

## Select Committee into Elder Abuse

### Jo McKinstry Opening Statement

18 June 2018

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Thank you for the opportunity to speak with the Committee today.

My name is Jo McKinstry and I am the ANZ Customer Advocate.

Part of my role involves providing support and guidance to ANZ regarding vulnerable customers, including our older customers who may be at heightened risk of financial abuse.

Banks are in a unique position to help identify and act upon suspected elder financial abuse and today I would like to address four topics:

1. ANZ's observations
2. Structural change
3. Opportunities for the banking industry
4. Practical protective measures

#### ANZ Observations

While we have seen examples of elder financial abuse perpetrated by friends, neighbours, carers and clergy, by far the most common is family.

ANZ supports the appropriate use of properly executed Powers of Attorney and Enduring Powers of Attorney. We receive over 1,000 of these per month and in the majority of cases they are effective instruments which are used by an Attorney who is acting in the best interests of the Principal.

We have however experienced a number of instances where an Attorney has used these instruments for their own benefit. The consequences on the wellbeing of the Principal, as well as on the broader family can be devastating.

The financial abuse we see typically presents as either:

- blatant and immediate, where large sums of money are withdrawn or transferred soon after an Attorney is appointed, or
- occasional transactions that the Attorney justifies are in line with the Principal's wishes, which tend to increase in amount and / or frequency over time

While banks are well placed to identify potential abuse, it is often very difficult to reach a satisfactory outcome. There can be a real tension between respecting the customer's autonomy and trying to prevent harm.

Customers may reveal concerns about financial abuse to bank staff, but advise staff they don't want the perpetrator removed from their bank accounts because they are concerned the situation will be exacerbated.

Customers tell us they don't want to give funds to family members but they are fearful of losing their accommodation, or they have been told they will be prevented from seeing their grandchildren. Customers also tell us they don't want to report matters to the Police.

Effectively managing these situations can involve very challenging discussions with customers and potential perpetrators as the bank is often interposing itself in a difficult family dynamic.

For these reasons, ANZ trains its customer facing staff in branches and contact centres to identify potential red flags, and escalate their concerns to a central internal point for investigation.

Some examples of red flags that staff are trained to identify include:

- Withdrawing large or unusual amounts of cash while accompanied by a new acquaintance
- Remaining silent while another party does all of the talking
- Appearing withdrawn and fearful (particularly of the person accompanying them)
- Not understanding or not aware of recently completed transactions
- Concerned about missing funds, or missing personal or financial documents

Customers who are the subject of potential financial abuse may have diminished capacity and may not be able to provide the bank with clear instructions about potentially concerning transactions.

Customer facing staff are also well placed to identify customers who may not be victims of financial abuse, but are considered to be more broadly at risk. This includes customers with diminishing capacity where there is no Attorney or Guardian and customers who have no family or carer.

Staff are trained to assume a customer has capacity unless the bank is on notice otherwise. This includes respecting a customer's right to make autonomous decisions. This can also present difficulties if family members disagree with the financial decisions of the older person.

If the bank becomes aware of a transaction that may not be for the customer's benefit, we can take a number of steps, including:

- Delaying the transaction
- Seeking clarification from the customer / Principal or another Attorney
- Querying how the transaction is for the benefit of the Principal
- Speaking to the customer alone
- Offering to assist the customer to contact the relevant seniors rights service

In addition to the more common forms of elder abuse perpetrated by a family member or friend, we are seeing increasing evidence of older customers being targeted in financial scams. ANZ has recently implemented a scam unit which is focused on detecting potentially fraudulent transactions and educating customers about scam risks.

### **Opportunities for the Banking Industry**

While general technology-based fraud controls detect some instances of elder abuse, we place significant reliance on front line staff to identify red flags when assisting older customers with their banking transactions. We know however that it is common today for Attorneys to assist the Principal via electronic banking channels.

ANZ is trialling a number of methods to leverage its data analytics and fraud detection capability. This includes identifying transactions that are not generally consistent with an older persons account, or not consistent with an account which has an Attorney linked to it.

### **Structural Change**

ANZ believes four key structural changes would assist with the prevention, detection and mitigation of elder financial abuse.

The **first** of these is the introduction of nationally consistent Enduring Powers of Attorney. While the laws in each jurisdiction are broadly similar, there are differences which add to the complexity of reviewing and accepting or rejecting these instruments. It is not uncommon for a Principal to reside in one state or territory, while the Attorney resides in a different state. We have also seen instances where joint Attorneys are appointed, however the Attorneys live in different states. Some states and territories require the registration of a Power of Attorney, while others don't. These complexities increase the risk that an instrument will be accepted that has not been properly constructed or executed.

The **second** of these is the introduction of a national register of enduring documents. We welcome the ALRC recommendation in respect of a national register as a positive development. Ideally this register would operate in real time, such that banks (and other parties with an interest in the currency of a particular instrument) could be notified immediately a revocation occurs. A real time register that alerted banks that an instrument had been revoked would enable banks to terminate an out-going Attorney's access to the Principal's accounts immediately. Absent this, banks are reliant on the Principal, new Attorney or out-going Attorney advising of the revocation.

The **third** change we support is the introduction of protections for bank staff who report suspected financial abuse to the relevant authorities. Currently staff are exposed to potential privacy breaches and this can act as a barrier to effective reporting.

The **fourth** change we support is the introduction of consistent powers for state and territory public advocates or public guardians to investigate elder abuse. I understand that in Western Australia the Public Advocate has a broad investigatory power. That is not the case in all states and territories and

we have experienced matters where ANZ has had to bring an application to the relevant Administrative Tribunal to request that a review of potential elder abuse be undertaken. This can take up to six months and at times leaves the bank in the difficult position of effectively managing the customer's accounts.

### **Practical Protective Measures**

I would finally like to comment on some practical steps that may be of assistance to consumers.

The first is with respect to the Power of Attorney instrument. We have seen examples of instruments where the Principal has included a clause to the effect that copies of their bank statements must be provided to their accountant or another trusted adviser. This can have the effect of deterring potential abusers because of the increased likelihood of detection.

The second is to refer to a Consumer Fact Sheet<sup>1</sup> published by the Australian Banking Association which provides consumers with practical guidance on protecting their financial documents, cheque books and PIN, reading contracts, talking to a trusted family member or adviser and planning ahead in the event of future incapacity.

Thank you for your time today and I welcome your questions.

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<sup>1</sup> [https://www.ausbanking.org.au/images/uploads/Elder\\_Financial\\_Abuse\\_Fact\\_Sheet\\_A4.pdf](https://www.ausbanking.org.au/images/uploads/Elder_Financial_Abuse_Fact_Sheet_A4.pdf)





## Financial abuse – the facts and how to protect yourself

Financial abuse is a serious and far reaching problem that can happen to anyone, but some people, like the elderly, people with a disability or other vulnerable and isolated people are at greater risk.

Increased house prices and reasonable superannuation balances can mean that some older people are in a good financial position. This can lead to family members feeling a sense of entitlement, with some people referring to it as inheritance impatience.

Exact elder financial abuse numbers are difficult to come by – but numbers will increase as population ages, by 2055 Australia's population is expected to grow to 40 million, around 25% of them will be over the age of 65.



### What is financial abuse?

Financial abuse can take many forms and can happen over an extended period of time.

Spending money without permission, forging signatures, coercing someone to sign something, pension-skimming; using the person's bank account or credit card without their consent; denying them access to their money or bank statements.

It can involve a loan that is never paid back. Or threatening or pressuring them to invest in something on their behalf.

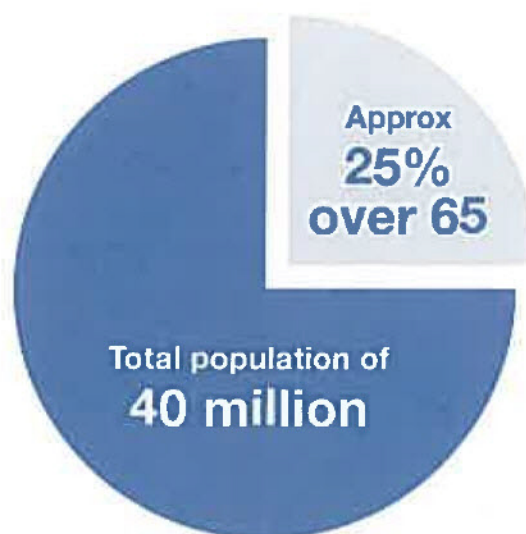
Making someone provide care or other services without being paid or fairly compensated or expects you to pay their expenses.

Pressures, tricks or threatens you to change your will, power of attorney or other legal arrangements.

Coercing a person to go guarantor on a loan.

### A Growing Problem

Australian Population - 2055





### Protecting yourself

Always protect your bank and financial cards, cheque books and other important documents. Never hand over a PIN or password to anyone.

If someone asks for money, discuss it first with a trusted family member or friend.

Get your affairs in order. Talk to your bank about setting up direct debits and pre-authorised bill payments. Consider who has third party authorisations over your accounts and ensure that they are trusted.

Keep a track on your bank accounts, investments and other assets.

Put in place arrangements, like power of attorney, for how your money and property will be handled if something happens to you or you can no longer communicate your wishes effectively.

Always read contracts and other documents carefully and never sign anything under duress, seek legal advice when in doubt or contact police if you think you are being abused.



### Bank staff on the frontline

Bank employees need to be vigilant and cautious when faced with a possible case of financial abuse. To intervene or question a customer inappropriately, or without due consideration and sensitivity may cause embarrassment for the customer, or possibly damage the customer-banker relationship.



### Challenges for bank staff and the solutions

It is currently very difficult for bank staff to report suspected cases - Australia needs an appropriate designated organisation where bank staff can report the suspected elder financial abuse for investigation.

Difficult to assess customer competency. Banks will continue to offer ongoing training to frontline staff to help them identify and assist customers in difficult and sensitive situations.

Power of attorney legislation is inconsistent across the country, which makes it overcomplicated to detect and report abuse. Australian banks are calling on Governments to introduce standardised legislation across the country.

In most states such as NSW, Queensland and Victoria, powers of attorney are not required to be registered formally, making it hard for banks to check the legitimacy of a power of attorney. The establishment of a national power of attorney register would help all financial institutions verify the authority of a power of attorney or court-appointed administrator when they present themselves as acting on behalf of a customer.

Australia's banks will continue to work with governments and other key stakeholders to help ensure that all of the necessary measures, legislation and training are put in place to help protect older Australians from being abused financially.

