

Episode 46: Summary

Episode name: Behind Closed Doors: The Insidious Challenge of Financial Abuse

Guest(s): Laura Bianchi (LB) and Julian Charters (JC)

What area(s) of law does this episode consider? Financial abuse and the government's response through legislative changes to the National Credit Code and the Banking Code of Practice.

Why is this topic relevant? Financial abuse, also known as economic abuse, is the perpetration of abuse, often by a spouse or partner, through exerting control over the finances and financial resources of the other partner. Perpetrators of financial abuse aim to make their partner completely reliant on them financially in order to control their behaviour.

Financial abuse is known for being particularly difficult to identify as it often requires a deeper understanding of what is going on in a relationship to understand how financial decisions are being made and whether coercion is taking place. Sometimes, victim survivors themselves are not aware that they are suffering financial abuse. Those facing multiple layers of disadvantage and/or without the financial means to support themselves are often excluded from appropriate pathways of redress and support to address both the legal and non-legal needs that are common of victim survivors of financial abuse.

The Redfern Legal Centre's Financial Abuse Service seeks to provide free legal advice and support to those experiencing financial abuse in New South Wales. Through the sponsorship of corporate partners such as AMEX Australia, RLC is given the resources to help combat financial abuse and restore financial independence to victim survivors.

What legislation is considered in this episode?

National Consumer Credit Protection Act 2009 (Cth) ('National Credit Code')

Fines Act 1996 (NSW)

Crimes Personal and Domestic Violence Act 2007 (NSW)

Family Violence Protection Act 2008 (Vic)

What cases are considered in this episode?

In a prepared case study for this episode, we explore financial discuss the fictional case of Laila and Adrian. Our Case Study is based on various cases and is not intended to bear a resemblance to any real person's case or experience. You can read the case study in full in the transcript for this episode.

Through Adrian and Laila's case study, we explore the issues and remedies concerning:

- consumer credit, such as a car loan Adrian forces Laila to obtain, including responsible lending obligations under the *National Credit Code* and the availability of internal and external dispute resolution options
- the availability of protection orders to victims of financial abuse
- debts owed to state revenue authorities, such as traffic fines, and how these can be addressed in circumstances of financial abuse.

What are the main points?

- The issues that arose in the findings from the 2019 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry has led to the creation of new design and distribution obligation (or DDO) laws as part of ASIC's regulatory guide 274. Under these provisions, issuers will need to make a target market determination (TMD) and identify for which consumers their products are suitable. Once the TMD has been reached, the credit provider needs to ensure that distributors are making that financial product available consistently with the credit providers' TMD.
- The National Credit Code requires credit providers to assess whether a facility is 'not unsuitable' for an individual which involves a subsequent process of: 1) suitability, and 2) verification.
- Section 130 of the *National Consumer Credit Protection Act 2009* (Cth) places an onus on credit providers to make 'reasonable inquiries' about a consumer's requirements and objectives in seeking a loan. This provision is heavily used at the RLC Financial Abuse Service to hold creditor providers accountable for facilitating financial abuse.

What are the practical takeaways?

- Online credit provider processes facilitate financial abuse as there is a lack of human connection that would alert a distributor to the possibility of financial abuse. ASIC Regulatory Guide 209 supports this approach and even includes an example of financial abuse to alert credit providers to its operation.
- Victim survivors of financial abuse often don't know they are being abused themselves, making it even more difficult for lenders or other service providers to offer support and assistance.
- NSW is currently the only Australian state or territory that doesn't legally recognise economic/financial abuse as a form of family violence.

Show notes

[AFCA Approach to joint facilities and family violence](#) (PDF download)

[ASIC Regulatory Guide 209](#) (PDF download)

[ABA Industry Guideline – Preventing and responding to family and domestic violence](#) (PDF download)