



CUSTOMER
OWNED
BANKING
ASSOCIATION

Submission to the Inquiry into financial services regulatory framework in relation to financial abuse

2 July 2024

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Introduction

COBA welcomes the inquiry into the Financial Services Regulatory Framework in Relation to Financial Abuse. We see disruption of financial abuse as an important part of our commitment to protecting consumers experiencing vulnerability. Our members detect and prevent financial abuse through implementation of policies and procedures, product design, system settings, training, monitoring and reporting.

Banks play an important role in identifying, preventing and responding to financial abuse. However, due to the sensitive and complex nature of financial abuse, we acknowledge that banks alone cannot solve this problem. Disruption of financial abuse requires a multi-faceted approach involving collaboration between banks, government agencies, community organisations, and other stakeholders. Notwithstanding, we remain committed to protecting customers and taking steps to stop our products from being misused by perpetrators, and we welcome collaboration across industries and government to end financial abuse and gendered violence.

The Customer Owned Banking Code of Practice (COBCOP) is the code of practice for Australia's mutual banks, credit unions and building societies. The COBCOP is a public expression of the level of support that subscribers will provide to their customers, and the standards by which they will be held accountable. It outlines clearly and transparently what customers can expect when dealing with a COBCOP subscriber. The COBCOP establishes higher standards than the law requires and reflects the customer owned banking sector's commitment to serving the interests of its customers. In clause 26, the COBCOP sets out that signatories will adapt customer service standards where reasonably practicable and take extra care where they are aware that a customer is experiencing vulnerable circumstances. Circumstances include age-related impairment, elder abuse, domestic violence or financial abuse. Signatories to the COBCOP commit in clause 27 to train staff on how to identify customers experiencing vulnerability, and how to adapt customer service standards for them in a sensitive and helpful way. Training will include awareness of vulnerable circumstances as a result of domestic violence and elder abuse.

About the Customer Owned Banking Association

COBA is the industry association for Australia's customer owned banking institutions (mutual banks, credit unions and building societies). COBA members range in size from approximately \$100 million in total assets to around \$25 billion in total assets for our largest member. Collectively, our sector has around \$175 billion in assets and 5 million customers. Our members' customer bases vary from around 3,000 customers to over 800,000 customers, which is smaller than many other banks. This means that COBA members can know and understand their customers and their customers' circumstances quite closely. However, this much be balanced against the many priorities faced by smaller banks. Customer owned banking institutions account for around two thirds of the total number of domestic Authorised Deposit-taking Institutions and deliver competition and market leading levels of customer satisfaction in the retail banking market.

Our members have a wide range of business models and service different demographics including those originating from employee groups (e.g., essential workers) or specific regional areas. That said, there is a structural element to customer owned banks that is unique, which is being member-owned rather than shareholder-owned. This is the common thread that links all COBA's members and delivers a values-based approach, focused on customers and communities and through this, helping to change people's lives for the better. As a result, the customer owned banking sector has a long history of putting our customers.

COBA is also a member of the Finance Industry Council of Australia (FICA). FICA brings together the leading financial services industry associations to advocate for efficient, competitive, modern and resilient financial services in Australia. As a FICA member, COBA is a signatory of the [FICA Statement of Principle on Financial Abuse and Family and Domestic Violence](#).

Key points

Banks play an important role in identifying, preventing and responding to financial abuse. However, banks alone cannot solve the problem of financial abuse, and financial abuse requires a multi-faceted approach.

COBA members take steps to combat financial abuse. These can include identifying customers experiencing vulnerability, looking for triggers that may indicate financial abuse and referring customers to specialist teams within the bank, who can offer assistance and refer to appropriate external services.

There are many challenges faced by banks when suspecting financial abuse. These challenges include privacy concerns, deficiencies in state-based legal frameworks relating to authority documents (such as Powers of Attorney, administration orders and financial management orders) and lack of consumer awareness.

The shift to an online banking environment has created additional challenges for banks, including the potential for abusive transaction descriptions, or for family members to transact on a victim's online banking account. The shift away from in-person transactions can also make it challenging for frontline staff to pick up on financial abuse 'red flags'.

Recommendations

Recommendation 1

COBA supports more detailed regulatory guidance on financial abuse. This can clarify the role of banks and empower them to better identify, prevent and respond to financial abuse.

Recommendation 2

COBA supports a national public education campaign to raise awareness of financial abuse in different circumstances. Often victims may not be aware they are being abused and help is available.

Recommendation 3

COBA supports a wider review of legislative and product design barriers that can facilitate or prevent banks responding to financial abuse. This could include on the application of credit-related regulatory obligations (for example, Responsible Lending Obligations, hardship, reverse mortgages and comprehensive credit reporting) in cases where such regulations can negatively impact victim-survivors.

Recommendation 4

COBA recognises the benefits of a 'one stop shop' for victim-survivors, so that victims do not have to repeat their story to many financial institutions. We support further examination of this concept. COBA also supports streamlining of reporting mechanisms to other stakeholders.

Recommendation 5

COBA supports an overhaul of the state based legal framework relating to authorities for documents such as Power of Attorney, administration orders and financial management orders. We support nationally prescribed documents and standard uniform clauses across all Australian jurisdictions and a national searchable register. We also support increased education and resources for all parties to the documents on their rights and obligations under the document.

Recommendation 6

COBA supports ecosystem collaboration across the banking and payments system to address technology-facilitated abuse. This is where the perpetrator weaponises payments messages by sending abusive messages to a victim-survivor.

Recommendation 7

COBA supports mechanisms for greater collaboration between industry, government and consumer advocates in combating financial abuse.

Recommendation 8

COBA supports a national body responsible for preventing and responding to financial abuse. The national body could play a key role in raising awareness for financial abuse and respond to reports of financial abuse.

Recommendation 9

COBA supports additional information and training resources in relation to financial abuse and supports the development of industry-wide guidance and awareness programs.

Recommendation 10

COBA supports additional funding for advisory and advocacy bodies that combat financial abuse effectively. This can include services providing legal assistance, advocacy, investigative bodies and specialist financial counsellors.

Should you wish to discuss any aspects of this submission further please contact Alysia Smith, Government Relations Manager, asmith@coba.asn.au, 0460 794 994.

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Prevalence and impact of financial abuse

COBA members are diverse, vary in size and often have strong links to local communities or professions. Our members can have varying approaches to financial abuse or may be at various stages of improving how they identify, manage and report cases of financial abuse. The approach can often be part of, or linked to, a bank's broader customer vulnerability framework. Our members have observed financial abuse occurring when someone, often a family member, close friend or trusted support person, takes control of a person's finances by:

- limiting access to money or removing access to bank cards
- hiding funds
- coercing a person to take certain actions in relation to their money
- using money for their own purpose, and
- using legal powers (such as those granted under a Power of Attorney) for the benefit of the attorney, not the principal.

There are also circumstances where financial abuse in a spousal relationship is either not evident or does not start until the breakdown of a relationship. In this scenario the victim may then be faced with an extremely challenging, costly and timely legal system. The abuse can have a significant impact on their (and their children's) safety and living circumstances.

Approach taken by customer-owned banks to identify, record and report financial abuse

In branches and over telephone banking, customer service bank team members play a crucial role in identifying indicators of financial abuse and taking action in a timely and sensitive manner to disrupt suspected financial abuse. Generally, team members engaging with consumers may identify vulnerability or 'red flag' indicators that may prompt the bank team member to ask the customer further questions to understand whether there is potential financial abuse. Indicators may include a family member 'coaching' a person to say certain things over the phone or in the branch. Red flags may also include transactions that are not typical for the accountholder (for example, large purchases at a building supplies warehouse from the account of an elderly customer who is at a nursing home). Once a red flag is identified, customers are usually referred to a specialist team such as a hardship team, vulnerability team, service delivery, compliance team or a fraud team to further support the customer.

In many cases the customer will not be aware that they are being abused, or abuse will take place within the parameters of documents such as a Power of Attorney.

Broadly, COBA members may undertake some of the following steps to identify, record and report financial abuse:

- Using a centralised portal, accessible by all team members, which contains a repository of information and procedures to assist in identifying and responding to potential cases of financial abuse.
- Training team members to identify and manage potential cases of financial abuse.
- Flagging consumers experiencing vulnerability by making notes on their file or adding a 'vulnerability flag' and/or a 'financial crimes/vulnerability flag' to a customer's profile in the banking system. In one member's case, both these flags are visible in the member details section of the core banking system. When staff process a staff-assisted transaction for a customer flagged as vulnerable, a prompt will display that the customer is flagged as vulnerable. Feedback from the interaction is also recorded, which can help direct any future communications/interactions with the customer.

- Implementing processes to ensure that complex cases of financial abuse are escalated to various teams (including fraud team, hardship team or a dedicated team of customer care specialists, who have expertise in financial abuse).
- Ensuring that processes are in place to capture information that will allow banks to provide appropriate support to customers experiencing vulnerability (for example, where a customer advises that they are looking to leave an abusive relationship in the future; or where a third-party reports that a customer's account is being misused).
- Working collaboratively with external organisations who specialise in financial abuse, for example, [The Advocacy and Support Centre \(TASC\) National](#), a legal and social justice service.
- Offering customers information and referrals about third-party agencies such as legal aid, financial counselling and advocacy services, demonstrating a commitment to assisting vulnerable members beyond the scope of banking services.
- Checking-in on the customer at regular intervals.

Examples of some of the financial abuse prevention measures banks may have in place include:

- Annual compliance training on financial abuse for staff
- Branch procedures on financial abuse
- Internal fact sheets on financial abuse which include how to identify indicators of financial abuse
- Financial abuse brochures for customers
- Procedures to address the referral of financial abuse concerns to a centralised legal and compliance department for investigation
- Financial abuse registers to record known concerns of financial abuse
- Product disclosure statement terms and conditions relating to the actions banks may take in response to suspected financial abuse, for example, using the bank's discretion to suspend or terminate an account
- Domestic and family violence training for various teams (for example, loan collections staff)
- Large payment procedures which require a higher level of scrutiny over large transactions before they are processed; and
- Transaction monitoring, including transactions that are not typical for the consumer and abusive transaction descriptions.

These measures are reviewed and refreshed as required.

Approaches to customers in vulnerable circumstances

The [Customer Owned Banking Code of Practice](#) (COBCOP) is the code of practice for Australia's mutual banks, credit unions and building societies. The COBCOP is a public expression of the level of support that subscribers will provide to their customers, and the standards by which they will be held accountable. It outlines clearly and transparently what customers can expect when dealing with a Code subscriber. It establishes higher standards than the law requires and reflects the customer-owned banking sector's commitment to serving the interests of its customers. Currently, [55 customer-owned banks](#) subscribe to the 2022 COBCOP, with one bank due to transition from the 2018 COBCOP to the 2022 COBCOP in July 2024, due to significant merger impediments.

The COBCOP sets out in clause 26 that signatories will adapt customer service standards where reasonably practicable and take extra care where they are aware that a customer is experiencing vulnerable circumstances. Circumstances include age-related impairment, elder abuse, domestic violence or financial abuse. Signatories to the COBCOP commit in clause 27 to train staff on how to identify customers experiencing vulnerability, and how to adapt customer service standards for them in a sensitive and helpful way. Training will include awareness of vulnerable circumstances as a result of domestic violence and elder abuse.

The Australian Banking Association has published industry guidelines on preventing and responding to [financial abuse](#) and [family and domestic violence](#). These guidelines set out principles of good industry practice and further guidance in relation to recognising, preventing and responding to potential financial abuse and family and domestic violence. These publicly available guidelines are used by COBA members and other stakeholders as benchmarks for industry best practice.

Excerpt from the Customer Owned Banking Code of Practice

When providing banking services to people experiencing vulnerability

26. We will adapt our customer service standards where reasonably practicable, and take extra care where we are aware that you are experiencing vulnerable circumstances. This might be because of:

- a. age-related impairment
- b. cognitive impairment
- c. disability
- d. elder abuse
- e. domestic violence
- f. financial abuse
- g. mental illness
- h. a serious health issue
- i. factors relating to your cultural background or because English is not your first language your unfamiliarity with banking products and services, or
- j. other personal or financial circumstance causing significant detriment.

27. We will train our staff how to identify customers experiencing vulnerability, and how to adapt our customer service standards for them in a sensitive and helpful way. Our training will include awareness of vulnerable circumstances as a result of domestic violence and elder abuse.

Members may have a vulnerability statement, framework or approach designed which defines how the bank manages customer vulnerabilities such as financial abuse. This approach can define who is a customer experiencing vulnerability and outlines general principles the bank has adopted in relation to management of customers experiencing vulnerability. It may also include procedures that underpin the vulnerability approach and outline how to manage interactions with customers where there are indicators of vulnerability.

Example: Customer Vulnerability Standard

A COBA member has a Customer Vulnerability Standard, which provides a clear definition of vulnerability including the factors which influence whether a customer is or may be at risk of experiencing vulnerability. One of the factors called out in the Standard is family violence where a customer faces challenges engaging with financial services due to abuse by those around them.

Training is provided to team members who interact with customers to help them identify and best support customers experiencing vulnerability. The training includes fundamental vulnerability modules for all frontline teams, and specialist training for vulnerability specialist and financial assistance teams. Team members are empowered to use the '4Rs Model' to identify vulnerability and

financial abuse when talking with customers: Recognise vulnerability; Review the situation; Respond to the situation; and Refer as appropriate to internal or external services.

Customers can self-identify if they are experiencing financial abuse during conversations with team members in branches and over the phone with our contact centre, financial assistance, collections, financial crime, and customer advocacy teams.

The bank's core banking platform has been enhanced to include a vulnerability flag on customer profiles to provide visibility across the bank of a customer's vulnerability status. If a customer is considered vulnerable, team members tag the customer as vulnerable then select a sub-flag to identify the type of vulnerability (accessibility, hardship, duress and redress) being experienced by the customer. Within duress, further categories include domestic violence and elder abuse.

The core banking platform represents the single source of truth of customers who are experiencing financial abuse. In addition, individual teams have their own customised reporting systems with varying levels of detail.

Changes in terms and conditions

COBA has promoted to members the Safety by Design principles outlined in the Centre for Women's Economic Safety's paper [Designed to Disrupt](#). We have engaged with the author of the paper, Catherine Fitzpatrick, to promote these principles and encourage members to consider ways they can amend terms and conditions, product design, training and capabilities as outlined in the paper.

COBA is aware of nine customer-owned banks to date that have changed their [terms and conditions](#) to specifically reference financial abuse, making it clear their products and services are no place for financial abuse. Many other COBA members include clauses in their terms and conditions stating that customers must not send threatening messages through electronic banking.¹

Forms of digital financial abuse

Financial abuse can also be identified through digital footprints and operational processes. For example, a COBA member's financial crime team may be able to identify potential financial abuse through descriptions in payment reference fields and escalate these accordingly. The payments team may also detect potential financial abuse when processing telegraphic transfers and adding Powers of Attorney and signatories. Training, experience and intuition all play important roles in detecting financial abuse in these settings. COBA members report additional detection complexities when abusive messages are in foreign languages.

Challenges when considering financial abuse

Notwithstanding training processes and procedures, COBA members highlight that it can be complex and challenging for a bank to take swift and determinative action in response to suspected financial abuse. In many cases the victim or victim-survivor and perpetrator are both customers of the same bank and have certain rights or may hold secure loans or accounts jointly. Similar to victims of scam crime, COBA members also outline that many people may not know that they are subject to financial abuse and may dispute it or insist on transactions going ahead, even when the bank raises concerns. It is also important to acknowledge that bank staff are not qualified psychologists and can encounter very complex situations that require professional diagnoses. However, bank staff are trained to detect potential issues and can refer individuals to support services or ask additional questions to try to ascertain the situation.

¹ Centre for Women's Economic Safety, [Action on financial abuse and banking 12-month snapshot](#), 7 December 2023.

Abuse can be particularly challenging where it occurs within the auspices of a power of attorney or other authority document. There are practical and legal limitations on a bank's ability to disprove the legitimacy of specific transactions or verify whether the attorney is deriving a personal benefit.

Each potential financial abuse scenario is different and involves an assessment of different risk factors and the most effective mitigating actions. For example, some of the following challenges may arise for bank team members when considering financial abuse:

- Privacy constraints, for example, around disclosing suspected financial abuse to third-parties.
- Joint account holder complexities, for example, the implications of removing of one account holder from a secured loan, or situations where one account holder uses a credit facility solely for their benefit without considering the adverse consequence for the other account holder.
- Implications of court orders, for example, to remove one party from the loan, that will likely result in the default of a loan.
- Managing dispute resolution obligations and at times, inconsistent external dispute resolution decisions.
- Dealing with victims that have lost mental capacity.
- Dealing with victims that have no apparent support outside of a potential perpetrator.
- Working with different family structures and dealing with multiple interested parties involved – for example, the customer, account signatories, joint and/or several Powers of Attorney (who may be in dispute between themselves), financial managers, or concerned family or friends with no authority.
- Both parties to a relationship alleging domestic violence.
- Bank staff may misinterpret customer behaviour caused by mental health issues as being related to being a victim or a perpetrator of financial abuse. Bank staff can be trained to detect and attempt to advise on support services, but they cannot diagnose or assume mental conditions.

Some of these challenges are further explored below.

One COBA member notes that guidance is provided to staff on how to identify indicators of financial abuse and the types of actions that the bank can take to minimise the impacts to a customer. However, a relatively high level of support from internal counsel or compliance personnel may be needed to guide banking staff through each case, and a degree of tailoring is required to develop appropriate solutions that addresses the specific financial abuse risks being faced. Such solutions may involve:

- continuation or discontinuance of some or all banking facilities
- declining or allowing some or all transactions
- appointing or removing authorities to operate bank accounts
- encouraging customers to obtain their own independent advice, and
- notifying relevant authorities.

Reverse mortgages

A COBA member notes that it is active in providing reverse mortgages to the aging Australian population. The moneys borrowed under a reverse mortgage do not require periodic repayments. In this case, the interest is capitalised, and the total loan is repaid from the sale proceeds of the mortgaged property on the passing of the owner. While this product can be very helpful for older Australians in need of financial support to cover expenses, it can also be used inappropriately in situations involving financial abuse. This may happen where a close family member coerces the elderly person (owner of the property) to take out a reverse mortgage and subsequently access the funds. As no regular repayments are required, the financial abuse may never be detected.

The COBA member has actively implemented safety by design features in relation to reverse mortgage lending which reduces the opportunity for financial abuse as follows:

- The lender is required to meet up with the borrower face-to-face and assist with the application process.
- The borrower is required to obtain legal advice.
- The borrower may be required to obtain financial advice.

By instituting the above safety design considerations, the COBA member attempts to reduce opportunities for financial abuse while ensuring reverse mortgages are available to those who have a genuine need.

Impact of the shift of financial products to online platforms

The increasing shift of financial products to distribution through online channels makes it increasingly difficult to identify potential red flags and effectively manage cases of financial abuse. Banks can be heavily reliant on personal interactions with customers and authorised parties to identify cases of financial abuse.

The online environment presents the following challenges:

- The ability to access a wide range of products and services and transactional capability online without the need for any assistance from a bank (customer self-serve) makes it easier for perpetrators of financial abuse to access and control a victim's accounts.
- The Consumer Data Right makes it simpler and easier for a perpetrator to gain access to and track all accounts and activity through apps.
- New fee free forms of electronic payments have made it easier for perpetrators to abuse through transaction descriptions that harass, coerce and threaten accountholders.
- Applying for an account, loan or credit card online can enable a perpetrator to mimic the identity of a victim/victim-survivor and open products in their name without their knowledge or using duress. This can also have an impact on that person's credit report.
- A customer saving their bank password on a device at home, enabling others to access their bank accounts through that device.
- Increased utilisation of third-party authorities and Powers of Attorneys has increased the opportunity for these third parties to conduct 'conflicted transactions' without the knowledge of customers (especially older customers who may not be using online platforms).

The online banking environment presents an opportunity for banks to use technology to assist in identifying cases of financial abuse as well as supporting customers. For example, a COBA member has implemented a 'quick exit' feature on some banking webpages. This allows a person to immediately close the webpages they were accessing, and clear their browsing history, to protect the person's privacy and safety (for example, if a person is looking to open a new bank account to allow them to escape from a violent relationship). Banks also use online reporting tools to report suspected cases of financial abuse.

However, online banking also presents the following system issues:

- The move to online platforms requires banks to automate their processes for identifying potential cases of financial abuse. This creates a friction with a customer's right to privacy and autonomy in not having their accounts and transactions routinely monitored.
- Banks may rely on manual processes to manage complex cases of financial abuse. This may include talking to customer directly, removing online/card access to reduce the risk of unauthorised transactions, or requiring an authorised party to provide documentation showing that funds are being used for a customer's benefit. This can impact on the speed and ease at which customers experiencing vulnerability can access their funds.
- Whilst digital controls can be put in place to reduce the risk of loss arising from unauthorised transactions, these typically involve the freezing of accounts or imposing transaction limits. These options then impact on the availability of funds for customers and can cause harm.
- Existing banking systems can have inherent limitations that can make it difficult to manage complex customer relationships in online environments. For example, it can be difficult to facilitate multi-party access where attorneys/administrators are involved, or to facilitate transactions for members with impaired mental capacity.

Interaction with fraud and scams

Financial abuse can be considered alongside other kinds of financial crimes such as fraud and scams when developing transaction monitoring and controls that are applicable to preventing and detecting those kinds

of financial crime. Existing controls can be leveraged to prevent financial abuse. As examples, there is an increased reliance on security controls to ensure that:

- Online facilities, such as internet banking are registered via the customer themselves (i.e., not re-directing to another person's email address or mobile phone number who could for example, change log in credentials).
- Accounts opened online belong to that person and are not subject to fraud. The use of digital identification involving verification through biometric data can help to mitigate this risk but is not yet employed widely across industry.
- Customers maintain appropriate security over passwords, secure access codes and security tokens that facilitate transactions via internet banking and mobile applications.
- Adequate friction or real-time intervention for new payees or unusual (large) transactions.

There is also increased reliance on transaction monitoring controls for online facilities to detect and/or stop large or unusual transactions that do not appear to be in a customer's interest from occurring. It can be more challenging to use automated systems given that what is in customer's interest is personal and subjective and, in some cases, blocking or stopping legitimate transactions may put a person that is already subject to limited financial control under increased pressure.

Contributory factors impacting prevalence of financial abuse

COBA members observe cases of financial abuse arising from a wide range of circumstances. These include instances of family and domestic violence, elder abuse, and financial abuse between intimate partners. Increases in financial abuse matters can correlate to wider economic issues.

COBA members have observed a general increase in the prevalence of financial abuse across the community caused by the following factors:

- An increase in the use of online platforms and digital banking making it difficult for banks to identify 'red flags' and easier for financial abuse to occur.
- Significant increase in the cost of living and necessities, including rent and mortgage repayments, have placed considerable pressure on households, appearing to increase the prevalence of financial abuse across the customer-base as financial stress becomes more evident.
- The aging population is contributing to a general increase in the prevalence of elder abuse cases. Elderly persons suffering from health and mobility issues may not use online banking platforms or other technology platforms, and may be reliant on a perpetrator for regular care and support. There are often significant barriers for these people to recognise financial abuse, particularly where the perpetrator of the abuse is a carer or family member.
- There are observations of an increase in the prevalence of 'inheritance impatience', such as attorneys transferring money from a principal's account to their own account.
- In the case of Power of Attorney relationships, COBA members see examples of attorneys lacking understanding of their obligations by mistakenly believing they are personally entitled to funds of the principals they are serving (e.g., 'It's my inheritance anyway').
- Romance scams: 'Fake' romantic partners taking advantage of the other partner, often using digital banking to undertake the financial abuse.

Other factors may include gender, disability, social media, lack of financial literacy, cultural attitudes, family dynamics including power, control and dependency.

Effectiveness of current regulatory and legal landscape

There is a need for a clearer definition in relation to a bank's role in relation to financial abuse, regulatory guidance for financial services providers, enhanced enforcement on perpetrators, comprehensive training, better victim support services, and effective monitoring and evaluation systems. Without these improvements, many victims of financial abuse will continue to suffer without protection.

Abuse can occur within lawful parameters

Financial abuse often occurs where the perpetrator is given lawful access through an authority form such as a Power of Attorney, administration orders and financial management orders to operate an account. It can also occur within the parameters of a deceased estate. While the current state laws in relation to Powers of Attorney have provisions allowing for transactions in favour of the attorney (e.g., reasonable gifts) these provisions are often inadequate to deal with and respond to patterns of behaviour that operate outside of this legislation.

Practically, an attorney may have access to internet banking and a bank card and can remove funds from the principal's account. It is important to note that it is not the bank's role or responsibility to prove or disprove the legitimacy of each transaction or whether the principal or attorney are benefitting from the funds.

Laws have been less prescriptive to banks about what they can do to protect customers experiencing vulnerability, for example, customers experiencing vulnerability who have capacity and want to transfer large sums of money. There is a considerable balancing act to honour the customer's right to choose how they manage their money while protecting customers experiencing vulnerability from financial abuse.

Understanding a bank's role under the regulatory framework

The current laws also do not sufficiently define the bank's role and responsibilities in being able to identify and manage the risks of financial abuse. This lack of clarity makes it challenging for banks to manage their risks from a liability perspective and allow them flexibility in supporting customers who may be experiencing financial abuse. Banks are limited by a complex and inflexible regulatory framework that at times may impede disruption of financial abuse and prevent adequate support for victim-survivors. Banks alone cannot solve financial abuse and further collaboration is required between industry, government agencies, community organisations, and other stakeholders.

Some barriers include the following:

- Banks need greater clarity around their role in monitoring accounts and transactions for instances of financial abuse. COBA members see a disconnect between legal obligations, AFCA's expectations, and the bank's requirement to transact with reasonable care and skill. While [AFCA's approach documents](#) can be useful, COBA members explain that sometimes there is inconsistency between AFCA's decisions in this area. Further examples and cases studies from AFCA would be beneficial.
- Some aspects of current regulation impede financial literacy and the ability of bank employees to have effective conversations with customers experiencing vulnerability. For example, in having discussions with customers experiencing vulnerability regarding their financial circumstances, bank employees risk providing personal advice or breaching the anti-hawking provisions. In these circumstances, the regulatory framework can limit the bank's ability to respond in a flexible manner.
- There are various regulatory barriers that can prevent banks from responding to financial abuse. For example, consideration could be given to modifying responsible lending obligations in financial

abuse cases where this would support victims and victim-survivors who are seeking to incur debt to enhance their safety or otherwise rebuild their lives. A review of other credit related obligations (for example, in relation to hardship, reverse mortgages and comprehensive credit reporting) could remove barriers and further protect against financial abuse. A clear regulatory framework could also empower banks to progress the separation of finances.

Conflicting state-based systems for Powers of Attorney

State-based laws and systems create unnecessary complexity and regulatory layers for COBA members. This is particularly the case in areas such as Powers of Attorney and financial management orders and administration orders. Simplified, national laws would make it easier for banks to navigate the regulatory framework and support customers.

The current legislative framework surrounding Powers of Attorney, which differs between each state, is ineffective and exposes customers to an increased risk of financial abuse. The additional complexity of differing legislation increases the potential for banks to incorrectly accept invalid documents. While acknowledging the current Power of Attorney reforms being considered by the Attorney-General's Department, this is an area that could be uplifted to help banks better identify and prevent financial abuse. COBA strongly supports a national approach, a national register and increased education to all parties involved in the document (including attorneys, principals and witnesses).

Privacy concerns

The Privacy Act 1988 and Australian Privacy Principles around 'use and disclosure' can make it difficult for a bank to disclose personal information about customers to a third party, such as a regulator, law enforcement body or an advocacy body, where they suspect financial abuse. Banks have a positive obligation not to breach privacy laws but do not have any clear protection from liability for disclosing this information.

Credit Reporting

Credit providers have reporting obligations under comprehensive credit reporting (CCR). These obligations may, at times, compromise the safety of victims and victim-survivors or disadvantage them in other ways. For example, where a customer is a victim of family domestic violence and is experiencing hardship, the customer may wish to apply to their bank for hardship assistance without the joint borrower's (i.e., perpetrator's) knowledge and without reflection on both account holders credit report. While we note ASIC's [no action position](#) on this issue, COBA supports further careful consideration of the broader implications of credit reporting on victims and victim-survivors. Beyond this example, the perpetrator may also benefit from any assistance provided (e.g., on credit report). This benefit could occur even when the perpetrator is completely disengaged from working with the credit provider or other party (causing further harm to the survivor/victim).

Recommendation 1

COBA supports more detailed regulatory guidance on financial abuse. This can clarify the role of banks and empower them to better identify, prevent and respond to financial abuse.

Recommendation 2

COBA supports a national public education campaign to raise awareness of financial abuse in different circumstances. Often victims may not be aware they are being abused and help is available.

Other potential areas for reform - prevention, protection, and proactive systems

COBA members have proposed the following areas for reform:

- Establishment of a central register for Powers of Attorney, wills, financial management orders and administration orders, where authenticity and revocations can be logged and provide a higher level of certainty that a customer's attorney remains authorised to act.
- An overhaul of the approved forms such as Power of Attorney forms. Forms should be uniform across all states and territories and the content of those forms should be simplified. Currently, forms require a high degree of financial literacy to complete, increasing the risk to customers experiencing vulnerability. It is also important that the roles and responsibilities of attorneys and other representatives are clearly articulated and agreed to as part of accepting appointment. In addition, court/tribunal orders should be effective across all states and territories, without the need to apply for interstate recognition.
- Further regulatory guidance to banks on financial abuse, including clear guidance on the bank's role in identifying, recording and reporting financial abuse.
- Establishment of a dedicated financial abuse referral service. The current referral and helplines are not specifically tailored to addressing financial abuse, although this may form part of the ancillary services provided by other services dedicated to specific scenarios.
- Specialised or recognised industry training for financial abuse. This could cover aspects such as indicators of financial abuse and assist industry to align response framework for different vulnerabilities.
- Community wide education and training programs to raise awareness and empower individuals to recognise and report abuse, including specific community outreach into First Nations remote communities or migrant communities where English is a second language.
- Funding for financial counsellors specialising in financial abuse that can work to support victim-survivors in a confidential, safe, free and independent manner.
- Reporting mechanisms can be streamlined and standardised, ensuring prompt and effective communication between financial institutions, regulatory bodies, and law enforcement agencies.

Product design

Financial product design is a key area, ensuring products have the ability and functionality to respond to financial abuse situations. Examples where uplift could occur include:

- **Products held in joint names:** Ensuring products such as joint home loans and joint transaction accounts are designed to respond when financial abuse has been identified to the bank. This could include functionality that enables staff to quickly and effectively protect customer information (e.g., customer details can be hidden, protected and not shared via account statements etc.). This functionality consideration could extend to comprehensive credit reporting on joint loans. There are acknowledged complexities associated with separating joint home loans given the need to comply with responsible lending provisions. In the case of separating joint transactions accounts, a clear process could be developed, modelled on existing processes currently used by specialist teams.
- **Payment reference messages:** Having the ability to block abusive incoming messages in payment reference fields to customers and the ability to warn, deactivate payment capabilities and

possibly offboard customers (although it creates difficulties for joint accounts). Similarly, enabling customers with the ability to self-report messages which they consider to be abusive, harassing or criminal in nature (this could occur within online banking/the mobile app, a designated inbox or via secure messaging).

- **‘One-stop-shop’ for victim-survivors:** As with scams, collaborating with receiving financial institutions when financial abuse has been identified. COBA recognises that a ‘one-stop shop’ for victim-survivors could support victims so that victims do not have to repeat their story to many financial institutions. COBA supports closer consideration of this concept as it would be valuable to find a way to help customers exit the situation they are in and reduce the need to revisit trauma. However, we appreciate the privacy complications this may present.

Recommendation 3

COBA supports a wider review of legislative and product design barriers that can facilitate or prevent banks responding to financial abuse. This could include on the application of credit-related regulatory obligations (for example, Responsible Lending Obligations, hardship, reverse mortgages and comprehensive credit reporting) in cases where such regulations can negatively impact victim-survivors.

Recommendation 4

COBA recognises the benefits of a ‘one stop shop’ for victim-survivors, so that victims do not have to repeat their story to many financial institutions. We support further examination of this concept. COBA also supports streamlining of reporting mechanisms to other stakeholders.

Recommendation 5

COBA supports an overhaul of the state based legal framework relating to authorities for documents such as Power of Attorney, administration orders and financial management orders. We support nationally prescribed documents and standard uniform clauses across all Australian jurisdictions and a national searchable register. We also support increased education and resources for all parties to the documents on their rights and obligations under the document.

Recommendation 6

COBA supports ecosystem collaboration across the banking and payments system to address technology-facilitated abuse. This is where the perpetrator weaponises payments messages by sending abusive messages to a victim-survivor.

System changes

The following technological and system changes can help combat financial abuse:

- Centralised databases or platforms where suspicious activities can be reported and analysed collaboratively. Additionally, integrating advanced technology solutions, such as artificial intelligence and machine learning algorithms, can augment the capability to detect patterns indicative of financial abuse in real time.
- Biometrics to detect whether banks are dealing with the correct customer and to detect any potential distress. This may help prompt a conversation with the customer.
- Allowing a customer to block payments from certain account numbers.
- Artificial intelligence can be used to analyse different types of data to detect the possibility of financial abuse (this would still need human verification of any insights).
- As third-party providers play a key role in the payments system, there may be some benefit in greater collaboration across the ecosystem to monitor and block encrypted abusive messages.

Steps to support banks to better detect and respond to financial abuse

COBA members strongly support further regulatory guidance in relation to financial abuse from legislators, government agencies, AFCA and industry associations. A financial abuse regulatory guide from regulators such as ASIC, including case studies, would help support banks to better detect and respond to financial abuse. While AFCA provides valuable [resources](#), our members support further consistency between AFCA decision makers in relation to financial abuse.

Regulatory guides can set out key expectations, responsibilities, and connections to advisory and government bodies for financial services providers, including banks. These would help drive a more consistent industry approach and response. COBA members would value additional clarity on the following:

- At what point or level of suspicion are banks required to act and respond (e.g., enquiry, report or refuse transactions/requests)?
- What type and level of any 'questioning' and 'reporting' is expected or appropriate when financial abuse is believed to be present?
- Could there be a central place to refer or advise that helps build profiles of perpetrators (e.g., AUSTRAC for AML, Financial Crime Exchange for scams/fraud)?

Further steps to help support banks to better detect and respond to financial abuse include:

- The establishment of a centralised governing body at a national level which is dedicated to financial abuse. This would enable financial abuse cases to be reported and managed outside of the bank, similar to how cases are managed by South Australia's [Adult Safeguarding Unit](#).
- A uniform system of mandatory reporting across all jurisdictions. Mandatory reporting reduces the pressure on banks to determine what action would be appropriate to take in each individual case. It is critical, however, that safeguards are in place to ensure that mandatory reporting does not aggravate circumstances and place victims further at risk.
- Increased investment in programs designed to improve financial literacy across the community. Strong financial literacy decreases potential vulnerability by empowering customers to better manage their finances and understand their rights.
- Improved handling of AFCA complaints. Our members note that responding to complaints from potential perpetrators of financial abuse can be time consuming and complex. Streamlining AFCA's process for responding to these types of complaints would reduce exposure to banks, particularly where a bank has refused to act on an authorised party's instructions when potential financial abuse has been detected.
- Investing in specialised detection tools.
- Continuous evaluation and improvement based on feedback ensure effectiveness in combating financial abuse, ultimately safeguarding customers experiencing vulnerability and maintaining a secure banking environment.

Support for ecosystem collaboration

COBA encourages collaboration within the ecosystem of the financial services industry, including banks, payments systems, government and consumer groups in relation to financial abuse to support banks to better detect and respond to financial abuse. This includes consideration of 'one-stop-shop' (outlined above), improved detection of payment reference (and self-reporting by customers), flexible product design for joint products and collaboration on detection and prevention technology, systems and processes.

Consideration should also be given to government-supported technology development to assist the customer-owned banking sector in uplifting its monitoring capabilities, including the use of behavioural biometrics.

Recommendation 7

COBA supports mechanisms for greater collaboration between industry, government and consumer advocates in combating financial abuse.

Role of government agencies in preventing and responding to financial abuse

The role of government agencies in preventing and responding to financial abuse is important. Members consider there to be a gap in federal and state support for victims of financial abuse.

Suggestions to close the gap include a federal body could be tasked to:

- Raise community awareness to reduce and prevent financial abuse, including instances of elder abuse, domestic and family violence or intimate partner financial abuse.
- Informing the public and banking industry about the available government agencies and their role in preventing and responding to financial abuse would be valuable. This information would help ensure banks are referring customers to the appropriate agencies.
- Receive and respond to reports or allegations of financial abuse (including reports made by financial institutions), including conducting investigations, issuing notices to produce evidence, commencing legal action against perpetrators of financial abuse.
- Provide support and information to those in need, particularly instances of financial abuse where the victim suffers from dementia, or some form of disability.
- Report and advise the government on related issues as well as engaging with industry on potential law reforms that can support industry to better identify and prevent financial abuse.
- Working with other agencies such as police, ombudsman, trustee and guardian offices and AUSTRAC to report and respond to financial abuse.

Recommendation 8

COBA supports a national body responsible for preventing and responding to financial abuse. The national body could play a key role in raising awareness for financial abuse and respond to reports of financial abuse.

COBA supports the need for increased government funding in the following areas:

- The provision of support services for victims and victim-survivors.
- Support for the development of industry-wide guidance and awareness programs, which financial institutions could incorporate into their own procedures and training materials.
- Funding for accredited financial counsellors that specialise in financial abuse and are dedicated to the banking sector. This would assist in removing any delays that are known to be experienced once a risk of financial abuse is identified or reported. These support services should be connected with appropriate partners, such as Legal Aid or Women's Legal Services.

Recommendation 9

COBA supports additional information and training resources in relation to financial abuse and supports the development of industry-wide guidance and awareness programs.

Funding and operation of relevant advisory and advocacy bodies

COBA supports additional funding for advisory and advocacy bodies that combat financial abuse effectively. This could involve increasing funding to expand services, such as Legal Aid and financial counselling, to support victim-survivors. COBA members report that when contacting certain bodies that handle aspects of financial abuse, they are usually faced by long waiting times or limited hours of operation. Adequately resources advisory, advocacy and investigative bodies are integral to a system that aims to support victim-survivors or disrupt financial abuse. COBA members also support operational changes to improve coordination between different agencies and streamlining processes to enhance responsiveness to financial abuse cases. While some government agencies offer a good investigative avenue to support customers without capacity who are subject to financial abuse, they do not cover all customer types or play a role in prevention or issuing industry guidance.

Furthermore, investing in outreach and awareness campaigns can help these bodies reach more at-risk individuals and provide them with the necessary support and resources.

Recommendation 10

COBA supports additional funding for advisory and advocacy bodies that combat financial abuse effectively. This can include services providing legal assistance, advocacy, investigative bodies and specialist financial counsellors.