

10 April 2025

Ms Natalie Cameron
Lead Ombudsman – Banking and Finance
Australian Financial Complaints Authority

By email: consultation@afca.org.au

Dear Ms Cameron

AFCA's Approach to family violence and financial elder abuse

COBA welcomes the opportunity to respond to the Australian Financial Complaints Authority (AFCA) on its Approach to family violence and financial elder abuse (Approach documents).

COBA is the industry association for Australia's customer owned banks (mutual banks, credit unions and building societies). Collectively, our sector has over \$185 billion in assets and is the fifth largest holder of household deposits. Customer-owned banks (i.e. mutual banks) account for around two thirds of the total number of domestic Authorised Deposit-taking Institutions (ADIs) and deliver competition and market leading levels of customer satisfaction in the retail banking market.

COBA and our members strongly support measures to combat any form of domestic family violence, including financial abuse. We also support initiatives protecting persons experiencing vulnerability, including older Australians, who have the right to feel safe, valued and heard whilst living free from mistreatment or abuse. To date, 17 COBA members have [changed their terms and conditions](#) to make it clear that their products and services are not to be weaponised or used for financial abuse. To this end, we welcome additional guidance from AFCA, setting out its approach and expectations when considering complaints involving financial abuse. This will assist banks to better understand the expectations when it comes to protecting their customers from the perpetrators of financial abuse and other forms of domestic violence.

Some of steps that our members take in preventing and detecting financial abuse include:

- monitoring for suspicious transactions
- identifying customers experiencing vulnerability
- looking for triggers that may indicate financial abuse, and
- referring customers to specialist teams within the bank, who can offer assistance and refer to appropriate external services.

Key Points

COBA welcomes guidance from AFCA in relation to domestic violence and financial elder abuse and support measures to combat any form of domestic violence.

AFCA's approach documents should adopt scalability and consider the diverse range of financial firms using the Approach documents.

We encourage AFCA to foster through its Approach documents a cooperative and supportive engagement between the victim/victim-survivor ('Victim') and the financial firm. We are concerned that AFCA expects financial firms to waive debt or award compensation in a very broad range of circumstances and that this could have unintended consequences. These include financial institutions being discouraged from supporting complainants who could be Victims, or debt management firms misusing the Approach documents.

AFCA should further consider the regulatory and practical challenges banks are facing when suspecting financial abuse. These challenges include privacy constraints and deficiencies in state-based legal frameworks relating to authority documents, such as powers of attorney. We recommend AFCA revises its Approach documents further to consider these issues.

The Approach documents would benefit from further examples and considerations of online banking and a more diverse range of banking and credit products (such as withdrawal of funds from transaction accounts).

When considering financial abuse, it is important to acknowledge the regulatory and practical challenges banks are facing when suspecting financial abuse. These challenges include privacy constraints, deficiencies in state-based legal frameworks relating to authority documents (such as powers of attorney) and the increasing customer preference to bank and transact online. AFCA should consider the Approach documents through the lens of these factors, especially when considering red flags or outcomes of disputes. We believe that this will ultimately ensure the best outcome for the victim/victim-survivor ('Victim').

We have provided specific comments on each of the Approach documents in **Appendix A**.

Scalability and proportionality

As smaller banks, customer-owned banks can be subject to 'one size fits all' industry guidance and regulation aimed at much larger entities with more resources and who serve much broader demographics. COBA generally welcomes measures that reduce complexity while promoting flexibility, innovation and positive consumer outcomes. AFCA's Approach documents should consider the different sizes and demographics of various financial firms when awarding remedies or considering red flags. We also highlight that our members may have different banking systems and system limitations compared with the major banks and identical prescriptive expectations for each financial firm may not be practical or appropriate.

Online banking

Many of the red flags listed in the Approach documents are appropriate in the context of a customer transacting at a branch or phone banking. However, as customers preferences change and they increasingly utilise internet banking, some of the red flags identified will not be applicable or visible. We encourage AFCA to consider and group red flags in the context of the various channels customers interacts with the financial firm, for example, online, over the phone or in branch. AFCA should also

acknowledge the challenges of picking up some red flags in the online environment and reflect this in its Approach documents.

For example:

- Perpetrators may use the customer's login details and may not have, or use, a separate login account as an authorised representative.
- In the case of financial elder abuse, some transactions may be regular reoccurring transactions for smaller amounts that the financial institution would have no reason to pick up as suspicious, even though they are not for the customer's benefit.
- The Approach documents fail to adequately consider scenarios of online applications for credit products, such as credit cards, where a perpetrator may be applying on behalf of (or pretending to be) the customer.

Unintended consequences

COBA is concerned that the Approach documents may have several unintended consequences and, in some instances, inadvertently reward the perpetrator. In AFCA's approach documents, financial firms appear to be liable for compensation in very broad circumstances. For example, the Approach to financial elder abuse includes reference to 'Possible outcome to a complaint'. All the outcomes in this section appear punitive against the financial firm, including awards for non-financial loss. This may result in financial institutions being discouraged from supporting victim-survivors and instead encouraged to challenge and dispute complaints to avoid the possible heavy penalties for matters they could not have identified.

COBA is also concerned that debt management firms or some individuals could take advantage of AFCA's Approach documents and attempt to achieve pervasive outcomes such as having debts waived where there was in fact no financial abuse.

We therefore encourage AFCA to foster through its Approach documents a cooperative and supportive engagement between the Victim and the financial firm. For example, AFCA could provide guidance on the type of acceptable remedies or compensation financial firms could offer when considering complaints. We discuss this further in **Appendix A**.

Consistency in the Approach to financial elder abuse

We note that the Approach to financial elder abuse appears of a different tone and style to the Approach to family violence and our members have observed it as encouraging a more adversarial engagement between Victims and financial firms. We recommend further reviewing the Approach to financial elder abuse to ensure consistency between the two Approach documents.

We also refer AFCA to the [National Plan to End the Abuse and Mistreatment of Older People 2024-2034](#) which provides that Compass.info will be the national online knowledge hub of resources and information about services relevant to the abuse and mistreatment of older people and 1800 ElderHelp will be the main point of contact. We suggest AFCA considers this plan when finalising its Approach to financial elder abuse.

Privacy and confidentiality

Banks have a positive obligation not to breach privacy laws but do not have any clear protection from liability for disclosing this information. We highlight the importance of financial firms complying with their privacy obligations (particularly to protect the privacy of Victims) and the challenges these may present when there is a suspected case of financial abuse or financial elder abuse. We encourage AFCA to further clarify expectations of financial firms in relation to disclosure of information to third parties (including family members) in cases of suspected financial abuse. Our members have

observed in the Approach documents inconsistent expectations in relation to privacy obligations and we have provided specific examples in **Appendix A**.

State-based powers of attorney regulatory framework

AFCA should consider that there are often inconsistent enduring power of attorney legislative framework and requirements across the different states, when setting its Approach to financial elder abuse. This is particularly relevant when awarding compensation or considering red flags.

Currently there is no unified approach or rigour in relation to how attorneys are appointed. This increases the risk of financial abuse. For example, in Queensland it is not necessary for the attorney to accept their role (sign the document) in front of the witness. Further, there is no information or reference to financial elder abuse when signing the power of attorney document for the principal, witness or attorney.

Attorneys may also not always understand their roles and responsibilities or be aware they are committing financial abuse. There is no set mechanism to ensure that attorneys understand their role. For example, one member provides an example of an attorney who signed a power of attorney document but could not speak English.

Abuse can also occur within the lawful parameters of powers of attorney where the perpetrator is given lawful access. While the current state laws in relation to powers of attorney have provisions allowing for transactions in favour of the attorney (e.g., reasonable gifts) these provisions are often inadequate to deal with and respond to patterns of behaviour that operate outside of this legislation.

It is important to note that it is not the bank's role or responsibility to prove or disprove the legitimacy of each transaction or whether the principal or attorney are benefitting from the funds. Practically, an attorney may have access to internet banking or a bank card and can remove funds from the principal's account and transact in a variety of ways that do not raise a 'red flag' for the financial institution.

We also highlight that currently there is no central national referral approach for financial elder abuse cases and that the separate state-based support agencies also have different powers and roles.

Definitions

Financial elder abuse

Our members suggested various mechanisms when considering financial elder abuse. Most members agreed it should refer to a combination of vulnerability and indicators of financial abuse instead of a set age. COBA is of the view that setting a blanket rule of requiring safeguards for customers' transactions over 60 may not be appropriate. We also highlight that in minority of cases (for example in some First Nations communities) financial elder abuse could take place at an earlier age.

Family violence

Some COBA members also suggest that the reference to 'family violence' throughout the Approach to family violence could be broadened to 'family and domestic violence', as they consider this term better reflects the reality that violence and abuse extends beyond the 'family' confines.

Transition

Our members operate in a heavily regulated environment and devote significant resourcing train staff to meet compliance requirements. Our members therefore require adequate time to transition to the

new AFCA Approaches, particularly the Approach to financial elder abuse. This transition includes system changes and additional staff training, particularly to front line staff who will be required to assess many of the issues identified in the Approach documents.

The current commencement date of the Approach is currently unclear and set to 'TBC' on the [joint consultation page](#). COBA believes the earliest appropriate commencement date would be **1 October 2025**. This date would also depend on when the Approaches would be finalised and published.

Thank you for taking the time to consider our submission. If you have any queries, please contact Ilana Madjar at imadjar@coba.asn.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Michael Lawrence', with a stylized flourish at the end.

MICHAEL LAWRENCE
Chief Executive Officer

Appendix A – document specific feedback

AFCA's Approach to family violence

Reference	Description/ Extract from Approach document	Feedback
Page 8	<i>'Preventing financial abuse at the time of lending or funds withdrawal: Recognising and acting on warning signs' - the paragraph sets out AFCA's expectation of financial firms in these circumstances.</i>	AFCA should consider scalability and resourcing constraints faced by smaller financial firms when making determinations based on the reasonable steps that should be expected from smaller financial firms.
Page 10	<i>'Transactions may be disputed on the basis that they were unauthorised. Alternatively, an authorised transaction may be disputed because a customer believes they should not be liable, for example because they obtained no benefit from the transaction.</i> <i>Where transactions are disputed, the onus is on the financial firm to demonstrate that the transactions were correctly authorised.'</i>	AFCA should clarify its definition of transactions that are 'correctly authorised'. For example, does the definition include situations where the consumer believes they did not obtain a benefit? We note that the concept of 'benefit' in the guidance could be misapplied beyond domestic family violence and have unintended consequences. For example, a parent buys McDonalds for their kids and didn't personally benefit – would parents have grounds to dispute this transaction? Very clear guidelines would need to be provided to support this dispute option.
Page 10	<i>'Where a financial firm becomes aware that the parties to a jointly held facility are in dispute with each other, it should change the operating authority for the account so that both parties are required to sign.'</i>	It would be helpful for AFCA to provide guidance on how both parties should be informed about the new arrangements to minimise potential harm to the Victim. For example, the Victim could potentially be put at risk if both parties are required to be informed of the changed operating authority.
Page 15	AFCA provides examples where financial firms have agreed to waive either part or all debt for both secured and unsecured loans. One of these is <i>'where a customer is experiencing or has in the past experienced family violence (and there were no warning signs at the time of lending).'</i>	Is AFCA's expectation that financial firms should automatically waive part/all debt even if no warning signs are present? This appears to be an inequitable approach for financial firms given that the warning signs may not present in all situations.
Page 17	<i>A financial firm's obligations to co-borrowers</i>	AFCA should clarify whether it expects that the co-borrower should be notified in circumstances where one borrower is seeking Financial Hardship Arrangements (FHA) where the contribution of the co-borrower is not required. On the one hand the Approach

		<p>suggests that the co-borrower does not need to be notified where their contribution is not required. On the other hand, it is suggesting it is good practice to notify the co-borrower in case they want to propose a variation arrangement.</p> <p>Under the Privacy Credit Reporting Code (CR Code) 2024 section 8A(6) states that where only one borrower has requested FHA, it is at the discretion of the financial institution to consider if the other party is to be notified.</p>
Page 19	<p>This page details key points regarding credit reporting and default listing such as:</p> <ul style="list-style-type: none"> • <i>'If a financial firm is on notice that a borrower is experiencing family violence, the financial firm should not make a default listing or disclose adverse Repayment History Information (RHI) on that individual borrower's credit file.'</i> • Financial firms may need to remove or refrain from entering adverse credit information. • Place enforcement actions on hold while the financial firm works with the individual borrower, however, can report adverse credit information and hardship on other borrower. • Separating credit information under Comprehensive Credit Reporting. • Remove default listing when advised of family domestic violence situations in subsequent reporting. 	<p>Our members have identified practical challenges with separating credit information on individual credit files as it is reported on the account, and we understand that there are operational limitations to separate the listings for each individual customer. We welcome AFCA's further guidance on this issue.</p> <p>AFCA should also clarify the expected industry practice in relation to credit reporting in the context of domestic violence. For example:</p> <ul style="list-style-type: none"> • in relation to the removal of default listing, does AFCA mean correction followed by suppression or just correction? • Should suppression of RHI be considered and referred to in the document? • It would be helpful for AFCA to provide a maximum timeframe when a default listing or adverse RHI could commence e.g. after a period of five years.
Section 3	Case studies and examples	<p>All the examples provided under section 3 of the document relate to home loans. We suggest AFCA provides examples of:</p> <ul style="list-style-type: none"> • Other credit products. • Other products such as transaction account (for example, fund withdrawal). • Prevention techniques that financial firms can utilise to minimise the impact to the customer.

<p>General observations</p>	<p>Language difficulties</p> <ul style="list-style-type: none"> The Approach to Family Violence does not currently include reference to customers from non-English speaking backgrounds or communication difficulty. It is common for older customers to bring a younger family member to assist them to communicate with their financial institution. While the use of an interpreter service is available to customers, that offer may be declined. We welcome further guidance from AFCA in relation to its expectations in these cases. <p>Separating co-borrowers</p> <ul style="list-style-type: none"> Expectations in the Approach in relation to separating co-borrowers only envisage the application occurring in person. It would be beneficial to have additional guidance regarding the expected actions or controls for online transactions and applications. We welcome guidance from AFCA on circumstances where a Victim discloses that they are being coerced to complete the transaction whilst in a private conversation separate from the perpetrator. There could be potentially severe consequences to the Victim if the perpetrator believes that information was disclosed that prevented the transaction. <p>Extra care or support</p> <p>AFCA should consider further how the perpetrator might gain access or is provided information about the Victim when they contact or interact with a financial firm (for example, impersonation, request for statements to be sent to an address). This would help further prevent privacy breaches.</p> <p>Silent Accounts</p> <p>We suggest AFCA defines ‘silent accounts’ and how they may differ from a ‘sole owner’ account.</p> <p>Remedies</p> <p>One COBA member submits that it may be beneficial to provide financial firms with guidance on acceptable remedies they may offer customers where they are alleging financial abuse. Having additional guidance on acceptable remedies would have multiple benefits:</p> <ul style="list-style-type: none"> Institutions will operate in a consistent manner when remediating issues. They would assist in identifying disingenuous complaints, where an acceptable remedy has been offered and declined. This can then be considered by AFCA when judging the merits of progressing a complaint. They would guide financial firms on acceptable options to resolve a dispute of this type.
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AFCA's Approach to financial elder abuse

Reference Page	Description/ Extract from Approach document	Feedback
Page 3	<i>'Appropriate safeguards need to be put in place to help protect older people aged 60 and over (particularly those who may be more vulnerable) when they obtain a financial service or conduct a financial transaction with a financial firm.'</i>	<p>As outlined above, requiring safeguards for all transactions by customers aged 60+ may not be feasible or necessary.</p> <p>We suggest AFCA removes the reference to an age threshold, particularly in relation to 'requiring safeguards'.</p> <p>To ensure that protection is given to customers who need it (and not those who do not), AFCA's focus should be on:</p> <ul style="list-style-type: none"> • vulnerability (which age can contribute you); and • indicators of financial abuse.
Pages 4-6	<i>AFCA's approach defines elder abuse and financial abuse</i>	<p>One COBA member encourages AFCA to issue guidelines that distinctly separate the summary definitions of financial elder abuse from financial abuse and the different measures between the two.</p> <p>Conversely, another COBA member queries whether a distinction is necessary considering the expectations of financial firms to take steps against financial abuse, regardless of age.</p> <p>This feedback suggests that this section could benefit from further refinement.</p>
Page 7 to 9	<i>'There are a number of 'red flags' that may indicate elder financial abuse of an older person. The red flags are warning signs a financial firm's employee should make further inquiries or proceed with caution, including, where appropriate, delaying the transaction or taking other preventative action.'</i>	<p>Our members note that the list of red flags is very broad, confusing and repetitive.</p> <p>COBA suggests a distinction between transactions that involve staff interaction (in branch or on phone) and those performed online. The Approach documents should recognise that financial firm employees will generally only investigate account activity when put on notice by another red flag.</p>
Page 10	<i>'When considering whether a financial firm took reasonable measures to provide appropriate access, we would consider the type of financial transaction and whether the financial firm explored appropriate options with the older customer. For</i>	Financial firms may encounter system limitations which may not allow for separate logins to be created for authorised parties. We encourage AFCA to revise this section to clarify that separate logins should be

	<i>example, where a financial firm is aware a caregiver of an older customer does their banking, the financial firm should discuss a separate login for the caregiver to distinguish who is conducting the transaction.'</i>	created where the system is equipped to do so, otherwise processes or controls should be in place to address this risk.
Page 10	AFCA refers to certain obligations in paragraph 96 of the General Insurance Code of Practice (GICOP) as matters of good industry practice.	<p>It would be useful to clarify whether AFCA's intention is to apply these obligations to banks? If so, could AFCA clarify which obligation/s, for example:</p> <ul style="list-style-type: none"> To engage with consumers with sensitivity, dignity, respect and compassion, which may include referring vulnerable consumers to people, or services with specialist training and experience. <p>We note a similar but narrower commitment in clauses 26 and 27 of the Customer Owner Banking Code of Practice.</p>
Page 11	<i>'referring financial firm customers to external support agencies where appropriate'</i>	<p>AFCA should consider referring to national based support agencies or clarify if it is referring to services such as the Office of Public Guardian (OPG).</p> <p>As previously noted, there is no central referral point as the support agency for each state are different. For instance, in Queensland for the OPG to consider a referral, the individual must be deemed incapacitated. If AFCA expects financial firms to refer customers to external parties, we recommend that AFCA includes a list of external support agencies.</p> <p>We also refer to the recent National Plan to End the Abuse and Mistreatment of Older People 2024-2034 that notes that the 1800 ElderHelp will be the main contact.</p>
Page 12	<i>• If there is no other family or friend, a referral to a relevant support service might be appropriate.</i>	<p>Our members welcome further clarification from AFCA around the meaning of 'referral'.</p> <p>On page 17, it states that under s16A of the Privacy Act, disclosure of personal information is allowed where there is 'misconduct of a serious nature'. COBA members would benefit from clarification as to whether</p>

		AFCA considers that this exception applies in relation to disclosure to a support service agency.
Page 12	<ul style="list-style-type: none"> <i>When the customer is alone, a financial firm should be willing to have a conversation with them about the reason for the financial transaction.</i> <i>Where an older person has appointed someone under a Power of Attorney (POA), firms should exercise due diligence to ensure the POA is properly executed, and the attorneys are appropriately appointed.</i> <i>Where the POA is active due to the older person's cognitive incapacity, check the POA to see if there is a joint attorney who can verify the financial transaction is appropriate and not to the detriment of the older person. Where the older person has capacity and the POA is not yet active, confirm their consent to contact any attorneys.</i> 	<p>It would be helpful to provide guidance on the expected actions financial firms should and should not take in the following situations:</p> <ul style="list-style-type: none"> Where an older customer has capacity but is under duress, has been separated by branch staff and engaged in a private conversation but is intent on proceeding with the transaction. A conflict transaction appears to be made under a POA.
Pages 12 & 17	<p>Page 12 states:</p> <p><i>'financial firm employees should feel free to ask the customer if there is another family member or friend the financial firm can talk to about the financial transaction before proceeding with it'.</i></p> <p>Page 17 states:</p> <p><i>Similar exceptions may apply where a financial firm seeks to disclose a customer's personal information to their family without the consent of the customer. However, careful consideration is required where:</i></p> <ul style="list-style-type: none"> <i>the family member does not hold a formal position, such as an attorney under a Power of Attorney, or</i> 	<p>It is not clear whether the customer's consent is required in these cases. Our members also suggest that page 17 is somewhat confusing or contradictory.</p> <p>If financial firms adopt the approach of disclosing a customer's personal information to their family without the consent of the customer, while consent is in fact required, financial firms are at risk of breaching the Australian Privacy Principles under the <i>Privacy Act</i>.</p>

	<ul style="list-style-type: none"> • <i>has not been appointed as an administrator or financial manager by a State or Territory tribunal or court</i> 	
Page 14	<p>A forged signature does not constitute a customer's authorisation, no matter how good it appears to be or how closely it resembles the customer's actual signature. If a financial firm pays an amount from a customer's account based on a forged signature, it has no authority to debit the customer's account.</p>	<p>COBA notes that forgery is a complex topic. It would be helpful to understand AFCA's expectation if the forged signature is almost identical to the actual signature.</p> <p>If a financial firm is not on notice of any concerns, a signature should be relied upon on if it is reasonably believed to have been done by the customer.</p>
Page 17 & 18	<p>Privacy and Confidentiality</p> <p><i>'The duty of confidentiality would not prevent a financial firm giving its customer information about relevant agencies or support services, or seeking the customer's direct consent to notify third parties on their behalf.'</i></p>	<p>Our members welcome further clarification in relation to the following:</p> <ul style="list-style-type: none"> • What are the expectations of financial firms to report financial elder abuse and to whom (other than the police), noting that each state has a different legislative framework and regime. • What is meant by 'direct consent' from the individual and how does that need to be evidenced?
Page 17	<p><i>'A financial firm may disclose personal information to other agencies as permitted by s16A of the Privacy Act 1988 where there is a "serious threat to life, health or safety", or "unlawful activity, or misconduct of a serious nature". In this instance, where fraud is suspected, the financial firm is clearly entitled (and possibly required) to report the matter to police.'</i></p>	<p>One COBA member notes that as financial elder abuse is a criminal act, AFCA could make it clear that reporting to the police is 'essential' rather than 'possibly required'.</p>
Section 4.3	<p>Section 4.3 provides a list of state-based organisations with staff who have specialist training and experience with whom vulnerable consumers can consult.</p>	<p>As noted above, the recent National Plan to End the Abuse and Mistreatment of Older People 2024-2034 provides that Compass.info will be the national online knowledge hub of resources and information about services relevant to the abuse and mistreatment of older people and 1800 ElderHelp will be the main contact. We welcome further clarification with AFCA around further alignment with the National Plan and the most appropriate organisations for financial firms to contact.</p>

General observation	<p>Our members observe that families of victims often find it difficult to get traction on investigations with law enforcement and/or solicitors as the case relies heavily on the victim to recount the abuse either due to age related impairment and/or confirmed cognitive impairment. Often families state that it is difficult to find a legal professional willing to investigate claims and often they are not taken seriously. From our members' experience in these complaints, it appears that law enforcement is limited in measures they can apply to initially just protect the victim from the abuse in the first instance. Families will then turn to the banks for resolution, as a last resort, demanding the banks investigate the abuse and reclaims the funds lost.</p>
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