

## Submission to the AFCA Approach Consultation on:

- The AFCA Approach to family violence
- The AFCA Approach to financial elder abuse

**Date of submission:** 11 April 2025

### About Financial Counselling Victoria (FCVic)

FCVic is the peak body and professional association for Victoria's 300 practising financial counsellors. Our organisation was established in 1978 by Victorian financial counsellors to provide sector professionalisation, peer support, and undertake systemic advocacy.

FCVic's vision is *'a fairer and more equitable society with improved community wellbeing and better lives for vulnerable people'*. FCVic develops resources, builds sector capability, and advocates on behalf of financial counsellors and community members on systemic issues that cause and exacerbate poverty and financial hardship. We work with government, banks, utilities, debt collection agencies and other industries to improve approaches to financial hardship and vulnerability.

Financial counselling is a free, confidential, and independent service. It provides vital help for people experiencing, or at risk of, financial hardship. Financial counsellors are uniquely qualified professionals, specially trained to deal with complex financial matters. They assist more than 31,000 Victorians each year – including newly arrived migrants and refugees, people impacted by catastrophic natural disasters, and particularly pertinent to this consultation, family violence victim-survivors and older people.

### About this submission

We welcome the opportunity to provide a submission to the Australian Financial Complaint Authority's (AFCA) consultation on the Approach to family violence and Approach to financial elder abuse (the Approaches).

This submission has been informed by the input of Victorian financial counsellors. We acknowledge and give special thanks for their input and expertise which has helped to inform this submission.

The commentary and recommendations provided in this submission should be read in conjunction with a wide body of work already produced by FCVic (in conjunction with our advocacy partners) on issues relating to family violence, elder abuse and financial abuse, including:

- [Submission to the Parliamentary Inquiry into the financial services regulatory framework in relation to financial abuse in Australia](#)
- [Submission to the Draft National Plan to End the Abuse and Mistreatment of Older People](#)

- [Submission to the Inspector-General of Taxation / Taxation Ombudsman's Review - Identification and management of financial abuse within the tax system](#)
- [Stronger than Before: Rebuilding financial resilience for older bushfire residents](#)
- [Submission to the next stage in Victoria's work to end family violence](#)
- [Submission to the Inquiry into Support for Older Victorians from Migrant and Refugee Backgrounds](#)
- [Response to the draft National Plan to end Violence against Women and Children 2022-2032](#)

We also suggest that recommendations in [our submission to AFCA's joint consultation last year on General Insurance Approaches](#) be considered in this consultation, specifically relating to enhancing readability and accessibility.

We acknowledge and support the submissions made by our community partners, specifically that by the Economic Abuse Reference Group.

Further questions about this submission can be sent to Amanda Chan, Advocacy Manager at FCVic at [achan@fcvic.org.au](mailto:achan@fcvic.org.au).

## Our commentary

**FCVic is fully supportive of AFCA's commitment to best practice supports for victim-survivors of family violence and elder abuse (FV/EA).** There are clear improvements to both Approaches which better highlight the nuances of individual situations involving FV/EA, and AFCA's expectations of how its members should respond to consumers in these situations.

However, we do believe that there are tweaks to the Approaches which can help to remove current wording ambiguities which could leave victim-survivors at risk. The following commentary provides further detail.

## Applying a safety-first approach

Safety of the victim-survivor has been mentioned throughout both Approaches, but we believe that it is important that it be framed as an over-arching consideration in all actions taken by AFCA members in supporting people who have experienced FV/EA.

Inclusion of a formal safety-first statement in the Approaches would help to frame the importance of this principle through the entire document:

*The safety and wellbeing of individuals experiencing family violence or elder abuse must be the primary consideration in all decisions by AFCA members involving communication, documentation, and financial and account arrangements – even where this may appear to conflict with organisational policy.*

This could help to encourage AFCA members to train and empower their frontline staff to act with confidence and compassion, and create opportunities to identify and innovate rapid responses to new ways in which adults using family violence perpetrate FV/EA.

## Applying an intersectional lens

It should be recognised that statistically, the risk of FV/EA can be elevated if an individual has multiple intersections of identity – for instance, if they are culturally or linguistically diverse, older or younger, living with a disability, or are LGBTIQ+. These intersections of identity not only have an impact on level of risks, but can also influence experiences of FV/EA.

Financial counsellors working in multicultural communities have reported that their clients who are victim-survivors may want to stay in a relationship for cultural reasons. As a result, they may not be eligible for many community, government or industry supports as these supports are commonly designed for victim-survivors who want to leave. Real consideration needs to be given to how supports can be provided to victim-survivors in a culturally safe and relevant manner that keeps them safe in their homes – and this should be reflected in the Approaches.

## Use of language

The Approaches use the language of ‘abuser’ and ‘perpetrator’ to describe the person perpetuating the FV/EA.

There is a general shift in language in Victoria under the Family Violence Multi-Agency Risk Assessment and Management (MARAM) Framework to using the terminology ‘adult using family violence’ (AUFV). This language shift acknowledges and emphasises that individuals have a choice to use family violence. It promotes accountability of the AUFV, and acknowledges that *there is always a choice to not use family violence*.

Shifting the language in the Approaches along these lines (even if not AUFV) will help to shift belief systems, to focus on the abusive actions of the AUFV rather than the actions of the victim-survivor.

Related to this recommendation on the use of language, we provide direct recommendations on implementation of a neutral language framework (e.g. passive voice) in AFCA determinations from a financial counsellor working closely with victim-survivors through AFCA cases:

### **Background:**

A critical issue has emerged whereby the communication of AFCA findings in FV/EA cases can be retraumatising in the language used – to the point that financial counsellors will often advise clients against reading the determinations in full. This is most common in cases where claims are unsuccessful due to evidentiary challenges – often because financial abuse resulted in documentation being controlled by the perpetrator.

### **Example:**

Current problematic phrasing – “*The available information indicates the complainant was involved in arranging the loan.*” or “*It is clear the complainant was involved in the*

*business... On balance it is likely the complainant arranged or was involved in arranging the loan with the financial firm."*

Recommended trauma-informed approach – *"The evidence presented was insufficient to establish that the loan was arranged without the complainant's knowledge."*

**Recommendation:** For AFCA to adopt trauma-informed language that acknowledges evidentiary limitations without making accusatory statements about the complainant's involvement and undermining their credibility or experience of FV/EA.

## Provision of evidence

We are really pleased to see in sections of the Approaches that AFCA emphasises that its members should take the disclosures of family violence at face value and not require evidentiary support of these disclosures. This should be better reflected in section 2.1. under 'Engaging effectively' where it currently states:

*Recognising that someone experiencing family violence may not have access to their financial records and other documents. Financial firms' requests for information should, therefore, not be onerous.*

Suggested amendments have been marked as below. This emphasis is needed, as financial counsellors report that this is one area that is often overlooked by creditors.

*Recognising that someone experiencing family violence may not have access to their financial records and other documents. **In many cases, firms should take these disclosures of family violence at face value, and requests for evidence or information should be unnecessary in most cases and limited in only a few.***

This amendment should be applied to AFCA's own processes to ensure that the complaint process does not inadvertently reinforce the same harms that can be perpetrated by its members. The following structural elements of the AFCA determination process have been reported by financial counsellors as disadvantaging victim-survivors of FV/EA:

1. **Document Primacy:** AFCA's policy to give more weight to documents created at the time events occurred fails to account for the reality that AUFV often control, manipulate, or fabricate documentation, thereby disadvantaging complainants from the outset.
2. **Contemporaneous Reporting Requirement:** The expectation that victim-survivors should have reported issues when they occurred disregards the delayed discovery nature of financial abuse, and the coercive control that they are experiencing.
3. **Digital Identity Assumptions:** Determinations that rely on electronic communication pathways fail to recognise that perpetrators routinely create and control email accounts in the victim's name specifically to facilitate fraud and conceal financial activities.

We recommend that AFCA's determination processes be reviewed holistically by an external expert to ensure a safety-by-design approach which accounts for the unique evidentiary challenges experienced by victim-survivors of FV/EA.

## **Industry Guidelines**

We acknowledge that AFCA may reflect upon compliance with industry guidelines in their complaints management. This is borne out in the Approaches with its references to the ABA Industry Guidelines on preventing and responding to financial abuse and family and domestic violence and Example 4 provided in the family violence Approach.

We suggest that there is a role for AFCA in considering where industry guidelines, which are largely not legally enforceable, may be inadequate in their responses to experiences of family violence. In these cases (e.g. the General Insurance Code of Practice), AFCA should take inspiration from best practice guidelines from other industries (e.g. Banking Code of Practice) to inform how the firm should have responded to a victim-survivor experiencing family violence.

## **Creating an escalation point**

In all industries and organisations, it is good practice for there to be an internal escalation point when the first point of contact is not adequately responding to requests for assistance. For instance, some financial firms and utility providers now have 'customer advocates' who act as an escalation point where standard procedures through hardship teams are not successful.

We recommend that AFCA consider creating an escalation point within its own complaint processes that can be accessed by applicants and their representatives where they believe that experiences of FV/EA are not or have not been adequately considered in their case at each stage of the AFCA process.

## **Non-financial loss**

While AFCA has a separate Approach for non-financial loss, we believe that there's a clear need for this to be tailored for situations of FV/EA given its complexities, or otherwise included in these draft Approaches. Concrete examples would be useful of where non-financial loss has been payable in relation to the lack of consideration for their circumstances, with clear guidance on how the loss has been calculated.

## **Reviewing examples provided**

We note that all the case examples provided in both Approaches are old determinations from FOS, presumably therefore at least seven years old.

Given the developments in the regulatory and legislative landscape, not to mention society's understanding and awareness of FV/EA, we believe that it would be useful to provide updated case studies (where available) that better reflect the current environment in which FV/EA situations may arise and the factors considered in AFCA's determination.

## Options for assistance

The family violence Approach lists a number of ‘options for assistance’ for people seeking assistance. Additional options that are currently unlisted but may be useful in certain circumstances is:

- including a deed of settlement for home loans with a reduced interest rate and realisation of the capital on sale of the property. This arrangement allows banks with ageing borrowers impacted by FV/EA nearing retirement to recoup their loan once the property is sold.
- Provision of ex-gratia financial support to assist the homeowner in selling the property.
- Provision of ex-gratia financial support to assist victim-survivors with moving costs / bond / first month’s rent where there is a shortfall after the property has been sold.
- Where there is a shortfall after the property is sold, the financial firm agrees not to pursue action in cases of FV/EA.

## Preventing financial abuse at the time of lending or funds withdrawal

There is a clear gap in the family violence Approach relating to verification of identity. While the Approach details examples of how financial firms can ‘recognise and act on warning signs’, this assumes that lending is happening in-person, face-to-face, where these warning signs can be spotted by someone who has undergone appropriate training.

Financial counsellors have reported instances of financial abuse that have happened when the individual was not aware – for instance, where the AUFV has logged into the victim-survivor’s banking app while they have been asleep, and managed to apply for a line of credit through the app without the knowledge or consent of the victim-survivor.

We suggest that there should be robust identity verification processes in place, like those used by Australia Post (Digital ID) or a video call with an applicant to verify that the person applying for the line of credit is the real borrower. This is important not just from a FV/EA perspective, but important from a fraud prevention perspective as well.

## Preventing financial abuse on an ongoing basis

There is a lack of detail in both Approaches on the responsibility that financial firms have in identifying financial abuse after the initial time of lending. This may include examples of where AFCA may look at where a firm should have:

- Used automatic red flag alerts on accounts – e.g. rapid and out-of-character fund withdrawals after account access changes
- Reviewed high risk profiles at specified trigger points – e.g. for elderly customers, reviewing the account whenever a new online user is added

## The importance of staff training

The Approaches make references at various points to ‘trained staff’ – however provides no clear information on how AFCA may assess the quality or consistency of training in their determinations.

It would be useful in these documents for AFCA to provide guidance on what evidence it seeks to establish how well the member has ensured that their staff are adequately and appropriately trained in responding to family violence in a trauma-informed manner – and how a lack of evidence may influence its decision-making.

### **Concerns around both-to-sign recommendations**

While both-to-sign operating authority may be useful in some FV/EA circumstances to protect joint assets, we hold some concerns about recommending it as an option broadly (see ‘Engaging effectively’ and ‘Disputed transactions’ in the family violence Approach) given the potential dangers in situations where it may be used to financially control a victim-survivor. Greater nuance is required in these situations, and this should be reflected in the Approaches.

### **Cancellation of insurance policies by one policy-holder**

The family violence Approach currently suggests that insurers make ‘further enquiries’ if one party cancels an insurance policy and abuse is suspected – however this vague wording leaves too much room for error given the overall poor performance of insurers in responding to client needs.

We suggest that this should be strengthened to require in all relevant cases (not just where abuse is suspected):

- Clear, uncoerced consent from both parties for the cancellation of any jointly held insurance policy
- Introducing a mandatory "cooling-off" notification period where the second party is advised (in a safe, secure way) that cancellation has been requested, and given the opportunity to object.
- Ensuring that communications are conducted separately and confidentially with each policyholder.

We acknowledge that the above recommendations will require potential amendment to the General Insurance Code of Practice, but we believe that AFCA can play a role in asserting best practice expectations in their complaints management, and influence industry change in the long-term.

On a related note, financial counsellors are grappling with an ongoing issue where there may be a jointly-owned property, yet only one person (the AUFV) is the sole insurance policy holder. There have been cases where the AUFV has cancelled the policy as a form of control over the victim-survivor, and therefore left a property uninsured.

While we acknowledge that addressing this issue may not be within AFCA’s remit, we recommend that AFCA monitor this issue from its position, and consider where its influence may help to shift industry requirements and standards in the intersection of banking and insurance, ensuring that victim-survivors continue to be protected should the AUFV attempt financial abuse through insurance.

## Use of Power of Attorneys

The elder abuse Approach provides some basic guidance around the use of Power of Attorney (POA), saying only that firms should exercise ‘due diligence’ to ensure that the POA is properly executed and the attorneys appropriately appointed.

Financial counsellors have raised numerous issues with power of attorney laws and its implementation and regulation. They report that staff in banks and other service providers who might encounter power of attorney forms get confused because of the variety of forms across different states and territories. This confusion is more likely to lead to instances of elder abuse because of a lack of full understanding of the implications of the use of these forms.

While it is not AFCA’s role to harmonise POA laws across the country, we believe that AFCA has a role in influencing financial firms’ acceptance of POAs through building an expectation that:

- Financial firms verify POAs regularly, especially after major transactions.
- Firms introduce a checklist for staff: Is the POA current, properly witnessed, relevant to financial matters, and free from conflict?

The points of feedback provided above are diverse and wide-ranging in nature – reflective of the complexities of people’s experiences of FV/EA and the many different situations in which AUFV can perpetrate this abuse through financial systems.

**Thank you for the opportunity to provide this submission to the consultation on AFCA’s Approach to family violence and Approach to financial elder abuse, on behalf of Victorian financial counsellors who each year, assist over 31,000 vulnerable people experiencing financial hardship.**