

# Redfern Legal Centre

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9 April 2020

**To:** AFIA  
Level 11  
130 Pitt Street  
Sydney NSW 2000  
**By Email:** [codes@afia.asn.au](mailto:codes@afia.asn.au)

Dear Madam / Sir,

**RE: Buy Now, Pay Later Code of Practice**

Thank you for the opportunity to respond to the Australian Finance Industry Association's (AFIA) Code of Practice for Buy Now, Pay Later Providers.

Redfern Legal Centre endorses the joint submission coordinated by Consumer Credit Legal Service (WA) Inc. In addition, we provide the following comments specifically in relation to financial abuse.

## **About Redfern Legal Centre**

Redfern Legal Centre (RLC) is an independent, non-profit, community-based legal centre with a particular focus on human rights and social justice. Our specialist areas of legal practice include domestic violence and financial abuse, tenancy, credit and consumer, employment and discrimination and complaints about police and other governmental agencies.

By working collaboratively with key partners, RLC specialist lawyers and advocates provide free advice, conduct case work, deliver community legal education, prepare publications and submissions and advocate for law reform. RLC works towards reforming our legal system for the benefit of the community.

## **RLC's Financial Abuse Service NSW**

Since 1977, RLC has run a specialist practice to assist disadvantaged consumers address financial hardship, consumer credit and banking issues. In recent years, we have identified a growing area of need for people, particularly women, who have experienced financial abuse

in intimate partner relationships.

To address this unmet need, in 2019, RLC established a state-wide financial abuse legal service in NSW. Our financial abuse service provides advice and representation through which we identify systemic issues to inform our law reform and policy activities. Given that statistics show domestic abuse is the leading cause of homelessness, we are of the view that people experiencing financial abuse are one of the most vulnerable groups in the community.

### **Financial Abuse and Buy Now, Pay Later Products**

Family, domestic and sexual violence is a major health and welfare issue that affects all people in Australia, but predominately women and children. Family, domestic and sexual violence is underreported in Australia, and data can be difficult to obtain, however the latest data shows that one in six women have experienced violence by a current or previous partner since the age of 15,<sup>1</sup> and one woman is killed every nine days by a partner.<sup>2</sup> Financial abuse is not defined in all jurisdictions in Australia, which also means data is difficult to obtain, however research from WIRE, a support and referral service for women nonbinary and gender diverse people in Victoria, indicates that between 80 and 90% of women seeking support from domestic violence services have experienced financial abuse.

Given the prevalence of domestic abuse, and more specifically financial abuse, there are many Buy Now, Pay Later customers impacted. At RLC, we regularly assist people who present with debt and financial abuse issues that stem from various Buy Now, Pay Later providers.

In the case of our client, Hannah (\*name changed), Buy Now, Pay Later accounts were used as a tool to perpetrate financial abuse:

Hannah\* was emotionally and financially abused in her relationship for many years. When she eventually fled to another state, the financial abuse continued. Months after she relocated, Hannah discovered that her ex-partner had created a Buy Now, Pay Later account in her name. She had no knowledge this account existed until she was being chased by the company to pay thousands of dollars for purchases she never made or benefitted from.

When Hannah presented to RLC, she was stressed and afraid. English was her second language so we assisted Hannah to investigate the account and check her credit report. This uncovered more Buy Now, Pay Later accounts in her name that she had never taken out. From the documents obtained from the Buy Now, Pay Later companies, it was clear her ex-partner had fraudulently created the accounts and an email address in Hannah's name.

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<sup>1</sup> Australian Institute of Health and Welfare 2019. *Family, domestic and sexual violence in Australia: continuing the national story 2019*. Cat. no. FDV 3. Canberra: AIHW, pg 4, available at: <https://www.aihw.gov.au/getmedia/b0037b2d-a651-4abf-9f7b-00a85e3de528/aihw-fdv3-FDSV-in-Australia-2019.pdf.aspx?inline=true>

<sup>2</sup> Ibid, pg 50.

RLC assisted Hannah to request debt waivers and closure of the accounts. The Buy Now, Pay Later companies required Hannah to obtain a police report and send them a copy of this in order for their investigations to move forward. After protracted correspondence between RLC and the Buy Now, Pay Later companies, they agreed to waive the debts.

We have also assisted clients whose partners have coerced them into creating Buy Now, Pay Later accounts for their partner's benefit. We are particularly concerned about an increase in this during the COVID-19 pandemic, for households that lose income and financial security.

### **Specific Feedback on the Code of Practice**

From our experience communicating with providers, we are concerned about general lack of awareness about family and domestic abuse issues. We note that domestic and family violence is only referenced once in the Code, under Clause 7.1, which states:

*We will train our staff to treat our diverse and vulnerable customers with sensitivity, respect and compassion. This includes specific training to identify signs of vulnerability, such as where there may be mental health or domestic and family violence concerns, and training for staff who regularly assist customers from diverse cultural backgrounds.*

Whilst we support this training commitment, we are of the view the Code doesn't go far enough given many other industries have specific family and domestic violence policies and guides for their members. An example of this is the Australian Banking Association's [Industry guideline on financial abuse and family and domestic violence policies](#).

We suggest, at the very least, the Code should have a specific section on family and domestic abuse, and within that, we submit the following issues should be addressed:

1. A requirement for each provider to develop and publish a policy on how they will safely support and deliver trauma informed customer service to people who are known or suspected to be experiencing family and domestic abuse.
2. A requirement for mandatory annual training on family and domestic abuse for both customer facing and non-customer facing staff (including staff that design the products and services).
3. The steps providers must take to verify the identity of the person applying for the Buy Now, Pay Later product. As illustrated by Hannah's case above, a perpetrator of financial abuse will know the personal and financial details of their victim and fraudulently use this knowledge to apply for various forms of credit, usually online, including Buy Now, Pay Later accounts. In more subtle cases, a perpetrator may coerce the victim into opening an account in their name for their partner's benefit. Buy Now, Pay Later providers must have systems in place to detect this.

4. Guidance on the amount and type of evidentiary material that providers can request when determining complaints or hardship applications on the basis of family and domestic abuse. Experts from the domestic violence sector around Australia should be consulted to inform this because each state has different laws which dictate when judicial or police evidence is able to be obtained. For example, in New South Wales, it is not possible to obtain an Apprehended Domestic Violence Order (protection order) for financial abuse in the absence of physical violence, so it would be inappropriate to request evidence of a court order or police complaint as a standard procedure.

We would welcome the opportunity to meet with you to discuss our submission.

Yours faithfully,  
REDFERN LEGAL CENTRE

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CEO

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