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Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
Canberra ACT 2600

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Attention Committee Secretary

**Arca submission to the inquiry into the financial services regulatory framework
in relation to financial abuse in Australia**

Arca welcomes the opportunity to make a submission to the inquiry into the Financial Services Regulatory Framework in Relation to Financial Abuse ('the Inquiry').

EXECUTIVE SUMMARY

Arca and its Members have recognised for some time the significant impact that domestic abuse¹ can have upon an individual's relationship with credit and the credit reporting system. We also acknowledge that more must be done to assist victims and victim-survivors when they and their representatives interact with these systems.

Since Arca is an industry association and does not have first-hand experience working with victims and victim-survivors of domestic abuse, we have undertaken an extensive consultation process over the last few years with experts, including lived experience experts, financial counsellors, community legal services, government organisations and others so as to better understand the issues that arise in the context of domestic abuse and credit.

The suggested policy and legal recommendations we have put forward in this submission, along with the various activities Arca and its members have already undertaken, are directly informed by, and build upon, the insights and learnings we have obtained from our extensive research, stakeholder consultation and Member engagement.

This submission sets out:

- An introduction to Arca along with a high-level summary of some of the relevant activities Arca and its Members have undertaken to date

¹Throughout the submission, we use the term "domestic abuse" instead of "financial abuse" because Arca adopts an expansive approach to the term 'domestic abuse', by which the term 'domestic abuse' includes other forms of abuse, such as financial abuse.

- An overview of the purpose of the credit reporting system and its interaction with domestic abuse
- Arca's response to the Inquiry Terms of Reference, including specific recommendations which we have put forward at Recommendations 1 to 15.
- An overview of some of the current and future industry-led initiatives which we consider are of assistance in addressing the issues arising as a result of the impact of domestic abuse in the credit space, including the development and adoption of industry guidance alongside initiatives aimed at training and consumer education.

INTRODUCTION TO ARCA

Arca is the peak industry association for organisations involved in the disclosure, exchange and application of data for credit decisioning and management in Australia. Arca is driven by the vision to make credit work for all Australians.

Arca is the only industry association whose sole focus is on consumer credit - with expertise across the regulatory and operational environment. A key focus is the consumer credit reporting system, which allows certain credit-related information about individuals to be shared for credit assessment and management. We develop the Credit Reporting Code and administer an industry code for the system as well as regularly providing additional principles and guidance for Members.

We bring together Australia's leading credit providers and reporting bodies to improve data protection and make credit more visible, accessible and easily understood. Our Members account for 95% of consumer lending in Australia and include the 14 largest banks, mutual banks, large consumer finance companies, specialist motor vehicle finance companies, fintechs, and credit reporting bodies (CRBs).

BACKGROUND – ARCA ACTIVITIES

Since 2021, Arca has undertaken an extensive consultation process with a range of key stakeholders such as lived experience experts, Government and consumer advocacy agencies, financial counsellors, industry participants, member associations and alternative dispute resolution schemes to better understand domestic abuse and its interaction with the credit and credit reporting system.

The insights drawn from Arca's consultation clearly demonstrate that the impact of domestic abuse can be devastating. For example, victims and victim-survivors have experienced credit being taken out in their name without their knowledge or under the coercion of the perpetrator. Similarly, we have heard from victims and victim-survivors who were often left without sufficient resources to meet basic needs which may result in a range of adverse consequences including bankruptcy, insecure housing, and a reliance on credit to meet their needs.

In addition to consulting with stakeholders, Arca and its Members have already implemented a number of measures to address the multitude of issues which victims and victim-survivors may face when navigating the credit and credit reporting landscape. We will be continuing this work, as outlined below.

By way of example, to date Arca and its Members have undertaken the following:

- In mid-2022, Arca identified an issue with the prospect that hardship reporting (which commenced on 1 July 2022) could have an adverse impact on credit accounts for victims and victim-survivors of domestic and elder abuse (i.e. potentially triggering abuse). We took steps to create an exception to reporting under the data sharing rules (the Principles of Reciprocity and Data Exchange (PRDE), administered by Arca). We further applied to ASIC seeking relief in respect to the mandatory Consumer Credit Reporting (CCR) supply requirements under the National Consumer Credit Act, for eligible licensees (ANZ, CBA, Macquarie, NAB and Westpac), with that relief allowing the non-reporting of credit information for accounts impacted by domestic abuse. ASIC provided interim relief in the form of a 'no action' position.

Throughout both of these processes, we engaged with a range of stakeholders including Members, consumer advocates, financial counsellors and government organisations.

- Arca also supported ASIC in providing regulatory relief of certain notice obligations imposed upon credit providers under the National Credit Code, in circumstances where the credit provider has either agreed or not agreed, to change a credit contract following a debtor giving a hardship notice. By letter dated 8 July 2022, ASIC issued its no-action position.
- In late 2022, Arca raised with ASIC concerns relating to the conduct of Debt Management Firms (DMFs) in circumstances where their clients had been or were victims or victim-survivors of domestic abuse. In particular, we raised with ASIC our concerns that DMFs were not necessarily equipped with the expertise and skills appropriate to assist victims and victim-survivors, that certain conduct observed in their handling of disputes on behalf of victims and victim-survivors indicated potential issues. This included conduct such as 'pro-forma' approaches being adopted and, in some instances, references to their client's domestic abuse situation without the client's knowledge.

In our correspondence with ASIC, we suggested a range of potential regulatory actions that could be taken immediately and which in our view would promote better consumer outcomes and improve conduct on the part of the DMFs (this is discussed in further detail below). As at the date of this submission, we have not been advised of any intention by ASIC to take action on this front.

- In its role as CR Code developer, Arca has included within its application to vary the Privacy (Credit Reporting) Code ('the CR Code'), amendments that deal explicitly with domestic abuse in the context of credit reporting. These variations include proposing that in the context of a consumer seeking correction of their credit reporting information, domestic abuse be specified as an example of where information is reported in relation to the individual because of circumstances beyond their control. Arca has also sought to incorporate changes to the CR Code that would facilitate a smoother process for victims and victim-survivors where information is reported about the individual to more than one CRB.

The OAIC has recently undertaken public consultation on these variations. We are currently awaiting the outcome of the application to vary the Code to give effect to these and other proposals.

- In mid-2023, Arca engaged Flequity Ventures, who worked with its research partners, the Centre for Women's Economic Safety, the Independent Collective of Survivors and the Institute of Non-Violence, to conduct lived experience research involving surveys and interviews with victims and victim-survivors of domestic abuse.² This research is underpinned by the view that any initiatives to respond to domestic abuse should draw

² There were 16 survey responses and 8 interviews.

on the lived experience of victims and victim-survivors to ensure these changes and approaches are informed, targeted and effective.

The research focussed on victims' and victim-survivors' experiences with credit products and interactions with credit providers and has now been completed. A roundtable on perpetrator perspectives was also conducted. Further, subsequent workshops with Arca Members were conducted to identify and prioritise actions and to develop a roadmap for making change. This work coincides with the recent launch of the Inquiry. A copy of this final report is contained in **Annexure A**.

- Arca has also developed resources about domestic abuse, which are available on our CreditSmart website.³ These resources are designed to provide victims and victim-survivors, along with people who work with these individuals such as financial counsellors, with practical information about the nature of abuse, relevant industry guidance as well as steps that can be taken to respond to abuse. These resources are available for the public and our Members and others can refer people to the website to access this material.
- Finally, Arca has delivered training to a range of external stakeholders, such as community organisations, financial counsellors, not-for-profit organisations and industry participants, about the relationship between credit reporting and domestic abuse. For example, Arca has provided training to financial counsellors specifically addressing credit reporting and domestic abuse.

We are keenly aware of the need for industry, along with Government and the community more generally, to do more when it comes to assisting victims and victim-survivors of domestic and financial abuse. In that regard, it is clear industry has already demonstrated a genuine willingness to better understand domestic abuse and take pro-active action where it can do so. We look forward to continuing to work with Government and key stakeholders to support necessary change.

PURPOSE OF THE CREDIT REPORTING SYSTEM AND INTERACTION WITH DOMESTIC ABUSE

The credit reporting system operates to provide accurate, timely and complete information about an individual's creditworthiness. This information will provide insights into an individual's credit relationships, whether they make payments on time and how they otherwise manage their credit. In turn, this information will be highly relevant when an individual applies for new credit – and, in that way, may restrict or enable access to new credit for that individual.

In situations of domestic abuse, the form and manifestation of the domestic abuse itself may distort how an individual appears on a credit report. The abuse itself – for instance, the perpetrator coercing the victim into taking out credit for the benefit of the perpetrator – may make the victim look far less creditworthy than had the abuse not occurred.

The negative impact of abuse on the victim's credit file may, by extension, be a factor which helps to trap the victim in the abusive relationship. That is, they cannot easily leave because they cannot establish financial independence. Furthermore, even where the victim-survivor has left the relationship, they may continue to be impacted by a poor credit history. Addressing these issues, and seeking, where possible, to correct this history, may be highly traumatising.

³ <https://creditsmart.org.au/financial-hardship/financial-abuse/>;
<https://creditsmart.org.au/otherhelpfulservices/financial-abuse-support/>

Some of the insights shared by participants in Arca's 2024 lived experience research highlight the impact credit reporting (including potential credit reporting) can have on victims and victim-survivors. For instance, one participant referred to a credit listing as "...a *reminder of the family violence*" and another participant detailed her fear of the impact that a potential credit listing could have on her employment opportunities if she was unable to service a debt which she had never benefited from.⁴

TERMS OF REFERENCE

This section outlines Arca's positions on issues related to the Inquiry's Terms of Reference.

1. Prevalence and impact of financial abuse

Arca's view is that the true extent of the prevalence and impact of domestic and other forms of abuse is unknown partly due to evolving awareness of abuse and its impacts on victims and victim-survivors. In addition, the difficulty in determining the prevalence and impact of financial abuse arises because data is not necessarily collected by credit providers (often due to privacy concerns). We are largely reliant on anecdotal evidence and insights provided by frontline staff and specialist teams, financial counsellors and lawyers working in this space and recently Arca's own lived experience consultation (which was based on a relatively small sample size).

What is evident from the information that has been provided is that domestic and other abuse can have a significant impact on victims and victim-survivors, with the impact including bankruptcy, homelessness, significant debts and difficulty ensuring personal safety or otherwise rebuilding the individual's life. In addition, there are emotional impacts (for example, from the struggle to be believed, the time and effort required to seek recourse and fears for safety).

The 2024 lived experience research identified instances where victims and victim-survivors were liable for credit they were coerced into taking out or of which they had no knowledge. There were also instances of joint credit that was for the sole or predominant benefit of the perpetrator. In addition, it was identified that perpetrators knowingly exploited financial products and processes, such as credit cards, personal loans, and joint accounts, to maintain control and perpetrate abuse.

This research also suggests financial abuse is a common form of domestic abuse and includes abuse by fraud, coercion, undermining credit reports or being placed in a position where additional credit is needed in order to provide for personal safety. The vast majority of respondents in this research (87.5%) indicated they had been pressured to access or extend credit against their will, with almost two-thirds (64.3%) related to credit cards. Just under half (43.8%) had debt taken out in their name without their knowledge, primarily interest-free purchases or personal loans. More than half (53.3%) said their credit report and score were impacted and more than half (53.3%) have used credit to support their safety, primarily using buy-now, pay-later ('BNPL') products or credit cards.

In addition, Member feedback has identified that, in relation to elder abuse, there seems to be a growing issue in relation to the misuse of Powers of Attorney as well as financial abuse by adult children. This issue coincides with financial pressures due to the rising cost of living.

⁴ A credit report is not able to be accessed by employers; however, the research finding does underscore the importance of consumer education, particularly through resources targeted to educating victims and victim survivors of domestic abuse.

Arca's lived experience research has identified that in the context of domestic abuse, remote lending practices (for instance, online and telephonic service channels) such as redraws and credit limit increases on unsecured loans and credit cards can also make it easier for perpetrators to make fraudulent transactions and applications by impersonating the abused individual remotely. These fraudulent debts were frequently discovered only after the abused person left the relationship, or inadvertently.

Whilst we note the benefits to consumers that flow from virtual means of interacting with their credit providers, it is clear that consideration needs to be given to how these new forms of engagement can be designed and managed so as to reduce their potential ability to be used for the purpose of inflicting domestic abuse or other harm.

Recommendation 1

The Inquiry notes that consideration is currently being given as to how industry guidance could be formalised, so as to:

- assist with the adoption of consistent approaches
- support better understanding by frontline staff of indicators of financial abuse and record keeping; and
- inform consideration of potential policy and regulatory change.

Whilst we recognise that other bodies such as the ABA and AFCA already have a code of practice or guidance that engages with the issues of domestic abuse not all Arca members are covered by ABA's Banking Code of Practice and the AFCA guidance has a more limited focus than what is currently proposed⁷.

Recommendation 2

The Inquiry notes that industry (via bodies such as Arca) is looking to develop and adopt guidance and training which sets out appropriate policies, controls and practices to help manage the risks of online and remote lending platforms being used to perpetrate abuse.

2. Effectiveness of existing legal framework

Although below we have highlighted some rather specific issues, the lived experience consultation has emphasised that the path to reform should begin with understanding, awareness and training – rather than regulatory prescription.

Further, the areas for regulatory reform we have identified are intended to better support business to respond to victims and victim-survivors. Adopting a piecemeal or fragmented approach to reviewing and amending the existing legal framework (as opposed to adopting a holistic consideration of the legal and regulatory framework informed by the lived experiences of victims and victim-survivors – and with awareness of how all the elements of the framework, alongside operational practices and consumer education work together) is in our view, likely to lead to a host of unintended and potentially, unwanted, consequences.

A) Clarification of responsible lending obligations

In broad terms, the responsible lending obligations under the National Consumer Credit Protection Act require (among other things) that before providing, suggesting or assisting a consumer to obtain credit, a credit provider or credit assistance provider, must assess whether or not the provision of credit would be 'unsuitable' in the circumstances. Where the provision or extension of credit has been assessed as unsuitable, the credit provider must

not assist the consumer to enter into or extend the credit arrangement. The credit provider must assess the loan as unsuitable where the consumer would be unable to service the loan or where repaying it would cause them substantial hardship.

Where an individual was, or is, a victim or victim-survivor of domestic abuse, circumstances beyond the control of that individual may mean that a credit provider who is subject to the responsible lending obligations will have no, or limited ability to, extend or increase credit to that customer, because to do so would be in breach of their responsible lending obligations.

For instance, a victim or victim-survivor may have had limited ability to earn an income, or their usual income level, because of the abuse, resulting in that individual failing to meet a potential credit provider's 'serviceability criteria' based upon that income level. This individual may be unable to obtain credit in these circumstances, despite their ability to now resume working at their usual, or increased, income levels, and, in turn, be able to comfortably service additional or new credit moving forward.

There may also be instances whereby the abuse suffered by the victim or victim-survivor may have resulted in the individual being deemed as a 'credit risk' and thereby, unable to meet a financial services provider's credit application requirements. For instance, the individual may have, unknowingly or due to coercion, had numerous small amount credit contracts, such as 'pay day' loans taken out in their name by the perpetrator and in circumstances which mean that under responsible lending regulations, that there is an automatic assumption that additional credit is 'unsuitable', whereas had the individual not suffered the abuse they would not have had any 'pay day' loans attributed to them and a prospective credit provider would not be required to address such an assumption

These outcomes can have significant practical implications for victims and victim-survivors of domestic abuse, who are often seeking credit to make a very challenging financial situation less difficult and who are taking steps to reduce the risk of further abuse.

The financial challenges for victims and victim-survivors were highlighted in the lived experience research, which identified that victim-survivors exhausted many options to service their debts – many before approaching their credit provider – including liquidating assets, working multiple jobs, going without necessities, using payday loans and borrowing from family and friends.

Among respondents who reported using credit products to manage or support their safety, nearly two-thirds (62.5%) used buy now pay later, half used credit cards and more than a third (37.5%) utilised phone or internet or utility company contracts. Respondents called for greater understanding and accountability for perpetrators and reported feeling penalised for the actions of another person.

Recommendation 3

Taking into account the existing legal and regulatory framework, Government should provide clarification in relation to the application of responsible lending obligations when victims and victim-survivors of domestic abuse are seeking to obtain credit. Such clarification should be informed by the lived experiences of victims and victim-survivors and could be in the form of regulatory guidance and should provide clarification of responsible lending obligations in the circumstances of abuse to allow credit providers to better support victims and victim-survivors who are seeking to obtain or increase available credit.

B. Supply of mandatory CCR information obligations

The current ASIC no-action position essentially provides that ASIC does not intend to take regulatory action against an eligible licensee where the licensee does not supply mandatory credit information because an account holder(s) of the eligible credit account may be, is or was the victim of family violence. The no-action position is temporary only as ASIC considers that more detailed policy consideration needs to be given to the application of the CCR regime in circumstances of domestic abuse.

Importantly, ASIC's no-action position does not amend or reduce the obligations upon eligible licensees contained within sections 133CR and 133CU of the National Credit Act. As such, the temporary nature of the current ASIC no-action position creates uncertainty for industry in terms of when, and precisely what permanent measures will ultimately be implemented in relation to eligible licensees and domestic abuse situations. This, in turn, makes it difficult to know precisely how systems and processes need to be configured in order to remain legally compliant.

In making the no-action position permanent, consideration will need to be given as to how Government can ensure it understands the benefits to victims and victim-survivors and whether non-reporting has an impact on access to credit in the future.

Recommendation 4

Government should consider:

- how knowledge gaps in relation to the consequences of the no-actions position would be best addressed, so as to inform consideration of potential policy and regulatory change
- engaging with industry in its consideration of data needs to support the implementation of Recommendation 1; and
- in turn, the merit of permanent measures which could include either, or both of the following:
 - (i) ASIC providing a form of 'permanent' relief in a format similar, or different to that which is currently in place; and/or
 - (ii) Treasury amending the National Credit Act itself, to bring about permanent relief.

C. National Credit Code – hardship notice obligations

In July 2022, ASIC issued its no-action position in relation to certain notification obligations arising under sections 72(4), 73(1), 177B(4) and 177C(1) (the notifying provisions) of the National Credit Code (at Schedule 1 to the National Consumer Credit Protection Act 2009 (National Credit Act)).

The current no-action position essentially provides that ASIC will not take action in respect of certain notice obligations and breach reporting obligations, imposed upon credit providers under the National Credit Code, in circumstances where (a) a requesting joint debtor may be, is or was the victim of family violence, and (b) the family violence may be, is or was being perpetrated by the other joint debtor(s) under the credit contract that is the subject of the hardship notice.

Again, we note that ASIC's no-action position does not amend or reduce the obligations upon credit providers under the relevant sections of the National Credit Code. We also note that we lack information about the impact of these reduced obligations on an abuse situation.

Recommendation 5

Government should consider:

- how knowledge gaps in relation to the consequences of the no-actions position would be best addressed, so as to inform consideration of potential policy and regulatory change
- engaging with industry in its consideration of data needs to support the implementation of Recommendation 1; and
- the merit of permanent measures which could include either, or both of the following:
 - (i) ASIC providing a form of ‘permanent’ relief in a format similar, or different to that which is currently in place; and/or
 - (ii) Treasury amending the National Credit Act itself, to bring about permanent relief.

D. Privacy Act

The Privacy Act does not explicitly refer to domestic abuse, which may limit the ability of credit providers to report information to support services. The Act, under Australian Privacy Principle 6, provides that a relevant entity that holds personal information about an individual that was collected for a particular purpose (‘the primary purpose’) must not use or disclose the information for another purpose (‘the secondary purpose’) unless the individual consents to the use or disclosure or, relevantly:⁵

- the individual would reasonably expect the entity to use or disclose the information for the secondary purpose; and the secondary purpose is related to the primary purpose (or directly related to the primary purpose, in the case of sensitive information)
- the use or disclosure is required or authorised by or under Australian law
- a permitted general situation exists in relation to the use or disclosure by the entity
- the entity reasonably believes that the use or disclosure is reasonably necessary for one or more enforcement-related activities conducted by, or on behalf of, an enforcement body

Broadly, relevant permitted general situations include:

- where it is unreasonable or impracticable to obtain the individual’s consent to the use or disclosure; and the entity reasonably believes that the use or disclosure is necessary to lessen or prevent a serious threat to the life, health or safety of any individual, or to public health or safety; or
- the entity has reason to suspect that unlawful activity, or misconduct of a serious nature, that relates to the entity’s functions or activities has been, is being or may be engaged in; and the entity reasonably believes that the collection, use or disclosure is necessary in order for the entity to take appropriate action in relation to the matter

These provisions mentioned above may be seen as barriers in relation to the reporting of suspected cases of domestic and other abuse to authorities or relevant support services. This is because there is concern about where the exemptions apply.

For example, as raised by a member in the context of elder abuse where a guardian or Power-of-Attorney is perpetrating abuse, a credit provider that has concerns or suspicions about a customer who lacks capacity might not be able to report the matter to the relevant authorities. There may also be other situations (e.g., in the context of domestic abuse) where:

⁵ *Privacy Act 1988 (Cth)*, APP 16.1

- obtaining consent is not appropriate and it is not clear whether the high threshold criterion of necessity to lessen or prevent a serious threat to life, health or safety is met
- it is not clear whether the high threshold of unlawful activity or serious misconduct in relation to the entity's functions or activities is met; or
- the other exemptions do not apply or it is unclear whether they apply.

Recommendation 6

Consideration should be given to the merits of either amending or providing guidance in relation to the operation of section 16A(1) of the Privacy Act and, in particular, the ability for a credit provider to disclose personal information where the provider reasonably believes that the collection, use or disclosure is necessary to lessen or prevent a serious threat to the life, health or safety of any individual. Such guidance could be issued by the OAIC within, or in a format similar to that, contained within the OAIC's Guidance in relation to APP 6: Use or disclosure of personal information.

However, consideration must also be given to potential challenges, including reconciling competing policy concerns such as protecting the confidentiality of customers and protecting the safety and wellbeing of customers. These would need to be carefully considered.

3. Additional areas for reform

In relation to other areas for reform, Arca suggests consideration should be given to implementing measures to better regulate the activities of DMFs such as credit repair.

Our experience of DMFs tends to indicate their business model is predicated on identifying 'gaps' in the system and directing disputes to those gaps – often with the use of template documents, an absence of supporting information and often relying on a lack of consumer knowledge or understanding.

The conduct that we have identified as already occurring is extremely concerning and includes the following:

- DMFs are not equipped with the personnel or the resources appropriate to provide victims or victim-survivors of domestic abuse with the support they warrant or need. For example, it is unclear what specialist training, qualifications or experience DMFs require their staff to possess prior to responding to and assisting victims or victim-survivors. This can be contrasted with specialist legal and financial counselling services, which are often staffed with individuals who are sufficiently trained and experienced, in recognising and assisting victims and victim-survivors of domestic abuse.
- Victims and victim-survivors of domestic abuse may be particularly vulnerable when it comes to engaging with the credit and credit reporting system. As such, organisations such as DMFs, which often charge excessively high fees and costs for providing services that are free to consumers through other channels, may find that these consumers are emotionally, mentally or physically incapable of representing themselves and as such, will incur these costs that other specialist support organisations would not charge for or which they would ordinarily undertake themselves.
- If left unchecked, practices of DMFs such as those that involve template approaches to complainants or that involve references to domestic abuse without a customer's consent or knowledge have the potential to reduce the willingness of organisations to act upon a

notification of domestic abuse where it arises from a DMF, leading to consumers who are represented by these organisations receiving different and potentially worse treatment.

At a general level, more effective regulation of DMFs could be proposed and cover, for example, unsolicited advertising, signposting free options, disclosures, advice suitability, fee restrictions and cooling-off periods.⁶

More specifically, Arca has put forward the following proposed regulatory activities that in our view will promote better consumer outcomes and improved conduct on the part of the DMFs, so the overall effect is 'win/win'.

- Imposing a requirement upon DMFs to notify victims and victim-survivors about the appropriate support services that may be available to them.

We consider that this obligation could be introduced and imposed in a manner similar to the current requirement for DMFs to notify potential clients of the availability of AFCA. This notification requirement should be required to be discharged prior to the consumer incurring any fees or charges from the DMF.

- Imposing a further requirement upon DMFs to assist victims and victim-survivor to obtain the appropriate services, where requested by the victim or victim-survivor.

Building upon the notice requirement that we have proposed above, we consider that DMFs should also have a requirement to offer a victim or victim-survivor of domestic abuse assistance with obtaining the services of a specialist legal or financial support services. Such assistance could include being required to offer to make telephone or email contact with an organisation, or any other reasonable assistance. Again, we consider that this assistance should be offered and provided, prior to the imposition of any fees, costs or charges on the consumer.

- Explicit confirmation being provided by ASIC that there may be in circumstances in which it is appropriate for the credit provider or credit reporting body, to communicate directly with a victim or victim-survivor who is represented by a DMF.

Whilst we note that ASIC Regulatory Guidance 271.139 (b) and (c) permits a credit provider or credit reporting body, in the context of a complaint to contact a represented complainant directly and that either of these clauses may be relevant where there is a concern about the conduct of a DMF in connection with their client who is referred to as being a victim or victim-survivor of domestic abuse, we consider that there would be benefit to industry, if ASIC was to explicitly confirm for all stakeholders, that financial services providers do have the ability to contact a represented individual directly if the provider reasonably believes that:

- the DMF is acting against the complainant's best interests, taking into account their particular circumstances, and/or
- that the DMF is acting in a deceptive or misleading manner with the complainant and/or the firm, in relation to the complainant's circumstances

Of course, such permitted contact with the complainant directly would need to be limited in scope and not undertaken for any purpose related to or in connection with, collection or recovery action or any attempt to 'evaluate' or 'test' the reference to the complainant's current or previous, domestic abuse circumstances.

⁶ Vivien Chen and Michelle Welsh, 'Safeguarding Australian Consumers from "Debt Vultures"' (2023) 45(1) Sydney Law Review 45

- A clear prohibition introduced within the DMF licensing regime, so that a DMF cannot refer to, or include any reference to, a client being a victim or victim survivor of domestic abuse, without the client's explicit consent to such a reference being made.

We are concerned that DMFs will adopt a practice of relying on 'domestic abuse' as grounds for removal of credit information, but without the knowledge or consent of their client/s. We already know of instances where this has occurred, and we think that a prohibition on this practice is necessary to ensure this practice does not become widespread.

- A clear prohibition should be included within the DMF licensing regime, so that DMFs are prohibited from developing or utilising a template, or pro-forma approach or 'complaint letter', in relation to circumstances of domestic abuse

This prohibition is necessary to ensure that domestic abuse is not included in the laundry list of dispute grounds which a DMF may put together based on the 'scattergun' effect (i.e., not checking the veracity with the client, but in the belief that one of the listed dispute grounds will land, and the sheer effort and cost imposed on the credit provider to respond to the laundry list will be sufficient motivation for the credit provider to capitulate). While ultimately the practice of running disputes as a laundry list needs to be stopped, the immediate concern is the effect of adding 'domestic abuse' to the list; it then has a retrograde effect on current industry initiatives to deal with domestic abuse.

Recommendation 7

Government should conduct a review of the conduct of DMFs in circumstances where their clients are, or may be, victims or victim-survivors of domestic abuse and give consideration to implementing some, or all of the increased regulatory measures and requirements, set out in this submission.

4. Steps available to financial institutions

Before considering the steps available to financial institutions in relation to potential responses and actions, it is useful to highlight some of the learnings and insights Arca has obtained in respect to the issues experienced by victims and victim-survivors of domestic abuse when engaging with credit providers and CRBs.

Arca's engagement with both industry and consumer stakeholders (such as financial counsellors and legal aid organisations) has identified a number of issues which arise as a result of the differing approaches taken by financial institutions to matters relating to domestic abuse. Some of these issues include:

- Individuals being asked to provide differing levels of 'proof' or evidence to support their identification as a victim or victim-survivor domestic abuse, depending upon the credit provider or credit reporting body.
- Individuals having to proactively raise issues surrounding the provision of credit with some credit providers and not others.
- Individuals being required to deal with different internal processes and procedures between credit providers and CRBs. For example, differences between the internal escalation and review processes between credit providers, could result in an individual experiencing differing timeframes when seeking to modify their credit information and/or raise a dispute in relation to the provision of credit.

Arca's lived experience research further identified that there could be poor recognition of a victim/ victim-survivor's circumstances unless the term 'domestic abuse' or similar, was specifically mentioned. That is, there is a lack of understanding about possible indicators or flags of domestic abuse. This led to delays in being referred to specialists, such as hardship and vulnerability teams and specialist women's legal services. However, where victims and victim-survivors were then referred to these teams, there were very positive experiences.

A. Relevant industry guidance

With these insights in mind, Arca is exploring the development of industry guidance for Members, that would assist to address some of the issues identified in respect to the response by credit providers to victims and victim-survivors of domestic abuse. Given Arca's role, the guidance would have a special focus on credit reporting and other credit-related data issues.

As noted above, whilst we note that other bodies, such as the ABA and AFCA already have a code of practice or guidance that engages with the issues of domestic abuse (however, not all Arca members are covered by ABA's Code of Banking Practice and the AFCA guidance has a limited focus⁷), the proposed guidance to industry would complement existing material and potentially address areas such as:

- educating customers (including upfront about risks of joint credit)
- the factors to consider in proactively identifying potential abuse
- preventing abuse (including via online and other remote channels)
- managing debts
- credit reporting and other credit-related data issues; and
- appropriate remedial actions where debt is incurred in a person's name without their knowledge, the person was under coercion or domestic abuse has impacted their ability to repay.

The guidance could potentially be extended to abuse in contexts beyond domestic abuse (e.g., elder abuse). Guidance on remedial actions would reflect whether it is appropriate to report or correct adverse credit information for victims and victim-survivors, including to mitigate the adverse effects of triggering a perpetrator to commit further abuse.

Arca is also exploring the development and implementation of conduct principles and guidance to support identifying, preventing and responding to abuse (covering, e.g., not requiring claims of abuse to include unnecessary information). There are challenges to implementing guidance, including the risks of misuse (e.g., by credit repair businesses).

⁷ This means that there is an opportunity to broaden the scope of businesses covered and fill in gaps not covered by other guidance.

Recommendation 8

The Inquiry notes that Arca is currently considering the development, in consultation with experts, Members and other stakeholders, of principles and guidance for Members in relation to domestic and other forms of abuse to complement ABA and AFCA guidance and cover:

- conduct principles and guidance (e.g., about not requiring unnecessary information from victims and victim-survivors)
- educating customers
- identifying and preventing abuse
- managing debts and credit reporting (and other credit-related data) treatment; and
- appropriate remedial actions

B. Employee training and culturally appropriate responses

Staff training has the potential to ensure regulatory obligations are embedded in the business. It also has the potential to empower staff to make judgements, guided by principles, that are tailored to the circumstances of individual victims and victim-survivors. Finally, training is crucial for all levels in the organisation because, as identified in the lived experience research, accessing specialist support within businesses can sometimes be challenging.

Indeed, a common problem identified by interviewees in Arca's lived experience research, was the lack of knowledge of some staff (given the generally positive attitudes of victims and victim-survivors to specialist teams, the concern seems to be about interactions with frontline teams within providers).

Research participants suggested enhancing staff training to recognise signs of financial abuse and respond effectively. Staff training that enables an empathetic and quick response and does not exacerbate the abuse is important.

In addition, participants identified that language barriers and cultural norms can make it more difficult for victims to access support services and understand their options for seeking help. Finally, as mentioned above, perpetrators may weaponise the credit reporting system or may be triggered by interventions of financial services.

With these insights in mind, Arca is exploring the development of guidance in consultation with Members and experts and other external stakeholders, and which would focus upon employee training and conduct within financial institutions.

Such guidance could include provisions relating to:

- recognising signs of domestic abuse
- engaging with customers who may be affected by domestic abuse
- acting discreetly to avoid triggering perpetrators; and
- escalating, in a timely way and to appropriate areas, matters that may involve domestic abuse, taking into account language barriers and cultural norms.

These approaches could potentially be extended to other contexts (e.g., elder abuse). As with other guidance, this approach would seek to complement the existing relevant material and is not intended to simply duplicate existing training that some Members may have already implemented.

Recommendation 9

The Inquiry notes that Arca is currently considering the development, in consultation with experts, Members and other stakeholders and in consideration of cultural differences among victims and victim-survivors of abuse, of industry guidance for Members on training for individuals working in or with Members, in relation to domestic and other forms of abuse.

C. Other measures

Considerable support is provided to victims and victim-survivors by organisations that exist primarily or solely to provide such support. This raises a question as to the potential benefits of using central services to assist Members to support victims and victim survivors.

There are existing service providers, such as Way Forward and the Thriving Communities Partnership (TCP), that are providing services to victims and victim-survivors. TCP through its One Stop One Story Hub helps individuals to seek assistance from the various businesses the individual uses, following referral from within a network of businesses, including some credit providers. TCP assists with both financial hardship and domestic abuse referrals. Way Forward provides assistance to individuals (e.g., through information resources or help in negotiating payment arrangements with credit providers) or refers them to appropriate support services, such as financial counsellors.

Arca is exploring the feasibility of promoting amongst its Membership base the voluntary use of central specialist services for supporting customers (such as financial counselling, hubs for customers dealing with multiple businesses and vulnerability teams) where appropriate for the Member.

We note, as raised in Member feedback, that there are real challenges to using specialised services, including in relation to oversight and capacity to deal with increased volumes. These will need to be considered as part of exploratory work. However, it is likely that existing centralised services can share the knowledge they have developed in implementing their solutions about how to manage these risks.

Arca is also exploring the potential for ensuring its CreditSmart website, which provides resources for consumers or for financial services and support services to refer individuals to, about the risks of joint debt and domestic abuse, including considerations for establishment and separation of accounts.

Additionally, Arca is exploring the potential for:

- sharing examples of better industry practice in relation to responding to domestic and other abuse
- reviewing on an ongoing basis industry practice; and
- improving on an ongoing basis industry principles, guidance and better practice resources in light of insights from such reviews.

These initiatives would help promote better and more consistent practice throughout industry.

Finally, Arca is exploring the feasibility of redesigning joint credit to allow debt to be separated. This might involve developing or updating standard terms and conditions in relation to how credit providers can respond to domestic abuse or may leverage any existing initiatives to provide contractually for responses to domestic and other forms of abuse. It should be noted that there are significant challenges to such a redesign, including around questions of

serviceability and continuity of credit reporting. The lived experience insights have also confirmed while there is a long-term desire to explore this option, the more immediate impact is likely to come from the proposed changes to drive consistent practices, improve upfront treatment and referrals, as well as to provide resources and education, and this is reflected in how Arca has mapped out and prioritised short, mid and long term actions.

Recommendation 10

The Inquiry notes that Arca is currently investigating, in consultation with experts, Members and other stakeholders, the potential for Members to voluntarily use particular administrative, financial counselling and vulnerability support services to assist them to support victims and victim-survivors of domestic and other forms of abuse.

Recommendation 11

The Inquiry notes that Arca is currently considering ensuring its CreditSmart website includes resources about the risks of joint debt and domestic abuse, including considerations for establishment and separation of accounts.

Recommendation 12

The Inquiry notes that Arca is currently considering the potential for sharing information on better industry practice, reviewing such practice and using the insights to improve industry principles, guidance and practice.

Recommendation 13

The Inquiry notes that Arca is currently considering exploring the feasibility, in consultation with experts, Members and other stakeholders, of developing standard terms and conditions (or leveraging other initiatives to amend terms and conditions) for credit products to facilitate the separation of debt on relationship breakdown.

5. Role of Government

Arca notes commitments of governments in this space, such as The National Plan to End Violence against Women and Children 2022-2032⁸, which makes clear there is a role not only for government but also industry, the community sector and individuals.

Arca supports the work Government and industry are already doing and welcomes the launch of an independent body to oversee the Industry Funding Model for Financial Counselling.

More generally, Arca recognises the role of Government in stepping in as needed and where informed by a full awareness of how much is being achieved by industry without government intervention. We would like to see that continue and would highlight the need for ongoing engagement with Government.

⁸ <https://www.dss.gov.au/ending-violence>

Recommendation 14

Consideration should be given to exploring opportunities for ongoing regular engagement between Government and key stakeholders to review and update on industry-led and delivered responses to domestic and other forms of abuse.

6. Funding of advisory and advocacy bodies

As mentioned above, victims and victim-survivors value independent support from advocacy bodies such as women's advocacy groups. Arca's position is that where there is limited, or insufficient funding of these organisations, it may be helpful to explore the roles Government and industry could play in funding these organisations given they serve a common good in supporting vulnerable people.

Recommendation 15

It would be appropriate for Government to undertake an end-to-end review of current funding levels for all domestic abuse support related organisations and, as part of that review, consider the adequacy of current funding levels and what changes (if any) to those funding levels and models are necessary to improve the services provided to victims, victim survivors and (where appropriate) perpetrators.

Thank you once more for the opportunity to make this submission. If you have any questions, please feel free to contact me.

Yours sincerely,

Elsa Markula

Chief Executive Officer

Arca