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Australian Financial Complaints Authority (AFCA)
via email: consultation@afca.org.au

AFCA's Approaches to Family Violence and Financial Abuse of Older People

The Super Members Council (SMC) thanks AFCA for the opportunity to make a submission to this consultation. SMC advocates for the collective interests of over 12 million Australians with more than $1.6 trillion in retirement savings managed by profit-to-member super funds. We advocate for a robust super system that safeguards against abuse and family violence to ensure that members' retirement savings are secure, their rights upheld, and that vulnerable members have appropriate support.

Trustees have a legal and ethical obligation to act in the best financial interests of members. Both the AFCA Approach to Family Violence and the Approach to Financial Abuse of Older People (referred to collectively as the Approaches) give clear guidance to trustees to help them meet these duties by proactively managing risks associated with family violence and financial abuse. By embedding the practices outlined in the Approaches, super funds will help drive broader industry improvements in how family violence and financial abuse are addressed, benefiting the entire sector and community. SMC acknowledges the importance and relevance of sector-specific examples in the Approaches. These sector-specific examples will enable:

- **Tailored identification of risks:** Different financial sectors have unique products, transaction types, and customer interactions. Sector-specific guidance helps trustees recognise the warning signs and patterns of family violence and financial abuse that are relevant to their products and services, improving early identification and intervention.
- **Relevant practical responses:** The financial risks and abuse mechanisms vary across sectors (joint loans in banking, super withdrawals and rollovers). Sector-specific examples provide concrete, practical actions and safeguards tailored to those risks, enabling super funds to respond appropriately and effectively in each context.
- **Compliance with industry codes and legal frameworks:** Each sector operates within its own set of regulations, industry codes, and fiduciary responsibilities. The sector-specific guidance ensures that super funds understand how to meet these obligations when addressing family violence issues, reducing legal risk and improving regulatory compliance.
- **Improved staff training and awareness:** Detailed examples and guidance make training relevant and impactful for frontline staff who work within specific sectors. This helps them better comprehend how abuse might manifest in their area of work and how to support affected customers sensitively and competently.
- **Enhanced consumer protection and support:** By addressing the unique challenges faced by members or customers in different sectors, the Approaches help deliver fairer, more tailored outcomes for victim-survivors, supporting their financial safety, dignity, and autonomy in a way that fits the specific products they hold.
- **Facilitates sector collaboration and best practice sharing:** The Approaches' clear sector distinctions encourage organisations within each sector to learn from relevant examples, implement tested solutions, and innovate interventions better suited to their operational realities, contributing to systemic improvements in how family violence is managed across the financial industry.

The Approaches further enable super funds to handle complaints involving family violence effectively and with sensitivity, reducing the risk of prolonged disputes and potential regulatory issues. SMC agrees that encouraging trustees to train staff to recognise and respond to members experiencing family violence will improve frontline responses and member support. Well-informed staff can better protect members and identify potential abuse issues early.

The Approaches equip super funds with practical guidance ultimately enhancing member confidence – making it a strong and positive framework for trustees.

Third-party authority

Someone intending to commit financial abuse may use a third-party authority form (TPA) to gain access to super information under the guise of legitimate authority. Once they have access, they could potentially coerce or manipulate the member into rolling their super balance into an SMSF controlled by the abuser or their associates. This might be done by:

- Using the TPA to obtain detailed information about the member's super balance and fund. Exploiting the authority to influence the member to make a decision that is against their best financial interests.
- Setting up a non-compliant or fraudulent SMSF that they can control so they can divert or misuse super assets once the member has agreed to the rollover.
- Although TPAs typically limit the powers granted to accessing information only, coupled with predatory or coercive behaviours it may be a warning sign of potential financial abuse when followed by a request to rollover funds to a SMSFs.

The Approaches could be further strengthened by including references to lodgements of TPAs followed by members requesting rollovers to SMSFs as a potential indicator of financial abuse. The last sentence in Section 8.2 of the Family Violence Approach could be enhanced to read:

"…and be vigilant for financial abuse signs such as withdrawal requests, change in investment strategies or rollovers that are unusual or have occurred shortly after a Third-party Authority was placed on an account."

This feedback also applies to the Financial Abuse of Older People Approach, particularly Section 5.3.

The role of subject matter experts and potentially AI

One area that could be further highlighted in the Approaches is the role of subject matter experts in both policy development and case management processes. Financial crime subject experts can spot atypical transaction patterns and bring investigative expertise required for evidence gathering to ensure responsive safeguarding measures when exploitation is suspected. Their involvement improves escalation processes, strengthens organisational policies, and supports ongoing training to reduce fraud exposure and streamline interventions.

Artificial intelligence (AI) can also play an important role in identifying abuse when a member contacts their super fund by leveraging advanced detection and response technologies. AI-powered models can monitor communications and transaction data to detect warning signs of various types of abuse, including financial abuse, harassment, or exploitation. These capabilities may enable funds to provide more targeted and proactive responses to protect members in vulnerable circumstances.

Risk factors

One area that may benefit from further consideration is the role of isolation, both social and geographic, as a contributing factor to increased risk of elder abuse, particularly financial abuse. Members who lack a support network may be more susceptible to scams or exploitation, as they often have no one to consult about the legitimacy of financial communications or transactions. This absence of support can leave members exposed to fraud or abuse.

Geographic isolation can also compound vulnerability. In rural and remote areas, the closure of physical banking locations has significantly reduced access to in-person financial services. For some older members, these branches were their primary means of managing finances and seeking assistance. Without access to face-to-face support, they may be less likely to follow up on suspicious activity or may struggle to identify potential fraud.

Warning signs

Incapacity warning signs, particularly related to memory and recall, can play a critical role in identifying potential financial abuse. For example, a member may contact a financial institution multiple times regarding the same withdrawal request, each time providing different reasons or failing to recall previous interactions which may indicate cognitive decline.

Additionally, phenomena such as the sundown effect, where individuals with dementia experience reduced clarity later in the day, can impact their ability to understand or manage financial decisions. Recognising these signs may help organisations intervene earlier and offer appropriate support.

Determining incapacity can be complex, and it may be helpful for super funds to consider a range of indicators that could signal diminished decision-making ability. These include whether a person can understand information relevant to a financial decision, retain that information long enough to make the decision, use or weigh that information as part of the decision-making process, and communicate their decision in any form. Recognising these signs may assist in identifying potential financial abuse and applying appropriate safeguards.

Powers of Attorney

It may be helpful to consider scenarios where two Powers of Attorney (POAs) are appointed to act severally but hold conflicting views on what is in the best interest of the member. In some cases, one party may not be acting with the member's welfare as the primary concern, which can complicate decision-making and increase the risk of financial abuse. In such instances, super funds and other financial institutions may benefit from guidance on when it could be appropriate to refer the matter for consideration of a Financial Management Order, as a safeguard to ensure the member's financial interests are protected.

Timelines for adoption

While some funds will already have robust and mature systems in place to adopt the Approaches (if they have not already done so in principle), others may have operational or system challenges in doing so. Family violence or abuse situations often involve multiple parties with competing claims or interests. Super funds must be able to handle internal dispute resolution processes fairly while being aware of the risk of further harm, complicating decision-making processes and requiring clear procedures. Adopting the guidance could require changes to transaction processing, account access controls, communication protocols, and complaint handling systems. This may involve some increased operational costs and may require time for some funds to implement.

Despite any transition period, super funds prioritising these improvements is essential for the benefit of all members. SMC views the Approaches as a framework for fair, trauma-informed complaint handling and dispute resolution, which can reduce prolonged disputes and associated costs over time.

SMC looks forward to further collaboration with AFCA to shape policies that reinforce consumer protection and promote transparency and trust in the super system.

About the Super Members Council

We are a strong voice advocating for the interests of 12 million Australians who have over $1.6 trillion in retirement savings managed by profit-to-member super funds. Our purpose is to protect and advance the interests of super fund members throughout their lives, advocating on their behalf to ensure super policy is stable, effective, and equitable. We produce rigorous research and analysis and work with Parliamentarians and policy makers across the full breadth of Parliament.