Falling through the gaps

Comparing Australian and United Kingdom responses to coerced debt

Claudia Robinson — JUSTICE FELLOW

JUSTICE IDEAS

ABSTRACT

Financial abuse is a form of family and domestic violence. It is a sub-category of "economic abuse", which takes a broader view of the financial resources that could be used to harm a person including altering their access to or enjoyment of transport, housing, employment and education. In contrast, financial abuse focuses specifically on the misuse of monetary and financial resources that can be used to inflict harm on a person. A common form of financial abuse is "coerced debt", where the perpetrator threatens or otherwise coerces a person into taking on debt in their name for the benefit of the perpetrator only. This can also occur where the perpetrator has access to a person's identity documents and takes out the loan in their name, without their knowledge. Traditionally, this abuse occurs in the domestic sphere and thus is outside the traditional remit of banks, loan providers and banking services. The banking industry is in a unique position to prevent and address this form of financial abuse given their necessary presence in the management of finances. This article aims to contribute to the legal scholarship examining what laws govern coerced debt, examine what remedies are available to victim-survivors, and to provide suggestions for law reform to better protect victim-survivors of financial abuse in recovering and reclaiming their lives. In order to do so, this article compares and contrasts the remedies available to victim-survivors in the United Kingdom to those available in Australia through the respective financial ombudsman systems.

Robinson C. (2026) Falling through the gaps: Comparing Australian and United Kingdom responses to coerced debt, Justice Ideas Vol 2025(2). Sydney: Law and Justice Foundation of NSW.

ISSN: 2982-3951

This publication was developed as part of the 2025 Law and Justice Foundation of New South Wales Justice Fellowship Program. The project was undertaken with funding and support from the Foundation. The views expressed in this publication are those of the author and do not necessarily reflect the views of the Foundation. The Foundation supports the dissemination of independent research and encourages robust debate to advance access to justice.

SUPPORTED BY

LAW AND JUSTICE FOUNDATION OF NEW SOUTH WALES

INTRODUCTION

In April 1890, Michael Barry stood trial in Queensland for the murder of his wife, Mary Barry. The material facts were not in dispute: after subjecting his wife to a violent beating over several hours resulting in her death, Barry attended the local police station and made a full confession to her murder.[1] His legal counsel called no witnesses in his defence.[2] Instead, Barry relied on the assertion that his wife had stolen a purse containing £5 from him as a defence to her murder. The purse was later found on the ground outside the home by a neighbour.[3] Despite the clarity of the evidence and Barry's confession, the jury deliberated for almost seventeen hours. At the time, the legal doctrine of coverture operated, which stripped women of their individual rights and merged her identity with that of her husband. Within this framework, a wife's appropriation of her husband's money (as all her own money and property was forfeited to her husband on marriage) could be characterised as theft. During this period, theft of this nature could be treated as a form of provocation and used as a justification for violence and murder towards wives attempting to exert any form of economic independence. Justice Mein, who presided over the Barry trial, directed the jury that a failure to convict on the charge of murder would constitute an "infamous betrayal" of their oaths after the jury was unable to come to a unanimous decision after several hours of deliberations.[4] Barry was ultimately convicted of murder and executed.[5] This outcome was exceptional for its time: many men tried for the killing of their wives under similar circumstances were acquitted or convicted of lesser offences, such as manslaughter, on the basis of a form of financial or domestic provocation.[6]

These cases illustrate not only legal tolerance for economic abuse, but its normalisation within intimate partner relationships. Male financial control was legally sanctioned and deviations from that control by women could be framed as criminal or blameworthy. Coverture has been formally abolished in both Australia and the United Kingdom. However its underlying assumptions – that men are the natural decision-makers in financial matters and that their partners implicitly consent to this control – continue to shape contemporary legal and institutional responses to financial abuse. These assumptions remain particularly visible in the modern treatment of coerced debt, where liability is typically assessed through the formal appearance of consent and the signature on a contract rather than considering the realities of power imbalances, dependency, and coercion that can occur within intimate partner relationships.

Coerced debt is a form of financial abuse in which a person is pressured, manipulated, or threatened into incurring financial obligations such as loans for the benefit or control of the perpetrator, often an intimate partner.[7] Common examples include coercing the victim-survivor into signing contracts for car loans, credit cards or mobile phones in their own name,

1 R v Michael Barry, (24 April 1890), Item ID 3530, Queensland State Archives.

2 'The West-street murder,' Morning Bulletin, (25 April 1890).

3 Alana Piper, 'Understanding Economic Abuse as Domestic Violence' in Alana Piper and Ana Stevenson (eds), Gender Violence in Australia: Historical Perspectives (Monash University Publishing, 2019) 35.

4 'The West-street murder,' Morning Bulletin, (25 April 1890).

5 Alana Piper, 'Understanding Economic Abuse as Domestic Violence' in Alana Piper and Ana Stevenson (eds), Gender Violence in Australia: Historical Perspectives (Monash University Publishing, 2019) 35.

6 See, for example, the conviction of Thomas William Browning of manslaughter despite significant witness testimony, reported in 'Central Criminal Court', The Age (Melbourne, 17 June 1884) 7.

7 Adrienne E Adams et al, 'Development of the Scale of Economic Abuse' (2008) 14(5) Violence Against Women 563, 564

with the perpetrator retaining exclusive use of the car, credit card or phone.[8] Coerced debt through fraud, for example applying for credit cards or other loans in the victim-survivor's name without their knowledge, is unfortunately also common. Perpetrators typically have access to the victim-survivor's identity documents and may also be intercepting their post/emails, monitoring personal devices or restricting them from accessing their personal financial information altogether.[9] Perpetrators can coerce victim-survivors into taking on debt in several ways: they may manipulate the victim-survivor into taking out the debt by framing the debt as a proof of loyalty or love, or threaten physical violence (either to themselves, the victim-survivor, or others) if the victim-survivor does not take out the debt.[10] In some instances therefore, the victim-survivor may be aware of the financial abuse (although they may not be aware that this is financial abuse), but be unable to practically prevent the coerced debt as they perceive that it would be unsafe or dangerous for them to challenge the perpetrator. This can make prevention of coerced debt particularly difficult, as outwardly the victim-survivor may appear to be consenting at the time of entering into the debt with no way to safely communicate the element of coercion they are facing.

Despite increasing recognition of financial abuse within domestic and family violence frameworks, the legal system in Australia is struggling to effectively address instances of coerced debt.[11] Historically, family violence was considered a private matter that fell outside the scope of valid state regulation.[12] Since the 1970s, feminist activism has thrust domestic violence out of the private sphere and into the public sphere to be regulated by law.[13] While physical domestic violence and its impacts have been researched for decades, the Australian Bureau of Statistics[14] only began recording statistics in relation to financial abuse in the 2021-2022 reference period.[15] This data recorded that 11.5% of Australians overall, 15.7% of women and 7.8% of men specifically, have experienced economic abuse at the hands of an intimate partner since the age of 15.[16] There is no data on the prevalence of coerced debt as a specific subcategory of economic abuse in Australia - this data is based on questions about five types of economically abusive behaviours unrelated to coerced debt.[17] Similarly, recent 2025 survey data shows that roughly 4% of women in the United Kingdom experienced coerced debt in an

8 Evgenia Bourova, Ian Ramsay and Paul Ali 'Limitations of Australia's Legal Hardship Protections for Women with Debt Problems caused by Economic Abuse' UNSW Law Journal 42(4) (2019), 1148

9 Clare Wiper and Jenn Glinski, 'The Role of Banks in Addressing and Preventing Coerced Debt in the Context of Intimate Partner Abuse' (2025) British Journal of Criminology 4

10 Clare Wiper and Jenn Glinski, 'The Role of Banks in Addressing and Preventing Coerced Debt in the Context of Intimate Partner Abuse' (2025) British Journal of Criminology 4.

11 Including, for example, the Australian Government's National Plan to End Violence against Women and Children (2022).

12 Evgenia Bourova, Ian Ramsay and Paul Ali 'Limitations of Australia's Legal Hardship Protections for Women with Debt Problems caused by Economic Abuse' UNSW Law Journal 42(4) (2019), 1146

13 Evgenia Bourova, Ian Ramsay and Paul Ali 'Limitations of Australia's Legal Hardship Protections for Women with Debt Problems caused by Economic Abuse' UNSW Law Journal 42(4) (2019), 1146.

14 The Australian Bureau of Statistics or "ABS" is Australia's national statistical agency that compiles key statistics to inform government and policy decision making.

15 Australian Bureau of Statistics, Partner Economic Abuse (Web Page, 2021–22) <https://www.abs.gov.au/statistics/detailed-methodology-information/concepts-sources-methods/personal-safety-survey-user-guide/2021-22/partner-economic-abuse> [accessed 17 January 2026].

16 Australian Bureau of Statistics, Partner Violence (Web Page, 2021–22) <https://www.abs.gov.au/statistics/people/crime-and-justice/partner-violence/latest-release> accessed 17 January 2026.

17 Ruth Glenn and Jess Kutin, Economic Abuse in Australia: Perceptions and Experience (Report, Centre for Women's Economic Safety, 2021) 6. <https://www.cwes.org.au/publications-submissions/> [accessed 17 January 2026].

intimate relationship setting in the previous 12 months.[18] Notwithstanding that coerced debt remains overall an under-researched form of financial abuse, it affects millions of people in both Australia and the United Kingdom.

The consequences of coerced debt are enormous for victim-survivors. Among women in the United Kingdom who experienced economic abuse, 24% (equivalent to nearly one million women) reported that the abuser damaged their credit score by taking out credit, running up debts in their name, or interfering with repayments of loans.[19] While this figure reflects economic abuse broadly rather than coerced debt specifically, it illustrates the scale of credit-related harm experienced by victim-survivors of intimate partner abuse in the UK. A poor credit score can prevent a person from accessing further credit, and may be taken into account when attempting to access essential services such as housing.[20] For some victim-survivors, the lack of ability to access further credit (for example, to buy a new car to go to work after the perpetrator took or destroyed theirs), made it more difficult to rebuild their lives after the abuse they endured.[21] A victim-survivor can ask a credit reporting body or a lender to remove defaults and other listings from their credit score that was incurred as a result of the financial abuse. Depending on the circumstances, a poor credit score may be seen as a "technically correct" portrayal of the victim-survivor's creditworthiness. In these circumstances, credit reporting bodies and lenders may refuse to remove defaults.[22] Other impacts of coerced debt include homelessness where victim-survivors have mounting debt and no way to pay. Additionally, for larger amounts of debt over $10,000, victim-survivors could be forced into bankruptcy for credit and loans from which they received no benefit.[23]

Given the serious consequences for victim-survivors of coerced debt, it is necessary to have robust policies and laws in place to prevent these harms. Contemporary legal responses to financial abuse in Australia are presently not advanced enough to effectively prevent or remedy coerced debt. Banking regulation and laws also do not place any meaningful responsibility on banks to prevent, intervene or provide remedies in cases where coerced debt is suspected or substantiated.

This article will examine coerced debt and the current legal responses in Australia and the United Kingdom, and provide options for law reform to better protect victim-survivors in rebuilding their lives after coerced debt and financial abuse.

A note on the difficulties with defining and contextualising "coerced debt"

One of the biggest challenges with identifying potential coercive debt is the importance of the context. Some behaviour may be neutral or a couple's agreed partner dynamic in one situation

18 Wilson-Garwood, R., (2025), Counting the Cost: The Scale and Impact of Economic Abuse in the UK, London: Surviving Economic Abuse and Ipsos UK.

19 Wilson-Garwood, R., (2025), Counting the Cost: The Scale and Impact of Economic Abuse in the UK, London: Surviving Economic Abuse and Ipsos UK.

20 It is common for landlords and real estate agents to request a copy of a prospective tenant's credit report.

21 Clare Wiper and Jenn Glinski, 'The Role of Banks in Addressing and Preventing Coerced Debt in the Context of Intimate Partner Abuse' (2025) British Journal of Criminology 1, 4.

22 McKay White, 'Access to Justice for Victims of Economic Exploitation' (2024) 61:3 Alberta Law Review 549, 555.

23 Controversially, Part 4 Section 10A of the Bankruptcy Regulations 2021 (Cth) currently sets the prescribed statutory minimum at $10,000 to force a debtor into bankruptcy. Many consumer advocates say this amount is far too low for the realities of the economic systems in Australia.

and abusive in another.[24] For example, one partner may have a worse credit score than the other and the partner with the better credit score consents to taking out a loan in their name for their partner's benefit with the agreement that the partner benefiting from the loan repays it. Or one partner may pay all of the bills directly from their bank account, so a large portion of their partner's pay is transferred to their partner's account each time they receive pay. On the face of it, this could be a potential occurrence of financial abuse but in reality this is the agreed way for the bills to be paid for the convenience of both partners. The difference in these scenarios is that both parties have agreed freely to this arrangement, and had the ability to disagree without fear of violence or other retribution from their partner. In situations of financial abuse, the victim-survivor is not in a position to say "no" for fear of violence, threats, and other forms of retaliation from the perpetrator.

Another difficulty with identifying coerced debt is that it can be obvious in some circumstances where the victim-survivor hasn't benefitted from the debt, but in other cases this can be extremely difficult. In a separate United Kingdom study on coerced debt, an interviewed member of the banking industry explained initially they believed the customer to have benefitted from the personal loan she received for a tattoo, only to discover that her abusive partner forced her to get his name tattooed on her arm to further exert control over her.[25] This paper will focus on actual instances of coerced debt, but recognises that not every situation involving coerced debt is clear, which contributes to the difficulty of regulating this form of debt in the banking industry.

Existing Australian civil law frameworks addressing coerced debt

There is limited Australian academic and policy literature examining the civil law remedies for coerced debt, reflecting the historical under-recognition of financial abuse. Existing laws provide some relief for financial abuse, but have not been tailored to address coerced debt specifically. As such, there is a patchwork of laws that do not adequately remedy coerced debt or do not apply consistently to all situations involving coerced debt. The legal framework of responsible lending governed by the National Consumer Credit Protection Act 2009 (Cth) ("***NCCP Act***") and the financial hardship framework governed by the National Credit Code ("***NCC***")[26] can both be used in situations of coerced debt, although this was not its designed purpose.

The NCC provides that consumers struggling to make repayments on debts administered by banks and other financial institutions are entitled to apply for "financial hardship". Financial hardship is a legal right to ask lenders for leniency and for consumers to propose alternative arrangements where they are finding it financially difficult to repay their debts. Consumers may ask a lender to vary the contract in several ways, such as pausing or reducing payments for a set amount of time, waiving interest payments, and/or capitalising arrears.[27] While these financial hardship provisions may be helpful to consumers in some circumstances, they

24 Ruth Glenn and Jess Kutin, Economic Abuse in Australia: Perceptions and Experience (Report, Centre for Women's Economic Safety, 2021) 11. <https://www.cwes.org.au/publications-submissions/> [accessed 17 January 2026].

25 Clare Wiper and Jenn Glinski, 'The Role of Banks in Addressing and Preventing Coerced Debt in the Context of Intimate Partner Abuse' (2025) British Journal of Criminology 1, 12.

26 National Credit Code, sch 1 to National Consumer Credit Protection Act 2009 (Cth).

27 Evgenia Bourova, Ian Ramsay and Paul Ali 'Limitations of Australia's Legal Hardship Protections for Women with Debt Problems caused by Economic Abuse' UNSW Law Journal 42(4) 2019, 1149; The legal frameworks containing these protections are analysed in Paul Ali, Evgenia Bourova and Ian Ramsay, 'Responding to Consumers' Financial Hardship: An Evaluation of the Legal Frameworks and Company Policies' (2015) 23(1) Competition and Consumer Law Journal 29 ('Responding to Consumers' Financial Hardship').

anticipate temporary hardships such as temporary unemployment or an illness that can be recovered from within, at most, a few months. Lenders also retain a significant amount of discretion in determining whether a hardship variation is to be granted, especially if they do not believe there is a "reasonable" cause for the consumer's inability to repay the loan, or if they reasonably believe that the consumer could not meet their payment obligations even if their repayments were to be paused or reduced for a time.[28] None of the financial hardship protections available to consumers in Australia require creditors to waive, or to even consider waiving, a debt in any circumstances; even where domestic violence or the debt being taken out via coercive means has been proven. Additionally, victim-survivors often find it difficult to navigate these systems which are not designed to address the particular type of harm they have faced, as their process of regaining financial stability is lengthy in comparison to time off work for a temporary illness.[29]

Responsible lending is another legal obligation where victim-survivors may receive some recourse. In accordance with responsible lending, the NCCP Act provides that creditors must ensure credit products (such as personal loans and credit cards) are not "unsuitable" for consumers. To ensure this, creditors must verify a consumer's financial situation, assess affordability and ensure the loan would not cause substantial financial hardship if the consumer was able to meet their regular repayments. However, even where a consumer is able to demonstrate that a creditor has not met their responsible lending obligations, the available remedies do not necessarily extinguish the debt on the basis that they received the benefit of the loan or credit. The usual response is that the consumer is still required to repay the initial amount of money they borrowed (known as the "principal"), but is entitled to a waiver of any interest and fees that were incurred on the loan. This outcome is ill-suited to cases of coerced debt, where the victim-survivor has not freely consented to the loan and therefore has derived no meaningful benefit from the loan, but they would still be required to pay back some money towards the loan.

The above financial hardship and responsible lending provisions can be accessed by a victim-survivor where it is solely their name on the loan, or also in situations where they share the loan with their perpetrator. However, in cases where both the victim-survivor and perpetrator's name is on the loan, it is important to note that the legal principle of joint and several liability means that both are equally liable for the entire debt regardless of the levels of benefit, contributions made by each partner, or the circumstances in which the debt was incurred.[30] In the context of financial abuse, this means that a victim-survivor may be held fully liable for a joint loan taken out under coercion, even where the perpetrator exercised control over the application process, received the substantial benefit of the funds, and was the primary decision-maker. This was recently examined by the 2016 Royal Commission into Family Violence that ultimately concluded that there is currently no clear legal recourse for joint debt incurred in the context of family violence and coercion.[31]

28 Evgenia Bourova, Ian Ramsay and Paul Ali 'Limitations of Australia's Legal Hardship Protections for Women with Debt Problems caused by Economic Abuse' UNSW Law Journal 42(4) (2019), 1152

29 Evgenia Bourova, Ian Ramsay and Paul Ali 'Limitations of Australia's Legal Hardship Protections for Women with Debt Problems caused by Economic Abuse' UNSW Law Journal 42(4) (2019), 1149

30 Evgenia Bourova, Ian Ramsay and Paul Ali 'Limitations of Australia's Legal Hardship Protections for Women with Debt Problems caused by Economic Abuse' UNSW Law Journal 42(4) (2019), 1148

31 Royal Commission into Family Violence, Report and Recommendations, vol IV, Parliamentary Paper No 132, Session 2014–16, State of Victoria, (2016), 105.

Where a person would like to raise a dispute about their lender in relation to a financial hardship or responsible lending complaint, the best jurisdiction for this is the financial services ombudsman: the Australian Financial Complaints Authority ("AFCA"). In contrast to a court, AFCA is a free, consumer friendly dispute resolution process designed to provide accessible and informal resolution of disputes between consumers and lenders. All entities with a financial services licence who provide consumer loans are required to be a member of AFCA, ensuring that most lenders will fall within its jurisdiction. In the context of financial hardship, AFCA can review a creditor's decision to decline a hardship variation under the NCCP Act. Where appropriate at its discretion, AFCA may require a lender to vary repayment terms, reduce or waive interest and fees, or otherwise adjust the contract. However, AFCA's powers remain constrained by the statutory framework of the NCCP Act and the nature of the credit contract itself. It cannot reallocate liability between joint debtors, require banks to consider whether a consumer is being subjected to financial abuse, or fundamentally rewrite contractual relationships beyond the scope permitted by the NCCP Act. As a result, while AFCA provides an important and accessible avenue for relief, its remedial powers are structurally limited in cases of coerced debt, which will be explored in the table further below.

Consequently, the current interaction between financial hardship protections, responsible lending obligations and joint and several liability creates a significant protection gap: even where the debt arises in circumstances of financial abuse, the victim-survivor may remain legally liable for repayment of the principal debt, thereby entrenching the financial consequences of coercion rather than alleviating them. While AFCA is a cost-effective alternative to a court that is more accessible for victim-survivors, it is limited by the confines of the Australian credit law framework.

United Kingdom civil law frameworks for addressing coerced debt

In the United Kingdom, coerced debt is explicitly recognised as a form of economic abuse under domestic violence law and policy.[32] Specifically, "economic abuse" is defined as "any behaviour that has a substantial adverse effect on [person] B's ability to)— (a) acquire, use or maintain money or other property, or (b) obtain goods or services."[33] As a result, economic abuse is legally recognised and considered a form of domestic violence. However, this does not translate to an underlying protection from financial abuse, nor does this include remedies where financial abuse has occurred. Similar to Australia, there is instead a patchwork of legal protections, financial industry guidelines, frameworks and discretionary creditor policies and responses that impact how coerced debt is recognised and addressed.

Like Australia, there is no legal recourse to sever joint liability for a debt without obtaining the perpetrator's consent or a court order; meaning that victim-survivors can be pursued for the entire amount of the debt regardless of whether they received any benefit from the loan.[34] In addition to the above legislation, there are several regulatory frameworks that refer to coerced debt.[35] The Financial Conduct Authority's Consumer Duty, which came into force in July 2023, imposed mandatory obligations on lenders to deliver "good outcomes" for all their

32 https://www.gov.uk/government/publications/public-sector-toolkits/economic-abuse-toolkit-html

33 Domestic Abuse Act 2021 (UK) c 17, s 1(4).

34 Clare Wiper and Jenn Glinski, 'The Role of Banks in Addressing and Preventing Coerced Debt in the Context of Intimate Partner Abuse' (2025) British Journal of Criminology 1, 5.

35 Clare Wiper and Jenn Glinski, 'The Role of Banks in Addressing and Preventing Coerced Debt in the Context of Intimate Partner Abuse' (2025) British Journal of Criminology 1, 14.

customers, including to "avoid causing foreseeable harm"[36] This rule has been interpreted so that even where there is no consumer law or other legislation to rely on, the lender still has a duty to protect consumers from ongoing economic abuse and coercion.[37] This is further supplemented by the United Kingdom's Financial Abuse Code which was recently updated in 2025. This is a voluntary code of practice that encourages member financial firms to identify and respond to financial abuse, including coerced debt. However, as a voluntary instrument, its effectiveness depends on the discretion of the financial firm rather than a set of enforceable rights consumers can rely on. A major difference between Australia and the United Kingdom's financial abuse framework is that lenders are required to waive debt taken out via coercive means if it can be demonstrated that they knew or should have known that the consumer was being coerced into the transaction.[38]

The Financial Ombudsman Service ("FOS") is the United Kingdom's equivalent of AFCA: a financial ombudsman with the power to adjudicate disputes between consumers and their lenders. As an independent statutory dispute resolution body, the FOS has jurisdiction to investigate complaints made by consumers against regulated financial services providers, including banks and non-banking credit providers. The FOS is required to determine complaints according to what is "fair and reasonable in all the circumstances of the case"[39], similar to the standard of AFCA. The FOS has increasingly recognised economic abuse and coerced debt as a unique form of harm and requires lenders to consider the presence of such behaviour. For example, in one case it ordered compensation to be paid where a broker recommended a woman take out a joint loan with her husband, in order to consolidate debts only in her husband's name, noting that the broker should at a minimum have required the wife to obtain independent legal advice.[40] While both FOS and AFCA have a similar decision-making standard and similar investigatory powers, FOS's willingness to scrutinise the role of lenders and brokers in facilitating loans where coercive control may be involved has led to better protections and outcomes for vulnerable consumers. The decision-making outcomes of the respective ombudsmen are compared below.

Comparison of AFCA and FOS decisions involving coerced debt

As a part of this research, a review of AFCA and FOS decisions between 1 January 2023 and 1 January 2026 was undertaken where the complainant made allegations of financial abuse perpetrated by a current or former intimate partner in relation to a mortgage, buy now pay later services, a personal or motor vehicle loan, or banking transactions. The keywords "financial abuse", "coercion" and "partner" were used to identify potentially relevant decisions. With these keywords, 22 relevant decisions of the FOS and eight relevant decisions of AFCA were identified. Given the modest number of published decisions identified, the comparison below should be read as an illustrative analysis of decision-making patterns rather than a statistically representative sample of ombudsman practice.

36 FCA 2022: 5

37 Clare Wiper and Jenn Glinski, 'The Role of Banks in Addressing and Preventing Coerced Debt in the Context of Intimate Partner Abuse' (2025) British Journal of Criminology 1, 6.

38 Clare Wiper and Jenn Glinski, 'The Role of Banks in Addressing and Preventing Coerced Debt in the Context of Intimate Partner Abuse' (2025) British Journal of Criminology 1, 13.

39 Financial Ombudsman Service, 'How We Make Decisions' (Web Page) https://www.financial-ombudsman.org.uk/who-we-are/make-decisions [accessed 12 March 2026].

40 Financial Ombudsman Service (UK), Mrs A v Intelligent Lending Ltd trading as Ocean (Decision, DRN-5848621, 2025.

It is important to note an additional limitation of this research was that neither AFCA nor FOS publishes their recommendations if the matter does not go on to a determination, nor is there any publication made when the parties are able to reach an agreed settlement prior to the matter being escalated for a final binding determination. Therefore, in practice, a consumer may be able to access relief through negotiation with the creditor, but how often this happens and on what basis is unable to be assessed. Even where decisions are published, evidence submitted by the complainant and the lender is not included. While the Ombudsman may reference evidence submitted by each party, there is no ability to review any evidence to determine a "threshold" or similar as to the quality of the evidence produced and the bearing this has on an outcome.

Table 1: Comparison of AFCA and FOS decisions involving coerced debt

Analytical feature	AFCA (Australia)	FOS (United Kingdom)
Decision-making standard	What is fair in all the circumstances, having regard to legal principles, applicable industry codes or guidance, good industry practice, previous relevant determinations of AFCA or predecessor schemes.[41]	What is fair and reasonable in all the circumstances, also taking into account the law, codes and good practice that applied at the time of the event.
Does relief depend on the lender's knowledge (knew or ought to have known)?	Yes	Yes
Principal debt waived	No	Yes, generally where the lender knew or ought to have known of the financial abuse, but occasionally in other exceptional circumstances.
Interest/fees waived	Yes, where it is found a lender has not met their responsible lending principles.	Yes, where the lender knew or ought to have known of the financial abuse or the lender did not meet their responsible lending requirements.
Credit file correction available	Yes	Yes
Liability reallocated to perpetrator	No	No
Relief most often linked to...	Responsible lending principles not being met.	Whether the lender knew or ought reasonably to have known of the financial abuse.

The above table summarises the main points of comparison between AFCA and the FOS. The main difference discernible between how AFCA and the FOS approach decision-making is that the FOS will consider waiving the principal debt in addition to interest and fees where it considers in the circumstances the lender knew or ought reasonably to have known about the financial abuse. The FOS may also waive the principal debt in other exceptional circumstances, including where the poor conduct of the lender has exacerbated the situation or the victim-

41 Australian Financial Complaints Authority, How AFCA Makes Decisions (Web Page) <https://www.afca.org.au/about-afca/what-we-do/how-afca-makes-decisions>

survivor can demonstrate they received no benefit from the loan.[42] Based on the applicable determinations, this does not appear to be an outcome AFCA would consider, absent of a breach of responsible lending principles.

AFCA's Approach to Family Violence factsheet[43] states that:

> ***"Financial firms should do all they reasonably can to prevent financial abuse"[44];*** and
>
> ***"If the financial firm was or should have been aware of financial abuse at the time of lending, it should release the customer from liability for any portion of the debt that did not benefit them, and amend their credit report, if needed."[45]***

However, there are currently no suggestions of any standards against which a lender's consideration of financial abuse can be assessed. By contrast, lenders are routinely expected to obtain and review documents such as bank statements, payslips, and other evidence of a consumer's financial circumstances when complying with responsible lending obligations. Consequently, where a lender has failed to undertake these inquiries, there is generally a stronger basis for arguing that it did not meet the required standard of conduct. However, given this document was only recently updated at the end of 2025, it is premature to assess its impact on AFCA determinations involving coerced debt. While this document is a step in the right direction, clear legislation setting out what is expected of lenders is necessary so consumers can be aware of their rights and their options when they find themselves in a situation of coerced debt.

Legal reform to address coerced debt in Australia/NSW

The fragmented nature of the current consumer credit legal frameworks in Australia mean that victim-survivors of financial abuse and domestic violence often face significant barriers to obtaining relief from coerced debt. Without a coherent legal framework to address this, victim-survivors may remain liable for debts from which they received no benefit, further perpetrating their economic insecurity and undermining their ability to leave their abusive relationships. Any proposed legal reforms should consider several core principles. First, coerced debt and financial abuse should be recognised as a distinct form of domestic violence requiring its own system of checks and balances rather than requiring victim-survivors to rely on existing doctrines such as responsible lending. Secondly, it should provide accessible remedies that can be obtained through the AFCA process rather than lengthy court litigation. Thirdly, it should require consistency across all lenders. Fourthly, it must strike a balance between consumer protection and ability to obtain of credit. Finally, it must also call for a trauma-informed approach from all parties involved: lenders, brokers and their authorised representatives as well as the AFCA process. The United Kingdom's approach offers some helpful inspiration: stronger obligations to recognise consumer vulnerability, explicit legislated

42 In Financial Ombudsman Service (UK), Ms L v MotoNovo Finance Ltd (Decision, DRN-5842758, 2025), FOS concluded that while the lender could not have reasonably been expected to have been aware of the financial abuse when Ms L took out the loan, its poor conduct in addressing her complaints and associated delays warranted being directed to waive the debt entirely.

43 Australian Financial Complaints Authority, The AFCA Approach to Family Violence (Approach Document, November 2025).

44 Ibid, 10.

45 Ibid, 11.

recognition of economic abuse as a form of domestic violence, expanded dispute resolution powers, and an ability to enforce full debt waivers.

Although AFCA's revised approach represents a significant step towards recognising coerced debt and providing appropriate remedies for its occurrence, the AFCA Approach to Family Violence is guidance rather than enforceable law. While AFCA can resolve disputes, it cannot comprehensively regulate the banking industry. This requires legal reform to the NCCP Act or relevant industry codes that explicitly recognise financial abuse, requiring screening for indicators of coercion and mandated staff training to identify potential instances of financial abuse and appropriate responses. Additionally, the "benefit" test may be problematic: a car purchased as a result of financial abuse may occasionally have been used by the victim-survivor, for example. It is unclear if this would be seen to be a benefit that would therefore prevent them from accessing a remedy in all of the circumstances. The weaknesses in the current system can be addressed in a myriad of ways, including the explicit recognition of financial abuse in consumer credit law with appropriate redress, mandatory family and domestic violence policies, and a greater emphasis on trauma-informed practice and communications. These options will be explored in more detail below.

Explicit recognition of financial abuse in consumer credit law and statutory remedy for coerced debt

Amending the NCCP Act or introducing new consumer credit legislation to explicitly recognise and define financial abuse in addition to providing appropriate remedies where a loan has been taken out via coercive means, would ensure a clear, consistent enforceable legal standard across all lenders. While AFCA's new approach document states that lenders should take reasonable steps to ensure consumers are not experiencing financial abuse, this is not law. Consumer law must be updated to specifically require lenders to take reasonable steps to be satisfied that the consumer is not experiencing financial abuse.

Mandatory family and domestic violence policies

While banks are generally expected to maintain internal family and domestic violence policies in accordance with industry guidelines published by the Australian Banking Association,[46] other non-banking lenders do not have the same obligations. Many non-bank lenders, buy now pay later providers and other credit providers are not subject to equivalent requirements. These policies should include procedures for identifying and responding to financial abuse, and mandate staff training on the above. While having these policies is not a substitute for law reform, they can complement more robust law and their existence can reassure consumers who may be hesitant to reach out and inform their lender that they are experiencing financial abuse or domestic violence.

Trauma-informed recognition and response policies

Banks and lenders interact with customers at every stage of their financial journey; from the start of the account setup process to everyday communication and dispute resolution. Because these touchpoints are so frequent and often sensitive, institutions must adopt a trauma-informed approach when working with consumers. Without such standardised best

46 Australian Banking Association, Preventing and Responding to Family and Domestic Violence (Industry Guideline, 21 April 2021).

practice principles, the treatment consumers receive will vary between lenders and would undoubtedly expose consumers who are experiencing financial abuse to subpar treatment.[47] How this is realised in practice should be developed in consultation with victim-survivors to ensure any proposed trauma-informed approaches are relevant, supportive and constructive. Co-design with victim-survivors is important for the development of trauma-informed policy resources that are fit-for-purpose and beneficial, and to prevent re-traumatising victim-survivors when they reach out for support.

Meaningful reform will require a shift from reliance on fragmented legal doctrines towards a framework that explicitly recognises coerced debt, promotes early intervention by lenders, and provides accessible and trauma-informed avenues for redress. While existing remedies provide partial avenues for relief, they were not designed with financial abuse in mind, often failing to provide appropriate recourse for victim-survivors of financial abuse. Such reforms would not only improve outcomes for victim-survivors but also enhance consistency, certainty, and fairness within Australia's consumer credit system.

CONCLUSION

The current legal and policy framework in Australia inadequately addresses the harms arising from coerced debt. Existing mechanisms within responsible lending and financial hardship processes accessible through AFCA provide only partial and discretionary relief, frequently leaving victim-survivors legally liable for debts incurred through coercion and financial abuse, which they did not benefit from. While financial institutions and lenders are not solely responsible for preventing coerced debt, they are uniquely positioned to identify and mitigate its occurrence. However, the absence of a legal doctrine explicitly recognising coerced debt, setting out the requirements for a lender's due diligence and establishing remedies for coerced debt is significantly impacting the ability of victim-survivors to receive just outcomes when escalating their matters to AFCA. A reliance on a lender's goodwill or their own internal family and domestic violence policy documents (if the lender has one) should not be a substitute for a robust legal framework that ensures all victim-survivors have access to the same preventative measures and remedies regardless of the identity of the lender.

Comparative analysis with the United Kingdom reveals that remedies for coerced debt include a consideration as to whether the financial firm was aware, or reasonably should have been aware, of the financial abuse, with the FOS willing to completely waive a victim-survivor's debt in circumstances where the lender has not met this test. Requiring lenders to turn their mind to financial abuse in Australia would not be a dramatic change, given that lenders are already required to consider ongoing affordability under the doctrine of responsible lending. Such reform would move beyond ad hoc discretionary relief towards a coherent legal framework that recognises coerced debt as a distinct form of domestic violence and financial abuse. Combined with explicit recognition of economic abuse as a form of domestic violence and a requirement for all lenders to have family and domestic violence policies, financial abuse would be better recognised and easier to address.

47 Ayesha Scott, 'Financial Abuse in a Banking Context: Why and How Financial Institutions can Respond' (2023) Journal of Business Ethics 679, 691.

It is hoped that this research serves as a foundation for further empirical, doctrinal and policy development by government, regulators and civil society, to better achieve justice for all victim-survivors of financial abuse and coerced debt.

ACKNOWLEDGEMENTS

I would like to sincerely thank the Law and Justice Foundation for their generous support of my project. I am especially grateful to Dr. Kerryn Butler for her guidance and mentorship throughout my fellowship. I would also like to thank Walker Sparling, my mother Simone Brittenden and my partner Jackson Cocks for their unwavering encouragement and belief in my work. Finally, I would also like to thank Brooke Smart and Laura Devlin, whose feedback and guidance during my formative years allowed me to develop the research and analysis skills necessary for me to write this paper today.

SUPPORTED BY