and regulatory barriers identified as part of this inquiry will help create a more coordinated and comprehensive approach to protecting vulnerable Australians from financial abuse and encourage all financial institutions and services to engage with guidelines similar to the Australian Banking Associations (ABAs). The financial services sector must be encouraged to standardise processes and provide clear channels for reporting and addressing financial abuse. Standardised protocols would ensure that all institutions follow best practices (such as the ABAs) in identifying and responding to financial abuse, thereby protecting clients more effectively. This includes having clear reporting and escalation mechanisms, designated staff trained to handle such cases, and robust systems for advanced monitoring systems for identifying and flagging suspicious activities and transactions.

Furthermore, industry-level guidance and training on vulnerability and financial abuse are necessary. As noted above, financial advisers would appreciate ongoing education to stay informed about the latest trends and tactics used in financial abuse, including guidance on reporting and how to have conversations with affected clients appropriately. This need is even more apparent in the broader financial services industry, which must proactively combat financial abuse and support affected clients.

Sources of Advice and Reporting Mechanisms

There is a lack of clear guidance on where to seek advice and how to report suspected financial abuse. Clients and financial protections and accessible resources that provide information on recognising abuse,

⁸ Australian Law Reform Commission, Report 131: Elder Abuse - A National Legal Response, May 2017, <https://www.alrc.gov.au/wp-content/uploads/2019/08/elder_abuse_131_final_report_31_may_2017.pdf>.

⁹ Australian Banking Association, *Industry Guideline: Preventing and responding to financial abuse (including elder financial abuse)*, March 2021, <<https://www.ausbanking.org.au/wp-content/uploads/2021/03/ABA-Financial-Abuse-Industry-Guideline.pdf>>.

understanding legal protections, and knowing the steps to report it. Without clear reporting mechanisms, cases of financial abuse may go unreported or be handled inconsistently, leaving victims vulnerable and without recourse. As a case in point, the Commonwealth Bank of Australia has developed *Safe & Savvy*¹⁰, an excellent resource for its customers in relation to financial abuse (and scams and fraud). However, as seen in Part 6 - *Where can I go for help?*, there are no fewer than 31 external support services and 7 internal CBA services for someone seeking help. For someone suffering from financial abuse or seeking to support an individual, it is nigh-on impossible to identify the right advice, support or place to report.

Establishing standardised reporting mechanisms similar to those for money laundering and fraud would provide a clear and consistent process for addressing financial abuse. This should include designated points of contact within financial institutions, clear procedures for reporting suspected abuse, and protections for whistleblowers to encourage reporting. Ensuring financial advisers and clients know where to turn for help and what steps to take is crucial in combating financial abuse.

International Jurisdictions

Financial abuse is not an issue isolated to Australia. Several international jurisdictions have considered and changed their reporting frameworks and processes for dealing with domestic violence, including financial (or economic) abuse¹¹. As we point out below, there does not appear to be a silver bullet solution in another jurisdiction; however, we recommend that the Committee consider some of these and consider implementing global best practices in Australia. For example, the Surviving Economic Abuse (SEA)¹² charity undertook a comprehensive research study into economic abuse globally, including legislative frameworks, industry guidelines and academic research on outcomes. It noted that while around 50% of countries have laws that recognise financial or economic abuse, financial institutions lack awareness on handling reports of financial abuse within many of these economies.

Outside of the aforementioned ABA Industry Guideline⁹, the UK has also developed a voluntary Financial Abuse Code¹³, as has Ireland¹⁴. While no formal guidelines exist in the USA, a guideline developed by FreeForm¹⁵ has been released to assist banks and financial institutions wishing to put in place a framework for supporting those suffering financial abuse. In short, however, it does not appear that any country's framework operates effectively across its entire financial services industry outside the small pockets mentioned, primarily in large banking institutions.

¹⁰ Commonwealth Bank of Australia, *Safe & Savvy: A guide to help people avoid scams, fraud and elder financial abuse*, 2023, <<https://www.commbank.com.au/content/dam/commbank-assets/about-us/2018-06/Safe-and-savvy-preventing-the-financial-abuse-of-seniors.pdf>>.

¹¹ World Bank, *Financial freedom: A step towards life without domestic violence*, December 2021, <<https://blogs.worldbank.org/en/developmenttalk/financial-freedom-step-towards-life-without-domestic-violence>>.

¹² Surviving Economic Abuse, *Economic abuse: A global perspective*, 2022, <https://survivingeconomicabuse.org/wp-content/uploads/2022/11/SEA_Economic-Abuse-A-Global-Perspective.pdf>.

¹³ UK Finance, *2021 Financial Abuse Code*, 2021, <https://www.ukfinance.org.uk/system/files/2022-12/Financial-Abuse-Code-2021_Updated_2022.pdf>.

¹⁴ Banking and Payments Federation Ireland, *Principles on Financial Abuse*, 2022, <<https://bpfi.ie/wp-content/uploads/2024/02/BPFI-Principles-on-Financial-Abuse.2024.pdf>>.

¹⁵ FreeForm, *Survivor Safety Banking Guidelines*, 2020, <<https://www.freefrom.org/wp-content/uploads/2021/06/SurvivorSafetyBankingGuidelines.pdf>>.

As well as the recommendations made in the SEA research, the Addressing Financial Difficulty Group's *Addressing financial abuse*¹⁶ report provides a series of recommendations based on considering global best practice designed to support and protect those suffering from financial abuse including:

- Validate disclosures.
- Protect confidentiality.
- Offer, refer or signpost to the right source of help.
- Be proactive.
- Help victims to regain control of their financial affairs.
- Offer forbearance.
- Develop and implement a policy across your organisation.

Recommendations

Based on the issues the FAAA and our members identified, we provide the following recommendations to the Committee.

Development of Support and Resources

1. Raise awareness about financial abuse among the general public through informational campaigns and government information guides.
2. Create educational materials and infographics to outline the signs of financial abuse and appropriate steps to take, including where to report and how to seek protection.
3. Establish a support hotline for consumers and an advisory service for professionals and the financial services industry dealing with suspected financial abuse.
4. Establish a referral process to adult safeguarding authorities and other relevant bodies to assist Australians subject to financial abuse.

Legal and Estate Planning

5. Work with States to require the creation of consistent national laws on estate planning, powers of attorney and guardianships.
6. Implement the ALRC recommendation for the creation of a public register of powers of attorney to track and monitor potential misuse.
7. Ensure the Privacy Act and Whistleblower protections support individuals reporting or assisting Australians suffering from financial abuse.

¹⁶ Addressing Financial Difficulty Group, *Addressing financial abuse*, April 2016, <<https://www.citizensadvice.org.uk/Global/CitizensAdvice/Debt%20and%20Money%20Publications/Addressing%20Financial%20Abuse%20-%20AFD%20report.pdf>>.

Financial Services Standardisation

8. Develop a centralised reporting system for financial abuse incidents, similar to AUSTRAC for money laundering and terrorist financing.
9. Develop a whole of industry framework for dealing with reports of suspected financial abuse for all financial service product providers, including consideration of a mandatory account flagging system.
10. Standardise processes for dealing with diminished capacity and powers of attorney within financial institutions.

Conclusion

Financial abuse is a pervasive and insidious issue that requires urgent attention and action. The Financial Advice Association of Australia (FAAA) acknowledges both the significant role that financial advisers can play in identifying and addressing financial abuse as well as the clear need for enhanced training, resources, and standardised protocols to equip financial advisers with the tools they need to recognise and report abuse effectively. However, the lack of clear reporting mechanisms and the complexity of financial abuse cases necessitate a coordinated effort among financial institutions, regulators, government bodies, and consumer advocates.

Our submission highlights several key issues, including the hidden nature of financial abuse, the diverse forms it can take, and the devastating impact on victims. Financial advisers are uniquely positioned to detect signs of financial abuse due to their close relationships with clients. Nevertheless, they may struggle to take appropriate action without proper legal protections, consistent financial abuse obligations within the financial services industry, and national estate planning improvements. The industry lacks consistent protocols for handling suspected financial abuse, and there are significant barriers to effective collaboration due to privacy laws and insufficient whistleblower protections. Addressing these challenges is crucial to protecting vulnerable Australians and ensuring financial advisers can act confidently and ethically.

To combat financial abuse effectively, we recommend raising awareness through public campaigns, developing educational resources, and establishing support services for consumers and professionals. Legal reforms are necessary to create consistent national laws on estate planning and powers of attorney and to implement a public register to monitor potential misuse. Furthermore, standardising reporting systems and protocols across the financial services industry will ensure a cohesive approach to identifying and addressing financial abuse. By implementing these recommendations, we can create a safer financial environment and empower financial advisers to protect their clients from abuse, ultimately contributing to a more just and equitable society.