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

Australian Human Rights Commission

Submission to the Parliamentary Joint Committee on Corporations and Financial Services

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ABN 47 996 232 602
Level 20, 175 Pitt Street, Sydney NSW 2000
GPO Box 5218, Sydney NSW 2001
General enquiries 1300 369 711
Complaints info line 1300 656 419
TTY 1800 620 241

Australian Human Rights Commission
www.humanrights.gov.au

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1 Introduction

1. The Australian Human Rights Commission (Commission) welcomes the opportunity to provide this submission to the Parliamentary Joint Committee on Corporations and Financial Services (the Committee) in response to its 'inquiry into the financial services' regulatory framework in relation to financial abuse in Australia'.
2. The Commission is Australia's National Human Rights Institution, whose purpose is to provide independent and impartial services to promote and protect human rights in Australia. The Commission undertakes a range of policy development and research tasks that aim to promote compliance with Australia's human rights obligations, while also investigating and conciliating complaints of unlawful discrimination and breaches of human rights.
3. This submission is made by the Age Discrimination Commissioner of the Commission. The focus of the submission will be on the role of financial institutions in the context of older people at risk of or experiencing financial abuse (also referred to in this submission as 'financial elder abuse').
4. While the Commission does not have extensive expertise in financial services regulation, it is uniquely placed to provide input regarding the human rights of older persons, which includes the right to freedom from all forms of exploitation and abuse.[1]
5. It is the Commission's view that a human rights-based approach – that is, an approach that places service users at the centre and where human rights norms and principles are integrated into the planning, provision and monitoring of laws, regulations and services – is fundamental to addressing systemic problems and improving service provision in all sectors, including the financial services sector.
6. While this submission focuses on the human rights of older persons, the Commission also acknowledges and draws the Committee's attention to the intersecting needs of other vulnerable groups in Australia's diverse population.
7. This submission addresses the following key topics in relation to the financial services regulatory framework and financial abuse: the prevalence and impact of financial abuse on older persons, enduring power of attorney law reform, the Banking Code of Practice (the Banking Code) and Industry Guidelines, adult safeguarding laws and agencies, legislative protection to report suspected abuse and the digitisation of financial services and accessibility.

2 Summary of recommendations

Recommendation 1: The Australian Government, in collaboration with the Australian Banking Association, should lead and coordinate efforts in the financial services sector to prevent, identify and respond to financial abuse against older persons. Such efforts should:

i. **recognise financial elder abuse as similar to but also distinct from financial abuse occurring in family and domestic abuse contexts and seek to encompass a range of measures and solutions at multiple stages of intervention**
ii. **recognise and respond to the diverse experiences and needs of vulnerable groups at risk of abuse, including older women, older persons with disability, older persons from First Nations and culturally and linguistically diverse communities**
iii. **include investment in training and education for financial services staff to identify and respond to suspected financial abuse and to provide support to older customers**
iv. **ensure sharing of information, innovations and best practices among financial institutions and other sectors, such as health, aged care and legal services sectors**
v. **ensure a strengthened focus on financial abuse prevention, including close monitoring of emerging risk areas, measures to enable early detection and intervention, timely provision of information and advice to inform and safeguard customers from potential abuse.**

Recommendation 2: The Australian Government should increase and ensure sustained funding to specialist elder abuse services, in particular mediation and legal services, to enable these services to respond and proactively plan for the growing risk and incidence of financial elder abuse.

Recommendation 3: In line with recommendation 5-3 from the Australian Law Reform Commission's 2017 report *Elder Abuse – A National Legal Response*, national consistency in enduring power of attorney laws across states and territories must be achieved as a matter of urgency under the proactive leadership of the Australian Government.

Recommendation 4: After the achievement of national consistency in enduring power of attorney laws, the Australian Government should prioritise the development of a national enduring power of attorney register and national education on enduring powers of attorney.

Recommendation 5: To enhance consumer protections against financial abuse, the Commission supports action to strengthen the regulatory power of the Australian Banking Association's Industry Guideline on Protecting Vulnerable Customers from Potential Financial Abuse by making its provisions enforceable through the Banking Code of Practice.

Recommendation 6: In line with recommendations 11.1 and 11.2 from the Final Report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability and recommendation 14-1 from the Australian Law Reform Commission's 2017 report *Elder Abuse – A National Legal Response*, all state and territory governments should introduce adult safeguarding laws and independent statutory bodies to administer safeguarding functions. These independent statutory bodies must be appropriate to receive, assess and investigate allegations of financial abuse. This should be articulated within a national adult safeguarding framework to ensure consistency across all jurisdictions.

Recommendation 7: All state and territory governments must co-design adult safeguarding laws and statutory bodies with older people and people with disability to ensure they are fit for purpose. These bodies must be empowered and resourced by state and territory governments to receive and respond to reports of suspected financial abuse effectively and efficiently.

Recommendation 8: In line with recommendation 14-7 of the Australian Law Reform Commission's 2017 report *Elder Abuse – A National Legal Response*, the Commission recommends that people who report suspected abuse to adult safeguarding agencies should be given legislative protection from certain legal obligations that might otherwise prevent them from reporting abuse. This should be extended to explicitly include financial institutions to remove the impediment to reporting abuse that banks have identified.[2]

Recommendation 9: In line with proposal 17.3 of the 2022 Privacy Act Review Report, the Commission supports further consultation on current privacy laws by the Attorney-General's Department with key stakeholders including consumer groups, the Australian Banking Association, Australian Financial Complaints Authority, Australian Securities and Investments Commission, and the Office of the Australian Information Commissioner to clarify issues and identify options to ensure that financial institutions can act appropriately in the interests of customers who may be experiencing financial abuse.

Recommendation 10: In the absence of designated adult safeguarding agencies in each state and territory to receive reports, clear rules or guidelines should be made by the Office of the Australian Information

Commissioner about when, what and to which authority financial institutions can report cases of suspected financial abuse.

Recommendation 11: Financial institutions must co-design digital financial services with older people and people with disability to ensure they are inclusive and accessible for all customers, regardless of age or ability.

Recommendation 12: Physical financial services, including branch-based assistance, ATMs and cash services, must continue to be made available.

3 Financial elder abuse - prevalence, impacts and emerging risks

(a) Prevalence and impacts of financial elder abuse

8. The World Health Organization defines elder abuse as:

> a single or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person. It can be of various forms: physical, psychological/emotional, sexual, financial or simply reflect intentional or unintentional neglect. Elder abuse is a violation of human rights and a significant cause of injury, illness, lost productivity, isolation and despair.[3]

9. According to the National Elder Abuse Prevalence Study 2021, almost one in six (15%) older Australians have experienced elder abuse within a 12-month period. Financial abuse is the third most common form (2.1%) of elder abuse in Australia after psychological abuse and neglect.[4]

10. Financial elder abuse or exploitation is the misuse or theft of an older person's money or assets. It can cover a broad spectrum of behaviours, with Seniors Rights Victoria describing it as existing 'in the grey area between thoughtless practice and outright theft'.[5] These behaviours can include, but are not limited to, using the older person's finances without their permission, misusing a legal document such as an enduring power of attorney (EPOA), withholding care for personal financial gain, or selling or transferring property against the older person's wishes.[6]

11. Financial elder abuse can have serious impacts on older people's physical and mental health, livelihoods and human rights. It has also been associated with higher levels of stress and depression and an increased risk of nursing home placement and hospitalisation.[7]

12. There is evidence that older women are substantially more likely than older men to receive assistance with financial matters from their children and share PIN numbers with them, with those receiving such assistance more likely to

report experiencing financial abuse.[8] The compounding consequences of gender inequality throughout a woman's lifespan – such as the gender pay gap and less time spent in the workforce leading to lower retirement incomes, financial insecurity and an increased risk of housing insecurity and homelessness – is also likely to aggravate the detrimental impacts of financial abuse on women in older age.[9]

13. Financial elder abuse can also look different for other groups such as older people with disability, older First Nations people and older people from culturally and linguistically diverse backgrounds (CALD). Particular attention should be given to understanding and recognising the unique experiences and challenges that specific population groups face, which may include language barriers, cultural and/or religious cross-generational expectations and 'humbugging' in Indigenous communities.

14. Financial elder abuse is a complex issue that requires a range of interventions and solutions at multiple points, and it is essential that the financial services sector plays its part in addressing financial abuse against older Australians.

15. While financial elder abuse has some parallels with family and domestic abuse, there are also key differences that must be considered by governments and financial institutions in addressing this complex issue.

16. Notably, unlike family or domestic violence, perpetrators of elder abuse are often family members, mostly adult children (almost 1 in 5). This can make reporting abuse more difficult for older persons, with only one third of older persons seeking help when they are abused.[10]

17. A combination of solutions and interventions, both formal and informal, via a range of contact points is therefore needed to identify and address this complex and underreported problem. Financial institutions are at the coalface of preventing, identifying and responding to potential financial elder abuse. Financial planners, bank staff, accountants, tax advisers and other financial service providers are key touchpoints for detecting suspicious transactions and other red flags, as well as for providing support to older customers.

18. It is critical that the financial services sector invest in regular and ongoing training and educate staff about financial elder abuse and ensure appropriate measures are in place to prevent, detect and respond to potential abuse.

19. Responding to the issue of financial elder abuse is often made even more challenging by the complex legal and policy frameworks that surround an ageing person and intersecting responsibilities for ageing, health and aged care that cross all levels of government. For example, criminal justice responses and laws dealing with substituted decision-making, wills and

powers of attorney currently vary in each state and territory. Professionals interacting with older people and their family also come from the diverse sectors of health, law, social work, banking and finance.[11]

20. In light of this, the Commission is of the view that the Federal Government should play a key role in driving and coordinating efforts by the financial services sector to curb financial elder abuse. This should be done in collaboration with the Australian Banking Association (ABA) but the Federal Government's leadership at the national level will be essential to provide the necessary impetus for action, facilitate sharing of information and exchange of best practices across different sectors, assist service providers to navigate the various inconsistencies and intersecting responsibilities across different levels of government and coordinate potential areas for reform.

(b) Increasing risk of financial elder abuse and emerging issues

21. The Commission further draws the Committee's attention to the increasing risk and incidence of financial elder abuse in Australia and emerging issues that require urgent attention.

22. The National Elder Abuse phone line recorded 9,085 calls from July 2023 until the end of May 2024 – a 36% increase from the same period the previous year. Reports from state and territory elder abuse services have shown similar trends of increasing reports, with financial abuse becoming increasingly common.[12]

23. For example, data from the NSW Ageing and Disability Commission's Ageing and Disability Helpline from January–March 2024 shows they received 4185 calls in this quarter, 14% higher than the same time last year. Of these calls, 1,028 (77.7%) involved older people. Consistent with previous quarterly reports, the most reported types of alleged abuse were psychological abuse (39.2%) and financial abuse (30.1%), with the leading report allegation being financial exploitation. Over half of the 1,028 reports about older people in this period pertained to their adult children, with 66.1% of reports implicating relatives as perpetrators.[13]

24. The SA Adult Safeguarding unit received 3,098 contacts in 2022–23, up from the 2,269 calls received in the previous financial year, with 1,876 related to concerns of abuse of adults over 65. The service also responds to concerns about people who live with disability. Of those contacts about older people, the most reported type of abuse concerns was 37.7% psychological/emotional, and 19.5% financial or exploitation. In the majority of calls, the alleged person of concern undertaking the abuse towards older people was 43.2% adult children.[14]

25. In the next 20–30 years, Australia's population will become the oldest it has ever been. The number of people aged 65 and over will double to 8.9 million, and people aged 85 and older will triple to 1.9 million. But the number of working age people is projected to fall.[15]

26. The biggest transfer of intergenerational wealth in history is set to happen at the same time, with $3.5 trillion in assets likely to change hands in Australia alone as the assets of 'war babies' and 'Baby Boomers' are passed on to younger generations.[16]

27. This all coincides with growing economic pressures including the rising cost of living, lack of affordable housing and low wage growth, which together with demographic changes and the rising trend of 'inheritance impatience' are likely to exacerbate the risk and incidence of abuse.

28. Recent trends associated with the rise of intergenerational financial assistance with homeownership – such as 'granny flat' or 'tiny home' arrangements and the 'bank of Mum and Dad' – are also emerging risk areas for financial elder abuse.

29. For example, researchers found that borrowing from the 'bank of Mum and Dad' encourages ageist attitudes that can, when combined with rising property prices and a lack of safeguards in place for older people in the banking sector, create the necessary conditions for financial elder abuse. The research noted that while guarantor arrangements are covered under the Banking Code of Practice (the Banking Code), other forms of intergenerational financial assistance are not. The expectation that older people will recognise and disclose abuse to a financial institution, also does not align with reality, with findings indicating that most donors do not seek financial or legal advice, nor put formal agreements in place, and feel uncomfortable and awkward discussing even the potential for financial elder abuse.[17]

30. The Australian Government, in collaboration with the ABA and financial institutions, should closely monitor these emerging risk areas and take steps to safeguard and inform older persons of the financial risks associated with such arrangements.

31. Given the increasing risk of financial elder abuse, it is also recommended that greater focus be placed on prevention, including measures to enable early detection and intervention as well as the timely provision of information and advice to older persons so they can make informed choices about their finances.

32. Specialist elder abuse services, including state and territory helplines and in particular mediation and legal services, must be sufficiently resourced and funded to manage and respond to the increasing risk and incidence of elder abuse. Funding must be increased in line with the trend of rising elder abuse

reports and must be sustained over time to enable service providers to proactively plan staffing and services to support growing numbers of at-risk older people.

Recommendation 1: The Australian Government, in collaboration with the Australian Banking Association, should lead and coordinate efforts in the financial services sector to prevent, identify and respond to financial abuse against older persons. Such efforts should:

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4 Effectiveness of existing laws, policies, and regulatory arrangements

(a) Enduring Power of Attorney Law Reform

33. Financial Enduring Powers of Attorney (EPOAs) are important tools for safeguarding Australians should they lose or have diminished decision-

making ability. This is particularly relevant for Australians as they age and for Australians with cognitive impairments.

34. While EPOAs are important tools, they can also be misused and become instruments for financial abuse and exploitation, which is often perpetrated by family members or trusted individuals acting under the authority of an EPOA. Abuse of this nature can involve attorneys misappropriating funds, making unauthorised transactions, coercing principals, and exerting pressure to change financial arrangements.

35. Financial institutions play a key role in facilitating and overseeing the actions of appointed attorneys under EPOAs and in preventing, detecting, and responding to financial abuse through their general duty of care, internal policies, and compliance with broader regulatory obligations.

36. However, as noted by the Commission and other stakeholders over the years, the current inconsistencies in EPOA laws across Australian jurisdictions can cause unnecessary confusion, uncertainty and practical challenges for financial institutions required to act on EPOAs, and in their role in preventing and responding to financial abuse.[18]

37. Under current arrangements, different jurisdictions may have distinct forms, definitions and requirements relating to EPOAs. The circumstances under which an EPOA becomes effective can differ, with some requiring medical certification of incapacity and others activating immediately upon signing. The extent of authority granted to attorneys can vary, with different restrictions and permissions in place across jurisdictions. Some states require EPOAs to be formally registered while others do not.

38. Banks operating across multiple jurisdictions face operational complexities due to these inconsistencies. Banks must be familiar with and verify the legitimacy of EPOA documents according to the specific requirements of each state and territory. This verification process can be cumbersome and time-consuming. Staff must be trained to recognise and understand the nuances of EPOA documents from different jurisdictions, increasing the demands for comprehensive training programs. Banks need to integrate different legal requirements into their systems and procedures, which can complicate the implementation of uniform policies and practices.

39. Varied requirements also make it harder for bank staff to detect forged or fraudulent EPOA documents. The inconsistencies can create loopholes that potential abusers might exploit. The need to clarify and verify documents from different jurisdictions can delay a bank's response to suspected abuse, giving perpetrators more time to exploit the principals.

40. The absence of a national EPOA register also means that there is no simple and direct way for banks to access information about who holds authority

under an EPOA or to confirm if an EPOA has been revoked. Current inconsistencies in EPOA laws across jurisdictions remain the key impediment to the creation of a workable national EPOA register.

41. To counter these issues, banks have put in place a range of measures, including 'two to sign' arrangements, pre-set digital and card limits and transaction notifications to assist staff with identifying and preventing financial abuse within EPOA arrangements.

42. The Commission commends the steps taken by banks to prevent and flag potential abuse, while observing that such measures have also, at times, caused frustration on the part of attorneys trying to carry out their duties under an EPOA. For example, the Commission has received complaints from attorneys who have been unable to open bank accounts or reset PIN numbers for their principal because of the requirements or restrictions imposed by banks and other service providers. These are usually complaints alleging age and disability discrimination in the provision of goods and services involving attorneys who are managing the financial affairs of an older family member with dementia or other cognitive impairments.

43. The ongoing impacts of current inconsistencies in EPOA laws on both financial institutions and customers highlight the critical need for harmonisation of EPOA laws across jurisdictions and the development of a national register of EPOAs, in that order, as recommended by the Australian Law Reform Commission's 2017 report *Elder Abuse – A National Legal Response* (ALRC 2017 Elder Abuse Report).[19]

44. National consistency in EPOA laws and a national register would clarify and reduce unnecessary complexity for both end users as well as those required to act on EPOAs such as banks and other financial service providers.

45. Harmonisation is also necessary to enable national education about EPOAs to support financial institutions and everyday Australians to understand their rights and obligations and to raise awareness about the importance of future planning and EPOA documents generally.

46. Recent research (yet to be released) by the Commission has found 85% of Australians agreed that more education was needed about EPOAs and 93% believed it was important that this information was standardised across Australia. Financial professionals were identified as a group that would benefit from education related to EPOAs. A notable proportion (27%) also felt that regular refreshers or reminders after an EPOA has been made would be helpful, a role which financial institutions would be well-placed to play when an EPOA is activated for a transaction or when financial advice is sought.

47. More than two decades on from when arguments for EPOA reform were first raised with the Australian Government and seven years since the ALRC 2017

Elder Abuse Report, the recommended reforms are yet to be achieved.[20] Throughout these years, the issues of financial abuse of EPOAs have continued to negatively impact vulnerable older people and service providers.

48. Addressing the inconsistency in EPOA laws across jurisdictions will only become more urgent and pressing as Australia's ageing population increases. Despite the differences in current state and territory EPOA arrangements, the Commission is of the view that national consistency is achievable with strong leadership from the Federal Government.

Recommendation 3: In line with recommendation 5-3 from the Australian Law Reform Commission's 2017 report *Elder Abuse – A National Legal Response*, national consistency in enduring power of attorney laws across states and territories must be achieved as a matter of urgency under the proactive leadership of the Australian Government.

Recommendation 4: After the achievement of national consistency in enduring power of attorney laws, the Australian Government should prioritise the development of a national enduring power of attorney register and national education on enduring powers of attorney.

(b) The Banking Code of Practice and Industry Guidelines

49. The Banking Code of Practice (the Banking Code) and associated Industry Guidelines form an important part of Australia's regulatory framework in addressing financial abuse within the financial services sector. It is the only code in the financial services sector with Australian Securities and Investments Commission (ASIC) approval and offers consumer protections for older persons through a set of enforceable rights and entitlements that operate in addition to the law.[21]

50. Since the Banking Code was first introduced in 1993, recommendations arising from independent reviews of the code have continued to deliver improvements to meet the changing needs of customers.[22]

51. From 1 July 2019, the revised Banking Code established several new obligations for banks, including welcome requirements to take extra care with vulnerable customers, including those who may be experiencing elder abuse and financial abuse. Staff are to be trained to act with sensitivity, respect and compassion, and to work with customers to find suitable ways to undertake their banking. Banks are also required to be respectful of confidentiality, make communications easy, provide guidance to help customers maintain and regain control of finances, and refer customers to external support services where appropriate. Banking services must be inclusive and accessible to everybody, including older people, people with disability, as well as

Indigenous people (including in remote locations), and people with limited English.[23]

52. The banking industry has also developed an Industry Guideline on protecting vulnerable customers from potential financial abuse as part of the ABA's Financial Abuse Initiative, including guidance on reporting abuse to the relevant authorities, when appropriate. However, this Industry Guideline sits outside the regulatory framework of the Banking Code, and banks consider it to be best practice guidance and voluntary, rather than a specific Banking Code obligation.[24]

53. Strengthening the regulatory power of the Industry Guideline, by making its provisions enforceable contractually by consumers through the Banking Code, could serve to strengthen safeguards against financial elder abuse in the financial services sector.

54. In line with the 2021 Independent Review of the Banking Code of Practice Final Report (recommendation 10) and the ALRC 2017 Elder Abuse Report, the Industry Guideline should be considered as a Code-related document, and not as outside the Banking Code and voluntary. Banks should take into account the Industry Guideline in assessing whether they are complying with code commitments. If they are not following best practice outlined in the guideline, banks should have to demonstrate they are following comparable processes in meeting commitments. There should also be greater transparency in the Banking Code over the role of Industry Guidelines and they should be specifically referenced in the Banking Code.[25]

55. While banks have a role to play in enhancing consumer protections against financial elder abuse, the Commission acknowledges that adult safeguarding responses require a partnership response from Government, business and community. Urgent government regulatory reform, as discussed in the following section, is also needed to better support and protect banks when they respond to financial elder abuse, including the reporting of suspected financial abuse.

Recommendation 5: To enhance consumer protections against financial abuse, the Commission supports action to strengthen the regulatory power of the Australian Banking Association's Industry Guideline on Protecting Vulnerable Customers from Potential Financial Abuse by making its provisions enforceable through the Banking Code of Practice.

(c) Incentivising and Protecting Financial Institutions in the Reporting of Suspected Financial Abuse

National adult safeguarding agencies and laws

56. The ALRC 2017 Elder Abuse Report noted that banks and financial institutions are often in a prime position to detect and prevent the financial abuse of older persons and at-risk customers.[26]

57. The ABA's Industry Guideline on 'Preventing and responding to financial abuse (including elder financial abuse)' acknowledges that reporting suspected abuse may be a reasonable step for banks to take in some circumstances. However, financial institutions are limited in their ability to respond to suspected financial abuse, with no guidelines detailing how or who financial institutions should report suspected abuse.[27]

58. The ABA has noted that one of the barriers to banks being able to report suspected abuse is the lack of a designated body that can receive and respond to reports of suspected financial abuse. This is especially relevant for non-emergency concerns which are not necessarily appropriate for police to respond to, or for adults who, despite having full decision-making ability and therefore do not fit under the remit of public advocates and guardians, are nevertheless at risk of abuse.[28]

59. The current complex landscape of safeguarding responses differs across state and territory jurisdictions and includes police, hotlines/helplines, public guardians, public advocates and trustees, as well as various complaint-handling bodies with differing statutory functions and powers. This piecemeal response to financial abuse not only creates confusion around where reports of suspected financial abuse can be made, for both the individual and the financial institutions, but also creates critical gaps due to the limited remit and powers of many of these agencies.[29]

60. The ABA notes that police generally require the customer themselves to make a complaint, while current state trustees and public advocates often require banks to make a formal application and provide detailed information about the customer, including their medical history. These existing reporting mechanisms are not appropriate for banks as bank staff are not qualified, nor is it their role, to make assessments about the competency of customers. Banks are also limited in what information they can provide to state trustees and public advocates due to their legal and confidentiality obligations. The current regulatory framework therefore operates ineffectively and leaves banks without sufficient protection or incentive to report financial elder abuse.[30]

61. The ALRC 2017 Elder Abuse Report recommended the establishment of adult safeguarding laws and agencies in each state and territory that should have a statutory duty to make inquiries where they have reasonable grounds to suspect that a person is an 'at-risk adult'.[31]

62. Following the recommendations, South Australia, the ACT and New South Wales have enacted adult safeguarding laws and bodies to receive, assess and investigate cases of suspected abuse and coercion. The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (DRC) noted in its Final Report that it is clear that 'these bodies are meeting a significant level of need'. There have been strong calls in other states and territories for the introduction of similar laws.[32]

63. While there has been some reform in the area of adult safeguarding, not all recommendations have been actioned across all jurisdictions and there remains inconsistencies in the existing safeguarding bodies. For example, there are discrepancies in who is covered by each state/territory's agency, with SA's Adult Safeguarding Unit covering any adult who is over 18 years of age who may be vulnerable to abuse, the NSW Ageing and Disability Commission covering older persons and persons with disability and the ACT Human Rights Commission covering a specifically defined 'vulnerable person'.[33]

64. There is need for a timely and coordinated response from all state and territory jurisdictions to action the adult safeguarding reforms presented in the DRC and the ALRC 2017 Elder Abuse Report, including the introduction in every state and territory of adult safeguarding laws and independent statutory bodies to administer the safeguarding functions. These should be developed within a national adult safeguarding framework to establish consistency across Australia.[34]

65. Once the Australian Government has delivered on the much needed and overdue adult safeguarding reforms, there is an important role for state and territory adult safeguarding bodies to collaborate with the ABA to develop protocols for banks for the referral and reporting of suspected financial abuse of older persons and at-risk adults. The Federal Government should play a coordinating role in creating a national safeguarding framework and involve financial institutions early on to provide industry guidelines and reporting protocols.

Recommendation 6: In line with recommendations 11.1 and 11.2 from the Final Report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability and recommendation 14-1 from the Australian Law Reform Commission's 2017 report *Elder Abuse – A National Legal Response*, all state and territory governments should introduce adult safeguarding laws and independent statutory bodies to administer

safeguarding functions. These independent statutory bodies must be appropriate to receive, assess and investigate allegations of financial abuse. This should be articulated within a national adult safeguarding framework to ensure consistency across all jurisdictions.

Recommendation 7: All state and territory governments must co-design adult safeguarding laws and statutory bodies with older people and people with disability to ensure they are fit for purpose. These bodies must be empowered and resourced by state and territory governments to receive and respond to reports of suspected financial abuse effectively and efficiently.

(i) Legislative protection

66. The current regulatory framework governing banks places an array of voluntary and legally binding obligations on them which limit their ability to report suspected financial abuse.

67. These regulations include the Banking Code, privacy legislation which protects the disclosure of personal information of a customer to a third party, anti-discrimination laws, defamation risks concerning false allegations of abuse being publicised or communicated to a third party, obligations of confidentiality to customers and contractual obligations. This web of regulations, and the potential risk of legal ramifications, is another barrier to financial institutions being supported and incentivised to report suspected financial abuse.[35]

68. While there are some exemptions and defences that banks may be able to rely on, there is no statutory protection for financial institutions in the reporting of suspected financial abuse. The uncertainty of any available protections does little to incentivise or appropriately enable financial institutions to report suspected financial abuse.[36]

69. Financial institutions have argued they need to be able to act without fear of legal repercussions to be able to safely report suspected financial abuse. The ABA has supported the establishment of clear reporting guidelines for banks as well as statutory protection to make such reports.[37]

70. Financial institutions are in a unique position to be able to identify financial abuse that is occurring against older people and at-risk adults. However, due to the lack of protection and absence of clear reporting guidelines dictating who, when and what they can report, they are limited in their ability to positively assist in addressing financial abuse. It is therefore imperative that they are provided with legislative protection to allow them to make good faith reports of financial abuse, as well as provided with clear guidelines setting out the process for making such reports.[38]

71. Additionally, the ALRC 2017 Elder Abuse Report recommended that

> adult safeguarding laws should provide that any person who, in good faith, reports abuse to an adult safeguarding agency should not, as a consequence of their report, be liable civilly, criminally or under an administrative process; found to have departed from standards of professional conduct; dismissed or threatened in the course of employment; or discriminated against with respect to employment or membership in a profession or trade union.[39]

Recommendation 8: In line with recommendation 14-7 of the Australian Law Reform Commission's 2017 report *Elder Abuse – A National Legal Response*, the Commission recommends that people who report suspected abuse to adult safeguarding agencies should be given legislative protection from certain legal obligations that might otherwise prevent them from reporting abuse. This should be extended to explicitly include financial institutions to remove the impediment to reporting abuse that banks have identified.[40]

Recommendation 9: In line with proposal 17.3 of the 2022 Privacy Act Review Report, the Commission supports further consultation on current privacy laws by the Attorney-General's Department with key stakeholders including consumer groups, the Australian Banking Association, Australian Financial Complaints Authority, Australian Securities and Investments Commission, and the Office of the Australian Information Commissioner to clarify issues and identify options to ensure that financial institutions can act appropriately in the interests of customers who may be experiencing financial abuse.

Recommendation 10: In the absence of designated adult safeguarding agencies in each state and territory to receive reports, clear rules or guidelines should be made by the Office of the Australian Information Commissioner about when, what and to which authority financial institutions can report cases of suspected financial abuse.

5 Other potential areas for reform

(a) Digitisation of financial services and accessibility

72. The 'digital divide' in Australia is a well-documented phenomenon and refers to populations who are not benefitting fully from the internet, either because they are non-users, they use the internet in a limited way, or they do not have access to internet services. Particular demographics appear to be more impacted by this divide. For example, 2018 Australian Bureau of Statistics data indicates 1.1 million (28.5%) people with disability had not used the

internet in the previous three months (compared to 13% of the total population). While there is evidence that older Australians are engaging in a notably broader range of online activities across different devices and connecting to the internet more than ever before, many older people continue to feel overwhelmed by technology changes and 38.4% are still not using the internet. This has broad implications when considered in conjunction with the increased digitisation of financial services.[41]

73. There are various accessibility challenges associated with the increased digitisation of financial services. These challenges can affect those with age-related disability such as vision and hearing loss, dexterity or mobility issues, and cognitive decline. Many of these challenges overlap with accessibility barriers faced by people with disability of all ages.[42]

74. Ensuring the continued accessibility of financial services is critical for protecting older people and people with disability from financial abuse. The DRC noted that the care dependence of people with disability on those who perpetrate abuse exacerbates a distortion of control and power. The more a person with disability must depend on someone else to navigate financial services due to their inaccessibility, the greater the opportunity for the perpetration of financial abuse. It is therefore necessary that financial services remain accessible for older people and people with disability so that they can maintain independent management of their own finances. Importantly, this means not just modifying and adjusting digital services so that they are accessible, but also continuing to provide accessible physical services, including branch-based assistance, ATMs and cash services, so that those who cannot navigate digital platforms easily are still able to manage their own finances.[43]

Recommendation 11: Financial institutions must co-design digital financial services with older people and people with disability to ensure they are inclusive and accessible for all customers, regardless of age or ability.

Recommendation 12: Physical financial services, including branch-based assistance, ATMs and cash services, must continue to be made available.

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