



Submissions to the

Joint Committee on Corporations and Financial Services

INQUIRY INTO FINANCIAL SERVICES REGULATORY FRAMEWORK IN
RELATION TO FINANCIAL ABUSE

June 2024

About Us

Villamanta Disability Rights Legal Service Inc. (**Villamanta**) has been providing advocacy and legal services to people with disability since 1990. We are funded to provide advocacy under the National Disability Advocacy Program, NDIS Appeals and the National Legal Assistance Partnership Agreement.

Villamanta engages in the following activities which inform this submission:

- **Telephone Information Service** – our intake team receives around 2,000 contacts per year from people with disability seeking assistance.
- **Advice calls** – our legal team provide discrete advice to over 150 people with disability per year.
- **Casework** – we provide representation to individuals, most of whom have a cognitive impairment, some of whom have or are experiencing financial abuse.

Contact

Naomi Anderson, Legal Practice Manager

naomi.anderson@villamanta.org.au

0481 091 061

Contents

Prevalence and impact of financial abuse for people with disabilities.....4

The impact of the shift of financial products to online platforms4

Financial institutions’ role in financial abuse of people with disabilities.....5

Improved training for financial institution employees.....6

Funding of advisory and advocacy bodies6

Prevalence and impact of financial abuse for people with disabilities

The financial abuse of people with cognitive impairment is a priority area for Villamanta. In the past 12 months, we have received enquiries or provided advice to 43 people about financial abuse, and we were able to assist 10 people on a casework basis with their financial abuse related legal issues.

Financial abuse of people with disability (**PWD**) is often part of a pattern of family violence. We know that PWD are at a higher risk of experiencing family violence and are more likely to be survivors of family violence, including financial abuse. There is very limited data available about the prevalence of financial abuse in general, and in particular for PWD. The most recent reliable data shows that PWD were significantly more likely to experience financial abuse than people without disability. This data was limited to abuse from a cohabiting partner; in our experience the problem is much broader than this.¹

People with disabilities, and in particular people with cognitive disabilities, are at a greater risk of financial abuse due to their dependence on family members or carers, infantilisation of the PWD by their family members, and lack of accessible services or information to seek help. Often PWD may take some time to understand the behaviour they are experiencing is abusive, or realise the financial detriment they have suffered.

In our experience, many family members of people with cognitive disabilities believe that they have the authority or responsibility to control the PWD's finances well beyond them reaching legal adulthood.

Financial abuse can severely limit a PWD's independence and right to make choices about their own lives. It makes PWD more vulnerable to other types of abuse as they are made financially dependent on abusive or controlling family members or carers and this limits their ability to escape from abusive situations.

The impact of the shift of financial products to online platforms

The shift to online services has multiple impacts for PWD. For those with physical access difficulties, online services can be highly preferable.

For PWD with cognitive impairments, the necessity of support to use online banking, can open the door to abuse due to other people being able to access their login information.

¹ Australian Government, 'Family, domestic and sexual violence: People with disability', *Australian Institute of Health and Welfare* (Web Page, 12 April 2024) <<https://www.aihw.gov.au/family-domestic-and-sexual-violence/population-groups/people-with-disability#data>>.

Recommendation: *Financial institutions should ensure that their customers can receive banking services that are accessible to them. This could include support to understand how to use online banking, facial recognition or other alternative logins, or access to in person banking options.*

Financial institutions' role in financial abuse of people with disabilities

Financial institutions have taken an inconsistent approach to dealing with potential financial abuse for PWD, at times failing to prevent financial abuse or respond to indications that it could be occurring.

Abuse by administrator or attorney

Where a PWD has requested that they have a new administrator appointed, banks have not always applied the new order in a timely manner. This can allow financial abuse to continue, and in fact escalate as the abuser realises the window is closing on their access to the PWD's finances. Likewise, if a Power of Attorney has been revoked and another created, with the intention of ceasing financial abuse by attorney, banks can take more time than seems necessary to make the relevant adjustments to their records.

We are aware that the Australian Law Reform Commission Report Elder Abuse – A National Legal Response recommends that a national register be established for enduring power of attorney instruments.² We concur with this recommendation and also recommend that it be extended to administration orders, which would ensure that banks have up-to-date information in circumstances where there is a risk of financial abuse of a PWD.

Recommendation: Establish a national register for financial administration orders which financial institutions can consult.

Transition of child accounts to adult account holder

In our experience, financial institutions can also fail to take appropriate action to ensure they have authority from the account holder when a child account holder attains legal adulthood.

Case Study

When Beth was a child, her mother set up a bank account for her. When she turned 18, the financial institution failed to seek her authority about what should happen with the account now that she was an adult. Instead, Beth's mother continue to have control and access to the account into which her fortnightly Disability Support Pension (DSP) was paid into. Beth was never aware of this account and never had access to her DSP income which was withdrawn by her mother. Over the course of a decade all of Beth's money was taken by her mother, while Beth was kept completely dependent on her.

² Australian Law Reform Commission, *Elder Abuse – A National Legal Response* (Report No 131, May 2017) 181.

Improved training for financial institution employees

As financial institutions are currently often not recognising and preventing instances of financial abuse, mandatory staff training for all frontline staff and staff who are overseeing transactions is essential. Currently it seems there is great inconsistency in staff training on recognising the signs of financial abuse and their awareness of policies and procedures on what to do if they suspect financial abuse. National training standards are needed with financial institutions being held accountable for meeting these standards.

In particular, these training standards should be informed by supported decision making principles and highlight the presumption of capacity. Supported decision making allows PWD to exercise their autonomy and independence in financial matters with the support they need, without recourse to more formal legal methods like administration orders.

Recommendation: Introduce national training standards for financial institution employees with mechanisms to ensure accountability. The training should include principles of supported decision making.

Funding of advisory and advocacy bodies

Additional funding should be provided to advocacy and advisory organizations, including community legal services, for them to assist people with financial abuse legal matters, as well as provide free community education on recognizing and addressing financial abuse.

Education on this issue and access to free legal assistance is particularly important for PWD experiencing financial abuse as they are often isolated and dependent on the perpetrators of abuse. A community legal service like Villamanta which focuses on assisting people with cognitive disabilities and has financial abuse as one of its priority areas is ideally placed to provide such legal assistance and targeted education programs to PWD.

Recommendation: Provide additional funding for relevant advisory and advocacy services, including community legal services, to assist people with financial abuse legal matters and provide community education, including for PWD.