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Australian Law Reform Commission
PO BOX 12953
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Dear Commissioners

Financial Services Legislation Inquiry –Interim Report B

We write to respond to the Interim Report B of the Australian Law Reform Commission's (ALRC) Financial Services Legislation Inquiry.

We have been heavily involved with various agencies work in the prevention and reduction of family violence across Australia. One of the main focuses has been how to prevent the weaponisation of financial services (current and future), focusing on general insurance and banking products and services.

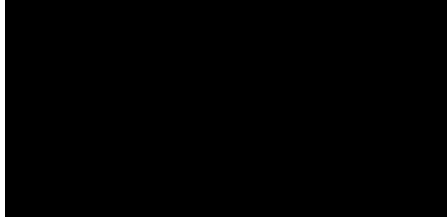
The attached submission articulates the need to consider "Safety by Design" Principles whilst creating legal frameworks and obligations. For financial services providers, part of the issue they face is, that in preventing harm (physical or financial), they often find themselves in the position of breaching the Corporations Act 2001 and other requirements (such as the Insurance Contracts Act 1984 or the Privacy Act 1988). Whilst it is fair to say, most institutions will breach, rather than risking consumer safety, it leaves organisations in a very difficult position. Most Board's Risk Appetite Statements have zero tolerance for legislative breaches and breaches now must be reported generally to ASIC or another appropriate regulator.

Whether Safety by Design is taken into consideration when law is created or later in your proposed framework (Scoping Orders or Rule Books) and included in the principles you outline in Appendix E, we would be happy to discuss.

The principles could contain an overarching requirement to protect consumers who are vulnerable and then a subset, could include domestic and family violence in its broadest terms to include the emerging fields of coercion and economic abuse. The objects of Chapter 7 of the Corporations Act - section 760A, could on revision could also contain a reference to protecting vulnerable consumers.

If you wish to discuss our submission further, please do not hesitate to contact us on the details below.

Yours sincerely



Annabelle Butler



Catherine Fitzpatrick – Founder, Flequity, [Flequity](#)

Rebecca Glenn – CEO, Centre for Women's Economic Safety, [CWES - Centre for Women's Economic Safety](#)

Peter McNamara – CEO, Sound East Community Links (SECL), [Home - South East Community Links \(secl.org.au\)](#)

Background

Recently, focus in Australian financial services has turned to protecting the most vulnerable in our society. Globally ISO 22458:2022 – Consumer Vulnerability has been released, to help all types of organisations meet vulnerable customer needs. Australian financial services and industry bodies participated in the development of this Standard and are in the process of supporting the localisation of the Standard via Australian Standards Board with the intention of adoption.

In Australia the 5 main financial services Codes of Practice have all concentrated on providing bespoke solutions to consumers who are vulnerable, on how they will be serviced as part of the financial services company's product/service offering.

The General Insurance Code of Practice and the Banking Code of Practice, have specific Guidance attached to help General Insurers and Banks understand and manage issues arising for their customers and staff from family violence. This includes economic abuse in its broader definition (as per Victorian Family Violence Protection Act 2008), as well as physical violence and coercion. These Guidelines are developed with representatives and consumers from support groups and services to ensure the guidance is based on lived experience.

In 2021, following on from the successful E-Safety Design Principles¹, the Federal Office of Women, under the Department of Prime Minister and Cabinet engaged Professor Kay Cook (Swinburne University of Technology and Rachna Bowman (Southeast Community Links – Victoria) to work with a wide group of stakeholders (from financial, government, community service and advocacy sectors) to identify design principles using real lived experiences.

The intention of the Safety by Design Principles² is to prevent financial services, systems or products being weaponised to perpetrate financial abuse, as a subset of family violence. They are cross sectoral so can be used by ombudsman services, financial services, utility services, regulators, policy makers and legislators.

This work was one of 33 Commonwealth initiatives funded under the Fourth Action Plan of the National Plan to Reduce Violence Against Women and their Children 2010-22. More recently they have been included in the National Plan to End Violence against Women and Children 2022-2032.

The principles were developed to assist organisations to prevent risks and mitigate harms related to women's financial safety, although more broadly they are being regarded as gender neutral (in recognition that economic abuse, the weaponization of goods and services is not just a woman's problem. Efforts to address all forms of gender-based violence are underpinned by work to address gender inequality.

¹ [Principles and background | eSafety Commissioner](#)

² [New resource to support women's financial safety | Department of the Prime Minister and Cabinet \(pmc.gov.au\)](#)

The Principles offer recommendations for producing broad and systemic level changes to initiate lasting reform and form part of a wider consumer protection ecosystem that is being developed both locally and internationally.

Current Financial Services Law

Unfortunately, we draft and implement financial services laws, including the disclosure requirements under various Acts, including the Corporations Act 2001 and the Insurance Contracts Act 1984, as strict liability clauses. The law does not allow for any form of non-compliance and given the ongoing focus on full compliance by Regulators (following on from legislative change post Hayne), organisations are fearful of breaching these requirements. However, as financial services institutions are understanding family violence more deeply and the potential weaponisation of their products and services, organisations are being required to make a choice between compliance and consumer's physical and financial safety.

The General Insurance industry recognised this issue recently. As part of the new Claims Handling obligations, certain disclosures are required to be made to consumers (Cash Settlement Factsheets and Confirmations of Transactions). For General Insurance, most insurance risks are jointly owned and therefore the policy is a joint policy. Both parties are entitled to receive the disclosures (whether or not they cohabit). As a result, the industry was concerned (given its recent experiences of manipulation of their products to harm a victim of domestic violence) that these disclosure laws could cause economic and physical safety issues for victims. The industry via the Insurance Council of Australia applied for and was granted relief by ASIC ([ASIC Corporations \(Cash Settlement Fact Sheet and Confirming Transactions\) Instrument 2022/809](#)), not to send these notifications where it could place victims of family violence at risk of harm. This was the first time this type of relief had been applied for by General Insurance, although a similar instrument was made previously, which provided a temporary no-action position to credit providers and consumer lessors to help protect victims of family violence in relation to credit reporting requirements (see [22-175MR](#)). The Banking Industry is also looking very carefully at this issue, from the perspective of joint account/debt holders. Recently the Centre of Women's Economic Safety released a paper, *Design to Disrupt*³, supporting the industry in formulating strategic responses to this insidious community issue.

Recommendation

In light of the above experiences and the growing understanding on how financial services and their regulatory eco-system can and is being exploited by perpetrators of family violence, it is recommended that when drafting legislation, strict liability clauses and requirements need to be considered in this context. Financial services institutions should be allowed (without the need of a legislative instrument) to decide whether the sending of statutory notices could pose an unacceptable risk of a person experiencing family violence.

³ [CWES_DesigntoDisrupt_1_Banking.pdf](#)

The new Safety by Design Principles should be incorporated into the legislative drafting process to ensure the economic and physical safety of family violence victims is fully considered (as an unintended consequence), prior to finalisation.