



AUSTRALIAN COLLECTORS &  
DEBT BUYERS ASSOCIATION

04/04/2025

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Transmitted via Email only: [consultation@afca.org.au](mailto:consultation@afca.org.au)

Dear Ms Cameron,

**Approaches to family violence and financial elder abuse (March/April 2025)**

The Australian Collectors & Debt Buyers Association appreciates the opportunity to provide the attached Submission in response to AFCA in relation to its consultation on the Approaches to family violence and financial elder abuse.

Please do not hesitate to contact the writer to discuss any aspect of the Submission.

Yours sincerely

Jacob Maiore  
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## Introduction

The Australian Collectors & Debt Buyers Association (ACDBA) welcomes this opportunity to comment on both the approaches to 'family violence' and 'financial elders abuse' dated March/April 2025.

The ACDBA was established in 2009 for the benefit of companies who collect, buy and/or sell debt. Our members (refer Appendix 1) represent the majority of the collection market in Australia, managing more than \$13.8 Billion in defaulted debt obligations.

ACDBA members are specialists in assisting consumers to deal with financial hardship and vulnerability, and have extensive experience in supporting consumers in a respectful manner to meaningfully and sustainably address their debts on a pathway back towards financial inclusion.

## Response

Family violence and elder abuse are serious concerns to the Australian community, and often involves financial abuse. ACDBA members recognise the important role they each play in supporting consumers impacted by family violence and financial abuse, and have invested significant resources to design and give effect to programs and solutions to assist consumers impacted by such circumstances.

The ACDBA supports the work AFCA has done in producing guidance in its approach documents in this important area. While the content is largely helpful, we consider that revisions are necessary to achieve the right balance, better align with the law, and avoid unintended and potentially negative outcomes.

We explain our concerns in more detail below.

### **Requests for information**

At section 2.6 of the Approach to family violence, the guidance states that:

*"Where a customer discloses family violence, the financial firm should take this on face value and not require the customer to provide evidence, for example, in the form of an intervention order."*

While members work to support customers at the earliest point, with a minimum of formality, there are circumstances where information will be needed to support more significant, or longer-term, assistance.

The ACDBA is concerned that the guidance provided at section 2.6 is inconsistent with the statutory framework governing financial hardship assistance and may lead to unintended consequences.

In particular, section 72(2) of the National Credit Code (Code)<sup>1</sup> provides that a credit provider may require specified information from a debtor in order to assess a hardship application. This includes information necessary to determine whether a debtor is unable to meet their obligations or how a contract should be varied. The ability to request relevant information is embedded in statute and serves an important purpose: ensuring fair and evidence-based decision-making.

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<sup>1</sup> The National Credit Code is [Schedule 1](#) of the [National Consumer Credit Protection Act 2009 \(Cth\)](#)

The AFCA guidance, by contrast, adopts a blanket position that firms “should not require” evidence where family violence is disclosed. This position runs counter to section 72 and may create tension between the provisions of the Code and the expectations outlined in AFCA’s approach.

Further, but more concerning to the ACDBA, is that whilst acknowledging that extensive evidence is rarely necessary to allow an assessment for hardship support, a blanket policy of accepting disclosures at face value introduces the risk of misuse. Our members have seen instances of certain paid representatives who, either directly or behind the scenes, may encourage or facilitate unsubstantiated claims of family violence in order to obtain waivers of liability. This not only undermines the integrity of the complaints process, but may also divert resources away from genuine victim-survivors.

The absence of an evidentiary threshold may also adversely affect co-borrowers. In joint borrowing arrangements, one party could make unverified allegations that result in disproportionate outcomes—such as the shifting of full liability onto the other party, or the inappropriate waiving of debts—without recourse for the affected co-borrower. It is conceivable that the AFCA process itself could be misused by a perpetrator to leave a victim-survivor with full responsibility for a joint debt.

The ACDBA supports the intent behind AFCA’s guidance and agrees that in many cases, survivors of family violence may not be able to produce documentation. In such cases, a financial firm should be flexible and adopt a trauma-informed approach. However, this flexibility should not translate into a rigid prohibition on requesting supporting information. Instead, financial firms should be empowered to assess each situation on its merits, with the discretion to seek additional information where it is reasonable and appropriate to do so—particularly where conflicting claims exist, or where co-borrowers’ rights may be impacted.

### **Lenders withholding debts from sale**

The ACDBA also wishes to comment on the position outlined on page 16 of the *Approach to family violence*, which states:

*“Where a financial firm agrees to settle a debt with one borrower on a joint loan, it should not outsource collection of the debt or sell the debt to third party debt collection agencies. This is because there is a risk that the collection agency will attempt to pursue both borrowers for the full amount of the debt, which would be in breach of the settlement that the financial firm reached with one of the borrowers.”*

Whilst the intention appears to be to prevent adverse outcomes for vulnerable consumers, the position is misconceived and perpetuates an outdated and inaccurate perception that debt collection firms are not well placed to assist such consumers.

Approach documents should set guidance on good industry practice, rather than attempt to prescribe particular business models. Debt sale and outsourcing are well-established and legitimate business practices that, when managed appropriately, lead to positive outcomes.

The key issue is not who manages the account, but that accurate information is shared with the debt collector, and that appropriate actions are taken.

ACDBA members have comprehensive frameworks in place to support vulnerable consumers, including staff training, protocols for managing sensitive disclosures, and alignment with industry codes of conduct.

Indeed, in the most recent ‘Rank the Bank’ survey<sup>2</sup> conducted by Financial Counsellors Australia, it was an ACDBA debt buyer member who achieved the highest ranking for its responsiveness to hardship and financial difficulty, across all financial service providers in Australia.

ACDBA recommends that this section of the guidance be clarified to focus on the importance of ensuring settlement terms and relevant information are communicated, and protections are put in place, rather than discouraging or limiting legitimate commercial arrangements. Such an approach would maintain appropriate consumer protections while recognising the operational realities of the financial services industry.

### **Assessment of Benefit and Evidentiary Burden**

We note that the *Approach to family violence* makes a number of references to consumers who did not receive benefit under a loan or credit facility. This is an important consideration where coercion or financial abuse is alleged. However, the guidance does not provide clear criteria as to how AFCA will determine whether such a benefit was received when deciding complaints.

In the absence of such guidance, there is a risk that case managers may default to accepting statements of “no benefit” on face value.

While it is important to handle allegations of family violence with appropriate care, AFCA’s processes must remain anchored in evidence and procedural fairness—particularly where the complainant is in a position to provide information that would assist in resolving the issue.

ACDBA submits that where relevant information is reasonably accessible to a complainant—particularly where there is no safety risk in obtaining it, and the effort required is minimal—AFCA should expect that the complainant will reasonably assist in obtaining it. If a complainant fails or refuses to do so, it would be appropriate for AFCA to draw an adverse inference in considering whether the complainant in fact received a benefit under the contract.

We consider the following example may support AFCA case managers in assessing where it is appropriate to make and adverse inference.

*A consumer made a complaint to AFCA in relation to a credit card debt, alleging that they were coerced to enter into the contract by a former partner perpetrating financial abuse. The complainant alleged they did not receive or use the card, and received no benefit under the credit card contract. The financial firm identified a number of transactions, including the purchase of an airline ticket, a payment to an insurance company, and a payment to a telecommunications provider. AFCA asked the complainant to make an enquiry with the three firms to obtain records in relation to the transactions. This was fair because doing so was unlikely to put the complainant at further risk, the information would be available and would be obtained with little or no cost or effort on the part of the complainant, and the information was directly relevant to deciding whether the consumer had benefited from the transaction. The complainant declined to obtain this information. Because of this, AFCA made an adverse inference, and found that it was unable to conclude that the consumer did not receive the benefit under the contract and held that the consumer was liable.*

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<sup>2</sup> <https://www.financialcounsellingaustralia.org.au/rank-the-banks-survey-big-four-banks/>

The ACDBA supports this measured and balanced approach. We would encourage AFCA to elevate this principle into its general guidance—namely, that where evidence relevant to benefit is within the complainant’s reasonable control, their refusal to assist in obtaining it may inform the fact-finding process and overall outcome.

Providing such clarity would enhance consistency in decision-making and help financial firms and complainants alike better understand how benefit is assessed in these often-complex matters.

### **Inappropriate Expectations**

The ACDBA is concerned by the example on page 22 of the Approach to family violence. The case study is inappropriate as it is likely to contribute to unrealistic expectations for complainants and negatively impact complaint resolution.

The case study is centred on a bank discretionarily offering a partial waiver in the amount of \$100,000. The wrongdoing of the bank outlined in the example was to suggest that the consumer, a victim of family violence, consider accessing superannuation to clear the arrears even though it was not part of the hardship arrangement, and discussed the victim’s circumstances in the open setting of a bank branch, rather than a private room.

While the intention of the case study is to demonstrate that the perpetrator and former partner may benefit from the bank’s partial waiver as a co-borrower on the mortgage, the example of the bank providing \$100,000 in compensation for what amounts to relatively minor breaches, is likely to misguide consumers in the sorts of remedies that they may expect.

The unintended consequences of using such an example, is that consumers may decline reasonable offers in an expectation that such an outcome could be achieved. This may delay resolution, cause financial service providers to incur further costs in the AFCA process, and place the consumer in a worse position, where interest may accrue, and the earlier reasonable offer, which may be considerably more favourable to the consumer, may no longer be available when the matter is finally determined by AFCA.

A different example should be used which will still illustrate the intended concept without creating unrealistic expectations and leading to the sorts of detriment described above.

## Conclusion

The ACDBA acknowledges and supports AFCA's ongoing commitment to addressing complex and sensitive issues such as family violence and financial elder abuse. We commend the effort to provide practical guidance to industry and consumers alike.

While we have raised a number of concerns regarding clarity, consistency with legislative obligations, and the practical implications of some guidance, these are offered constructively and with the shared goal of ensuring fair and effective outcomes for all parties.

We appreciate AFCA's willingness to consult with industry on these important matters and we encourage you to contact us should you wish to discuss any of the detail contained within this submission.

## Contact

For any enquiry in relation to this Submission, please contact:

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## Appendix 1

### Members of Australian Collectors & Debt Buyers Association

- Axxess Recoveries & Collections Pty Ltd
- CCC Financial Solutions Pty Ltd
- Charter Mercantile Pty Ltd
- Complete Credit Solutions Pty Ltd
- Credit Corp Group Limited (ASX: CCP)
- Lyndon Peak Pty Ltd t/as Access Mercantile Services
- PF Australia Pty Ltd
- PRA Australia Pty Ltd (NASDAQ: PRAA)
- Recoveries Corporation Holdings Pty Ltd
- Strategic Collections Pty Ltd

### Affiliate Members of Australian Collectors & Debt Buyers Association

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- CreditSoft Solutions Pty Ltd
- Experian Australia Pty Ltd
- Talefin Australia Pty Ltd
- TCN
- Collect!