



**Redfern
Legal
Centre**

REDFERN LEGAL CENTRE SUBMISSION ON THE AFCA APPROACH TO RESPONSIBLE LENDING

18 September 2023

CONTACT: Amelia Klein
Jasmine Opdam

Redfern Legal Centre
Gadigal Land
73 Pitt St Redfern 2016

jasmine@rlc.org.au

Gadigal Land, 73 Pitt St Redfern NSW 2016 | PO Box 1805, Strawberry Hills NSW 2012

Phone: (02) 9698 7277 **Web:** rlc.org.au **Email:** info@rlc.org.au

ACN: 31 001 442 039

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1. *Summary of Recommendations*

- a. Explicitly recognise that risk of harm is proportional to a consumer’s financial position when considering the value of the credit product.
- b. Reduce obligations on consumers to disclose vulnerability to credit providers, by providing further guidance on the reasonableness of inquiries and expectations about contact with consumers.
- c. Provide clear expectations around the use of self-assessments and estimates, particularly when independently verifiable information would be easily available.
- d. Expand the list of examples of reasonably foreseeable events to reduce the risk of consumer harm.
- e. Clarify expectations and aspects relevant to the requirements and objectives assessment.
- f. Recognise that lenders cannot be expected to take certain steps without being asked to do so, and include consideration of conditional approvals in responsible lending assessments.
- g. Confirm that personally sensitive information should not be shared with all parties to an AFCA complaint in certain circumstances, like commercially sensitive information, but can still be considered by the decision maker.
- h. Explicitly recognise expectations that only relevant information should be provided and irrelevant information inappropriately provided by parties will not be considered or retained on the file.
- i. Note that conduct of a consumer should not lead to compensation being reduced if the conduct took place in circumstances of coercion, duress, fraud, elder or financial abuse.

- j. Require lenders to take particular care where they are aware of a relationship between a broker involved in a transaction and a potential beneficiary of a transaction, for example, the partner of a borrower.

2. Introduction: Redfern Legal Centre

Thank you for the opportunity to provide input to AFCA's draft Responsible Lending Approach (the **Approach**).

Redfern Legal Centre (**RLC**) is a non-profit community legal centre that provides access to justice. Established in 1977, RLC was the first community legal centre in NSW and the second in Australia. We provide free legal advice, legal services and education to people experiencing disadvantage in our local area and statewide. We work to create positive change through policy and law reform work to address inequalities in the legal system, policies and social practices that cause disadvantage.

We provide effective and integrated free legal services that are client-focused, collaborative, non-discriminatory and responsive to changing community needs – to our local community as well as state-wide. Our specialist legal services focus on tenancy, credit, debt and consumer law, financial abuse, employment law, international students, First Nations justice, and police accountability, and we provide outreach services including through our health justice partnership.

3. RLC's work in consumer credit and domestic and family violence

Since 1977, RLC has provided specialist assistance to people who have credit, debt and consumer law problems. In addition to RLC's Credit and Debt practice which services the local community, we provide consumer credit advice and representation through our state-wide Financial Abuse Service NSW, our state-wide International Student Legal Service NSW, our local First Nations Justice practice and our Health Justice Partnership that provides legal services at Royal Prince Alfred Hospital and Sydney Dental Hospital.

RLC has over three decades of specialist experience in domestic and family violence (**DFV**) in New South Wales, receiving its first formal recognition for these services in 1996 with a Special Award for dedication and commitment to the prevention of domestic violence from the NSW Minister for Community Services. The award recognised a scheme pioneered by RLC – the Women's Domestic Violence Court Assistance Scheme – a holistic approach to the provision of services for women seeking legal protection from domestic violence which has since been extended throughout NSW. Additionally, RLC has initiated or been actively involved in projects which have led to the establishment of the Welfare Rights Centre, Prisoners Legal Service, Accommodation Rights Service, Consumer Credit Legal Centre (now Financial Rights Legal Centre) and Campbelltown Legal Service (now Macarthur Legal Centre), among others.

In 2014, RLC began providing legal services to victim survivors of financial abuse through our credit, debt and consumer law practice. RLC identified that there was a need for a more specialised and state-wide service for people who were experiencing legal issues associated with DFV and financial abuse, including family law expertise in financial matters such as property settlements, spousal maintenance and child support.

Since 2019, RLC has provided legal advice and representation to NSW-based clients affected by financial abuse from an intimate partner, via our specialist Financial Abuse Service NSW. In addition to providing legal support for victim survivors of financial abuse and other coercive controlling behaviour, the Service provides community legal education and engages in capacity-building and reform work to drive systemic change and prevent financial abuse.

RLC also coordinates the Economic Abuse Reference Group, an informal group of community organisations which work collectively to influence government and industry responses to reduce the financial impact of family violence. Members include DFV services, community legal services and financial counselling services.

Based on this experience, this submission will focus on the intersection of responsible lending and domestic and family violence.

We otherwise endorse the recommendations made in the joint submission of Consumer Action Law Centre, Financial Rights Legal Centre, Consumer Credit Legal Service and Financial Counselling Australia.

4. Specific Comments on the Approach

RLC welcomes the creation of the Approach. Our experience in consumer credit demonstrates that many of our clients are not aware of the obligations of lenders under the *National Consumer Credit Protection Act 2009* (Cth). The Approach provides further opportunities for educating the public about their consumer rights, as well as providing clarity and guidance to consumer advocates and industry.

In our experience there have been inconsistencies in the approach of AFCA case managers to responsible lending, and in particular questions of what is 'reasonable' and 'appropriate' in terms of the obligations of borrowers and lenders. The clarification and consistency provided by an Approach is welcome. We strongly support the Approach. We provide some comments and suggestions we believe would further improve the rights and experience of consumers.

AFCA's approach to what is fair in all the circumstances of each complaint is very important. RLC assists borrowers who are often experiencing multiple layers of vulnerability, including but not limited to cognitive impairment, experience of domestic and family violence, experience of homelessness, financial hardship and from culturally and linguistically diverse backgrounds.

Applying a standard of fairness to those who are experiencing vulnerability means that AFCA must consider a wide range of circumstances, including vulnerabilities that should have been considered by financial firms at the time of lending to determine suitability of the financial product. Responsible lending is not a check box exercise; lenders must consider the information reasonably available to them and, in circumstances where that information is incomplete or raises questions, request additional information and ask those questions.

4.1. Risk of Consumer Harm

The Approach takes a number of positions which will significantly reduce the risk of consumer harm. We endorse and support the following positions in particular:

- The recognition that a number of circumstances are 'red flags' of consumers experiencing vulnerability (p. 12 of the Approach);
- The indication that use of the Henderson Poverty Index as a benchmark needs to involve an additional buffer (p. 18);
- Where industry codes impose additional or more specific obligations than the legislation, subscribers should comply with those codes, and if specific provisions reflect good industry practice, they should apply to an industry sector, even beyond signatories (p. 21);
- The inability of a lender to rely only on a broker's assessment, particularly if there are red flags (pp. 22-23);
- Consumers are unlikely not to provide information on request, unless there is specific information indicating otherwise (p. 25); and
- The recognition that small surpluses may indicate further verification of income and expenditure was required (p. 25).

4.1.1. Harm is Proportional to Consumer's Financial Position

AFCA has set out on page 12 that *"the amount of credit"* offered will vary the reasonable inquiries and reasonable verification required to meet a lender's responsible lending obligations, amongst other factors. RLC suggests that this be amended to specifically refer to *"the amount of credit proportional to the consumer's financial position"*. The same amount of credit offered to one person who has substantial assets and income will have a very different effect compared to a person who is reliant upon a Centrelink payment as their sole source of income. Similarly, where two consumers are on the same income but one has several relatively small credit products, the latter has a higher risk of consumer harm due to snowballing debts and therefore the inquiries and verification should vary between the two.

We do not consider this is sufficiently captured in *"the risks to the consumer if the contract is unsuitable and they default on their repayment obligations"* and/or *"the consumer's net debt position"*. For clarity and to ensure that it remains front of mind for lenders, we recommend the explicit inclusion of the consumer's financial position. Multiple smaller debts, particularly if being taken out to meet previous debts, can have greater risks of financial harm compared to a single debt of the same value.

4.1.2. Indicators of Experience of Vulnerability

RLC has experienced unfortunate attitudes of some financial firms that appear to place the obligation on consumers to disclose their experiences of vulnerability. RLC recommends the dot point *"circumstances indicating the consumer is experiencing vulnerability"* at page 12 of the Approach be amended to include the words *"whether or not the consumer has disclosed that they are experiencing vulnerability"* afterwards.

The Approach should link directly to the *AFCA Approach to Joint Accounts and Family Violence* when listing factors that indicate there will be a higher risk of consumer harm. This will allow consumers to consider their own circumstances as well as keep concerns about financial abuse and family violence front of mind for lenders.

Electronic transactions, and other transactions without contact with borrowers, remove opportunities for creditors or other parties in a transaction to identify warning signs of financial abuse or other vulnerabilities and reject unsuitable or fraudulent credit applications. This places the onus on consumers and their advocates to point out indicators of vulnerability, such as financial abuse, that may render a credit product unsuitable. This reduces the onus on lenders to identify financial abuse and other indicators of vulnerability and prevent fraudulent or coercive lines of credit, despite lenders having far greater resources and ability to do so.

We recommend the Approach specify that a negative inference will be drawn in terms of the reasonableness of the lender's inquiries in circumstances where the lender has not spoken directly with the borrower on any occasion. RLC frequently advises victim survivors of financial abuse who are listed as a co-borrower of a joint loan where they had very limited, or no, contact with the lender. The financial firm then typically defends their lending decision on the basis that there were no indicators of vulnerability, despite the fact that, had they made contact with the co-borrower, this contact would have revealed vulnerabilities such as the presence of coercion or financial abuse. If a lender does not make contact with a co-borrower, there is very limited opportunity to determine whether a credit product meets that co-borrower's requirements and objectives or whether they stand to receive any benefit from the credit. Financial firms should not be able to claim that they have met the criteria for making reasonable inquiries where they have not had any contact with the co-borrower.

4.1.3. Lesser Weight to be Placed Upon Self-Assessments or Estimates

The Approach indicates that fewer inquiries/verification steps may be appropriate where the obligation is immaterial to the consumer's available income. This should be fettered by the requirement that financial firms rely upon independently verified information when compared to borrower disclosed information. Consumers may disclose inaccurate income and expenses because they are genuinely mistaken about these amounts, without any intention of misleading the financial firm. Financial firms should instead rely upon independently verified information such as paystips and bank statements when determining that fewer inquiries are required.

In addition, "available information" for this purpose (referred to at page 12) requires consideration of all information that a financial firm has available to them. In circumstances where a consumer holds a transaction account or other credit products with the same lender, this information is available to the financial firm and should be considered in its suitability assessment. A financial firm should be required to consider all information available to them in meeting its responsible lending obligations.

Case Study – Joelene

Joelene had been a customer with ABC Bank for a number of years and held her everyday transaction account with them. Joelene's partner would not contribute financially to the household's expenses, including for their 4 children, so Joelene had to work several jobs to make ends meet. To help with meeting her family's cost of living, Joelene applied for a credit card with a \$10,000 limit from ABC Bank. Within 3 months, the credit card was at limit. Joelene applied for a personal loan with ABC Bank to in order to pay off her credit card and to pay out other smaller loans. By the time of applying for the personal loan, Joelene had opened an account with a buy now pay later provider Laterpay. Joelene had several repayments debited from her everyday bank account to Laterpay, totalling almost \$700 per month.*

ABC Bank did not include the payments to Laterpay in its suitability assessment for the personal loan, even though it could have easily established that Joelene had these commitments by looking at any of her transaction account statements. When the payments to Laterpay were taken into account, Joelene could not repay the personal loan without substantial hardship, but ABC Bank approved the personal loan.

In addition, if a consumer's self-assessment is well below estimates based upon the benchmarks that financial firms rely upon, this should be considered a "red flag" as referred to at page 14 of the Approach. This is not to say that it is definitely inaccurate; but that it warrants further investigation and inquiries. An inaccuracy in terms of current expenses may indicate factors requiring further investigation, including that a consumer may not have a strong capacity to comprehend and understand the credit product and their obligations, that other information provided by the consumer may not be accurate, and that there is a higher risk to the consumer.

Similarly, verification should be required in circumstances where expenses are claimed to be shared between the borrower and a non-borrower (at p. 19). For instance, where a consumer indicates that they are sharing rental expenses but appear to be making payments of the full amount of rent each week and there does not appear to be a partial reimbursement or any transfers into their account, this should give rise to further inquiries. Apparent apportionment of shared expenses should be based on information available to the lenders; this is particularly important for victim survivors of domestic and family violence, where the perpetrator may withhold financial support or refuse to contribute to expenses despite agreements to do so, significantly reducing the victim survivor's true borrowing capacity.

4.1.4. Onus on Financial Firms to Justify Reasonableness of Inquiries

RLC strongly endorses the obligation of financial firms to “provide AFCA with a clear explanation of the process they followed in making their unsuitability assessment, supported by references to other documents or verification information.” In order to demonstrate that the necessary inquiries and verifications were made, we further recommend that there be a positive obligation on financial firms to demonstrate the reasonableness of their inquiries, and inquiries that they chose not to make.

There has been an unfortunate tendency of some financial firms to take an approach of wilful blindness to whether information is a red flag or not. RLC has seen a number of circumstances where it would have been reasonable for a financial firm to request a bank statement due to the low expenses disclosed by a consumer, but have simply applied a benchmark figure with no further questions. Benchmarks like the Henderson Poverty Index only establish the expenses reasonably required for a family to remain out of poverty. There is no reason to assume that a consumer who discloses unusually low expenses does not in fact have expenses much higher than the benchmark. They may be mistaken in their calculations, or have underestimated one or more expenses. The lender's assessment needs to take into account the customer's actual expenses, and where appropriate, this should be independently verified.

Compliance with responsible lending obligations requires verification, and a reasonable belief must be based on evidence. To simply take a consumer at their word that their income and expenses are as they estimate exposes consumers to unreasonable risks of harm. Consumers make genuine errors which, if not verified against third-party evidence such as payslips, could lead to unsuitable credit products and subsequent financial harm – for instance, providing their gross income when the request is for their post-tax income, or incorrectly inputting their fortnightly income rather than their weekly income.

Consumers can also be affected by coercion and pressure to supply incorrect information, or have someone else input information on their behalf. If reasonable inquiries are not made, this exacerbates harm suffered by consumers experiencing financial abuse or desperate financial hardship. There are very few circumstances where RLC considers it would be unreasonable to request recent bank statements to verify the expenses a consumer has disclosed, and even fewer circumstances where it would be unreasonable to request payslips or a Centrelink Income statement to verify the income a consumer is receiving. If a financial firm fails to do basic verification or make simple inquiries, AFCA should require the firm to justify why their inaction was reasonable.

4.1.5. Reasonably Foreseeable Events

There are several events which should be generally considered to be ‘reasonably foreseeable’. These are more relevant for longer term credit products, but should be considered in responsible lending assessments, and are particularly related to our experience assisting consumers who have experienced financial abuse and other forms of domestic and family violence.

Examples of reasonably foreseeable changes we suggest including in the Approach are:

- Children getting older and therefore household expenses increasing; while in some cases this could be accompanied by an assumption that income will also increase, the latter assumption cannot be made when an applicant is solely reliant upon Centrelink income;¹
- Change in major expenses recorded as nil, for example a young adult may be expected to live with their parents for the length of a relatively short-term loan, but an adult in a new relationship should

¹ Bruce Bradbury and Patricia Hill ‘Australian income support since 2000: Those left behind’ (Build Back Fairer Series, Report No. 2, ACOSS/UNSW Sydney Poverty and Inequality Partnership, October 2021) <https://povertyandinequality.acoss.org.au/wp-content/uploads/2021/10/Income-support-since-2000_those-left-behind_FINAL.pdf>.

be reasonably expected to pay rent or other housing expenses in the medium to long term even if their partner is currently paying those expenses in the short-term.

- Change in support from a third party, for example a young adult may have expenses paid by their parents in the short-term for example to allow them to attend university, but if a major expense such as groceries or rent is being met by a partner or another third party, it is reasonably foreseeable that this may not be sustainable in the long term.

In the latter two examples, if the affordability of the credit product relies on the third party continuing to pay the borrower's expenses, the lender should consider whether the third party supporting should be a co-borrower or, if not receiving a benefit under the product, a guarantor. Otherwise, we have significant concerns about lenders approving credit products in circumstances where a third party is using financial control to perpetrate financial abuse against a partner or other family member.

We consider this to be a similar responsible lending approach to the differential treatment of casual income versus permanent income; it is less stable to rely upon a third party to either pay for an expense directly or provide a benefit which reduces a consumer's expenses. It is reasonably foreseeable in most circumstances that such arrangements will not continue in the long term. It should, in fact, prompt further inquiries of a consumer in a financially vulnerable position who is applying for a credit product, if their expenses are being met by someone else.

4.1.6. Requirements and Objectives Assessment

Further clarity in relation to requirements and objectives would benefit all parties. We suggest that these particular factors be included as relevant considerations when assessing the requirements and objectives of a consumer:

- The credit limit of a product, particularly a credit card or revolving line of credit;
- The timeframe in which the credit product is required (priority processing or 'rush' fees should only be added when specifically requested);
- Whether or not insurance is included, and should only be included if specifically requested or agreed;
- An interest free period or other benefit which can be offset if other features are included without express agreement;
- Whether the requirements and objectives of the product are for the benefit of the borrower or not.

In relation to the latter, we specifically draw AFCA's attention to car loans, which we regularly see approved in circumstances where:

- It is a joint loan, but only one of the borrowers intends to drive the vehicle; and
- The borrower on the loan is taking on debt for the benefit of their partner or another person.

Case Study – Lynette

Lynette and Toby* were in a short de facto relationship of 6 months, during which time Toby subjected Lynette to physical, verbal and financial abuse. Lynette was granted an ADVO protecting her from Toby once the relationship ended.*

While they were together, Toby pressured Lynette to take out a loan for a new \$80,000 car Toby wanted to buy. The car was at a dealership owned by Toby's cousin, and the dealership had a relationship with a financier EasyLoans whereby the dealer received a kickback from any loans through Easyloans. Toby told Lynette that the loan needed to be in her name due to the family relationship between him and the car dealer. He told Lynette he would make all the repayments

so that she didn't need to worry about the loan. Toby asked Lynette to give him pay slips as proof of her income, and she provided them as she felt she had no other option.

Toby made the finance application to EasyLoans on Lynette's behalf. In their credit assessment report, EasyLoans stated that Lynette's requirements and objectives were "Purchase of vehicle". However, EasyLoans never spoke to Lynette. She did not sign any documents, attend the dealership, or speak with anyone from EasyLoans. The car was purchased in Toby's name and remained in his possession at all times.

Toby made the payments on the loan until Lynette ended the relationship and got the ADVO. Once the loan went into default, EasyLoans started to pursue Lynette for the entire loan amount. Lynette has been left with an \$80,000 loan which she received no benefit from, for a vehicle that she never owned or drove.

In our view there should be more detailed information about circumstances where a product is affordable, but did not meet the requirements or objectives of the consumer, with reference to more of the above factors. In addition, there should be further guidance as to how AFCA will approach questions of failure to meet requirements and objectives in circumstances where there is no benefit to the consumer due to financial abuse.

Case Study – Kaitlyn

Kaitlyn is a First Nations single mother and survivor of domestic violence, who over the years was provided several unsuitable credit contracts by a number of lenders which left her in extreme financial hardship. While trying to stay on top of her unmanageable debts totalling more than \$50,000, Kaitlyn recalls being approached at The Good Guys retail store to sign up to high interest credit cards for credit limits that were significantly higher than the lower cost products she was seeking to purchase.*

On one occasion, Kaitlyn sought to buy a single TV for just over \$1,000 and only applied to take advantage of the interest free period. However, the in-store representative came back and told her she had been approved for a \$10,000 credit card. When Kaitlyn told him she did not want a credit card with an amount that high as it would only encourage her to buy more things that she could not afford, he said it was too late as she had already been approved for that amount, after which Janine was encouraged to buy more in-store products she didn't really need, but for an amount still well below the \$10,000 credit card limit.

When a complaint was made to the lender, the lender stated they could find no evidence of wrongdoing by the retailer or their representatives, however failed to provide any evidence to show the credit limit met her requirements and objectives and was appropriate in her circumstances.

4.1.7. Conditional Approvals to be Required to be Effective

In order for lending to be considered responsible, and for the requirements and objectives of consumers to be met, the use of conditions in approvals should be encouraged. This is most commonly seen in mortgages where it will be a requirement that debts are paid out either before the mortgage will be granted, or as part of a re-finance process. However, we are aware of examples where the consumer's objective is to consolidate debt, but the lender does not require the closure of the other loan accounts to approve the new loan, and also does not factor in continued payments towards those previous lines of credit in the suitability assessment.

We suggest the Approach specify that a lender cannot assume that a consumer will take certain steps, including to close other lines of credit, unless it is a requirement of the product; this could form part of the information on page 25 under ‘what a complainant would have provided on request’.

Case Study – Joelene (continued)

ABC Bank approved the personal loan, which included a condition that the credit card be paid down, but not closed. When the loan was drawn down, the credit card balance was reduced to zero, but the account remained open. ABC Bank did not include future repayments on the credit card in its suitability assessment, despite the fact that this credit was still available to Joelene at the original limit.

Shortly after taking out the personal loan, Joelene’s relationship broke down, and she had to use the credit card to pay for her expenses in relocating herself and her children. She reached the credit card limit and was unable to maintain payments on the personal loan, and came to our service in severe financial distress.

4.2. Reasonable Information Exchange

We endorse the recommendation of the Consumer Action Law Centre, Financial Rights Legal Centre, Consumer Credit Legal Service and Financial Counselling Australia that information should be requested first from the financial firm, and only from the consumer in the event that the financial firm would not be reasonably required to hold the information.

RLC is aware of examples where information is provided by a financial firm that cannot be provided to the consumer or their advocate. Commonly, this will be responsible lending or other internal policies of the financial firm. We recognise that there may be valid reasons for commercially sensitive documents to not be shared with all parties to a dispute. Advocates accept that AFCA will disclose what is reasonable and will make fair decisions based on all of the information available to them.

However, RLC is also aware of examples where a consumer does not wish to disclose personally sensitive information to the lender, but is willing to provide it to AFCA to support a decision being made. We have been advised that for this information to be considered in AFCA’s decision, it must be provided to the lender and placed on the file. There are many valid reasons why a consumer may not want sensitive information shared, and this should be respected in the same way that commercially sensitive information is respected. This should also be reflected in this Approach. This is critical in circumstances where the consumer is a victim survivor of domestic and family violence, and there is a relationship between the perpetrator and the financial firm.

Case Study – Charlotte

Charlotte sought legal advice after escaping a financially abusive relationship with her ex-husband George*. Although Charlotte was the sole owner of the family home, George maintained tight control of their finances, withheld access to their financial documents and accounts, and threatened her and their children when she asked questions about their finances. George took out a series of loans, secured by the property Charlotte owned, to purchase investment properties. All loans were*

obtained through a broker who was a close friend of George, and the loan documentation was prepared by George and the broker. Charlotte was only allowed to look at the documents when she was told to sign them. After the relationship ended, Charlotte was forced to sell the family home and was left with no assets to her name. She and her children had to live with her parents while she rebuilt her financial independence.

We assisted Charlotte to make separate complaints to AFCA against the bank and the broker who facilitated the loans. While both complaints resulted in compensation being paid to Charlotte, they raised serious concerns about the treatment of sensitive confidential information in AFCA complaints, particularly in circumstances where the broker was a close friend of the perpetrator of financial abuse.

As part of the exchange of information, the AFCA case manager requested that Charlotte provide copies of her tax returns and notices of assessment for several years. Given the confidential personal information contained in the tax returns and the broker's ongoing close personal relationship with George, Charlotte was not comfortable having her tax returns disclosed to the broker or any parties outside AFCA. The lawyer therefore requested that AFCA exclude this confidential annexure from its information exchange with the broker. The case manager stated that if they did not exchange the tax returns with the broker, they would not be able to rely on them in their decision-making. Charlotte reluctantly agreed to the tax returns to be shared with the broker because she worried that otherwise the case manager would agree with the broker's allegations about her.

In addition, RLC is aware of examples where a financial firm has provided information which is personally sensitive to the complainant and not relevant to AFCA's assessment of the complaint, but the case managers have placed the information on the file. AFCA should indicate in the Approach that, where this occurs, AFCA will communicate to all parties that such information is being explicitly disregarded and will not be kept on file, and advise the financial firm that the information is not relevant and was not requested.

Case Study – Charlotte (continued)

When the broker responded to Charlotte's complaint and AFCA's request for information, their 300+ page response included a 72-page transcript of the court hearing regarding Charlotte's Apprehended Domestic Violence Order application, which the broker's legal advisers had obtained. The response also dedicated 3 pages to quoting the transcript and undermining Charlotte's credibility.

Charlotte was triggered and retraumatised by seeing very intimate personal details of her relationship with George scrutinised and dissected by the broker in response to her consumer complaint. Our lawyer wrote to the AFCA case manager expressing concern about the broker's decision to obtain a transcript of the ADVO hearing and reproduce that transcript in full to AFCA without regard for its relevance or the potential impacts on Charlotte and on others who may read the file. Despite these concerns, the case manager did not rebuke the broker for their actions or give Charlotte any written confirmation about how this material would be considered (or not) by AFCA in the context of her consumer complaint.

4.3. Conduct of the Parties and Third Parties

4.3.1. Perpetrators as Parties

There may be very limited circumstances where the conduct of a consumer should lead to a reduction in compensation. However, in our view that is a particularly limited circumstance, and should explicitly exclude victim survivors of domestic and family violence. In many cases where the complainant is unable to provide full information to AFCA, it is because they did not provide information to support the application – the perpetrator did, either explicitly or under the guise of the complainant – or the complainant did so in circumstances of serious coercion.

This section of the Approach should specify that the actions of a perpetrator should not be counted against the complainant. There are significant risks that information was not provided by the consumer, but a third party or co-borrower. If AFCA finds that false information was provided, but it was provided under coercion, duress, fraud or other circumstances of elder or financial abuse, then the complainant's compensation should not be reduced.

4.3.2. Brokers

RLC welcomes the express inclusion that if a broker has engaged in fraud or deception, AFCA will not reduce the compensation payable to the perpetrator (p. 41).

We recommend including at page 23 further examples where a lender should take particular care where a broker is involved in a transaction, to also capture circumstances where the credit provider is aware that the broker is an associate of one of the co-borrowers or is an associate of the partner of the borrower or a third party who could obtain a benefit from the loan. While the credit provider will not always be aware of such relationships, in circumstances where they are, these relationships should also put the lender on notice that further verification is required.

** Names in case studies have been changed to protect client safety and privacy.*