



# **Australian Banking Association: Consultation on Better Banking for Vulnerable Customers**

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## About Financial Counselling Australia and Financial Counselling

Financial counsellors provide advice to people with money and debt issues. Working in community organisations, their services are free, confidential and independent.

Financial Counselling Australia (FCA) is the peak body for financial counsellors in Australia. FCA's members are the State and Territory financial counselling associations.

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## 1 Introduction

Financial Counselling Australia (FCA) welcomes the Australian Banking Association (ABA) consultation on better banking for vulnerable customers.

Financial counsellors around Australia assist people experiencing various forms of vulnerability on a regular basis. Financial counsellors have a key role in assisting and supporting vulnerable consumers with financial issues that have developed due to that vulnerability.

This submission has answered the specific questions in each section where relevant. We assume that there will be a further process to release a draft guideline. In some of the sections we have included a set of practical specific suggestions that could be included in the guideline.

## 2 The Banking Code of Practice (the Code)

The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission) recommended a number of changes to the Code. The Issues Paper sets out the main recommendation relevant to vulnerable customers (1.8 of the Final Report of the Royal Commission) in full.

The ABA is in the process of making the changes recommended by the Royal Commission. This is also an opportunity to include other changes to the Code to set higher standards for the protection of vulnerable customers. We strongly encourage the ABA to undertake more than the minimum changes recommended by the Royal Commission.

### **Recommendations**

Further principles and specific provisions need to be included in the Code to protect vulnerable customers.

## 3 Framework of the Guideline

### 3.1 Structure of the guideline

We recommend that the guideline is structured similarly to the Code, with principles and specific obligations. This would be to encourage tangible changes to benefit customers experiencing vulnerability.

#### **Recommendation**

The guideline should be structured similarly to the Code with both principles-based obligations and specific obligations.

### 3.2 Guiding principles

FCA supports the guiding principles in the Code underpinning the Guideline. The guiding principles, when fully implemented, will support an ethical, customer-oriented framework.

### 3.3 Self-regulation and guidelines

Guidelines are non-enforceable, voluntary self-regulation. Member banks are consulted on guidelines but are under no obligation to implement them. This is clearly stated on all guidelines issued by the ABA. This type of self-regulation is only as effective as its adoption and implementation. If no member banks are using the guideline or only using it selectively, it is unclear how it would have any impact at all.

Vulnerable customers are a “whole of bank” issue. Everyone can or could be vulnerable. The response to vulnerable customers needs to be comprehensive and systemic. The community needs to know or be able to see that these guidelines are adopted as well as the extent of that adoption. We recommend that the guidelines therefore include a process which measures adoption and impact. If, for example, most banks ignore an important guideline (such as this one) then this could lead to considering another approach, for example, adding more detail in the Code. We suggest a bi-annual report from all member banks that covers: if the guideline is being adopted in principle, top level details of implementation, any sections causing problems in practice and other comments.

#### **Recommendation**

All ABA Guidelines need to be reviewed bi-annually, with public reporting, on the adoption of the guideline.

## 4 Communications

### 4.1 Defining vulnerability

We support the decision to revise the term “vulnerable customers” used in the Code. The term implies that there are some customers that are vulnerable and others not. This is not how vulnerability works. People are not a label: circumstances change and vulnerability can change. As the Issues Paper acknowledges, vulnerability can be temporary or permanent as well as situational. The range of factors described in section 5.1.2 on language are all relevant.

It would be helpful if we all used the same definition of vulnerability - a common language and understanding will be a critical if we are to adequately assist people who may be vulnerable. It is also critical that the definition is simple to explain and remember. For example, in relation to financial hardship, this is often explained as a situation where a person “wants to pay, but can’t”. Below we set out some potential options for definitions. We have deliberately not recommended one above the other.

A useful next step would be, that through the auspices of the ABA, some of the organisations providing submissions to this discussion paper could further workshop and discuss a proposed definition. This process could also be helpful for other parts of the guideline (noting of course that final decisions about the content of the guideline are for the industry to agree).

#### UK Competition and Markets Authority definition

The UK Competition and Markets Authority in *Consumer vulnerability: challenges and potential solutions*<sup>1</sup> states:

...we use the term consumer vulnerability in a broad sense, to refer to any situation in which an individual may be unable to engage effectively in a market and as a result, is at particularly high risk of getting a poor deal.”<sup>2</sup>

One possible definition of vulnerability therefore could be:

*Customer vulnerability is any situation in which an individual may be unable to engage effectively with a bank and as a result, is at risk of getting a poor deal. This means the bank must take extra care.*

This definition is simple and would be easy to remember.

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<sup>1</sup> <https://www.gov.uk/government/publications/consumer-vulnerability-challenges-and-potential-solutions/consumer-vulnerability-challenges-and-potential-solutions> published 28 February 2019

<sup>2</sup> Under the heading “What is consumer vulnerability” at <https://www.gov.uk/government/publications/consumer-vulnerability-challenges-and-potential-solutions/consumer-vulnerability-challenges-and-potential-solutions>.

## European Union definition

The definition used by the European Union in their report<sup>3</sup> on consumer vulnerability is:

*A consumer, who, as a result of socio-demographic characteristics, behavioural characteristics, personal situation, or market environment:*

- *Is at higher risk of experiencing negative outcomes in the market;*
- *Has limited ability to maximise their well-being;*
- *Has difficulty in obtaining or assimilating information;*
- *Is less able to buy, choose or access suitable products; or*
- *Is more susceptible to certain marketing practices*

## Other comments about a definition

Any definition must be broad enough to include vulnerability arising from the way the market operates as well as a person's personal characteristics:

- Market specific - where the particular market can cause or exacerbate a person's vulnerability. This would include a product or service and the way those products and services are sold and operate;
- Vulnerability associated with personal characteristics - people can have characteristics (for example a disability) which means the person may have persistent problems in engaging with services (including financial services).

Other factors to consider in finalising a definition are that:

- It uses the term customer vulnerability implying a broader group of people;
- The key idea is that people can be vulnerable when engaging with the bank. This covers a wide range of scenarios;
- It acknowledges the structural power imbalance; and
- The definition points to design and prevention as a way to address these problems (as well as taking extra care).

### **Recommendation**

Separate consultation on a definition of customer vulnerability is needed. Our preference would be that this consultation take place in a workshop setting.

## 4.2 Communicating with customers

### The role of product design in improving communication

Before considering the suggestions set out in the issues paper, we recommend that the main change to improve communication is to simplify product terms and conditions and to provide fair and safe products. We discuss this suggestion further under part 5 below. Simplifying a product can make a

<sup>3</sup> Consumer vulnerability across key markets in the European Union, Final Report, January 2016 at [https://ec.europa.eu/info/sites/info/files/consumers-approved-report\\_en.pdf](https://ec.europa.eu/info/sites/info/files/consumers-approved-report_en.pdf).



profound difference in what a person needs to understand. The simpler the product is, the more likely everyone, including people who may be vulnerable, can understand it.

While we strongly support the intention in the Code to take extra care with certain customers, who may be vulnerable, this action is arguably not as important as designing products and services that are safe for everyone in the first place.

Banks can and do contribute to vulnerability through poor product design (see example below).

**Case study: Responsible lending and vulnerability**

Systemic problems were identified with responsible lending in the Royal Commission. When people seek a loan, they often rely on the bank to tell them how much they can afford to borrow. Loan calculators for example are described as tools to help people answer the question: “How much can I borrow?”. When people ask for a loan, they were vulnerable if the bank gives them a loan they could not afford. The harm of doing this ranges from minor to catastrophic (family breakdown, violence and suicide).

Some of the people who ended up with loans they could not afford were in the vulnerable customer groups identified in the Code, for example, people who were close to retirement. Others may not have been in those groups, but became vulnerable because of the situation they were placed in as they did not have a realistic understanding of what they could afford to pay.

### Simple and accessible information

We support innovation to improve communication with bank customers. Making information easier to understand is an important part of improving communication.

We support providing information in a simple and accessible format. Plain English should also be used.

The suggested list of information to be provided covers the main information required.

The main problem is that people have been worn down over many years with wordy terms and conditions and other product information. This has led to a situation where very few people read the “fine print” for any product or service. In any event, there is little point as the terms and conditions are not negotiable. People who may be vulnerable are even less likely to read information.

There are ways to improve the chances of people noticing critical information. They include:

- Boxes (for example the Schumer boxes used in loan contracts)
- Infographics
- Traffic lights
- Highlighting with colour
- The font size should be at least 12 point but preferably larger.
- Cartoons

The only way to work out the method or methods which work best is to test the effectiveness of the various options through consumer testing. We also strongly support ensuring that websites meet the Web Content Accessibility Guidelines.

### 4.3 An easy to understand commitment to vulnerable customers

We support the Guideline covering an easy to understand commitment to vulnerable customers.

### 4.4 Practical specific suggestions

#### Multiple methods of communication

Getting the method of communication right can be critical for people experiencing vulnerability. Giving people choice about how they communicate with the bank can be transformative. For example, people with mental health problems may find a phone call impossible as it causes serious anxiety. A call from the bank about a missed payment or even a minor matter can cause some people to have a serious mental health episode. Another example is a person with a disability that affects their voice or hearing but they can use their hands to email or text.

The key change needed here is to offer multiple methods of communication such as email, text, phone, webchat and mail. Most banks do have multiple methods of communication available, however, finding out about those methods are available can be difficult. Bank staff can also make it difficult to use other methods of communication. This is because it can be more convenient and cost-effective for the bank to strongly prefer one method of communication.

The guideline should specifically require that multiple methods of communication are available and publicised. Staff should offer different forms of communication as soon as they become aware that the customer may be vulnerable or is struggling. The bank should ensure that the customer service standards are maintained regardless of communication method used.

#### **Recommendations**

Vulnerable customers need access to multiple methods of communication including phone, email, text, webchat and ordinary mail. These methods should all be accessible and customer service standards maintained.

#### Online banking

Some people never want to communicate with a human from the bank as it is too difficult or stressful for them. Online banking is vital for this group. It is an access and inclusion issue to make sure that online banking performs as many functions as possible while remaining secure.

#### **Recommendations**

Online banking should be as inclusive and accessible as possible. Each bank should audit their online banking to improve accessibility and usability.

#### Communicating what is possible

A common complaint from customers experiencing vulnerability is that they simply did not know a particular option was available that would meet their needs. This can occur for two main reasons:

1. the staff member did not discuss other possible options; and/or

2. the staff member told the person that a particular solution was not possible when it was.

The staff member may say that the person never told them about their particular personal circumstances. This is why staff need to ask. It is not acceptable, for example, to simply assume someone can get to the branch if they struggle to walk at all.

Staff need to be aware, or be able to find out about, a range of possible options to solve a particular problem or need. This is not just a staff training issue, but also about developing a sheet of options for customers with different personal circumstances, for example, a disability. Finally, staff need to be empowered to solve problems for vulnerable customers.

**Recommendation**

Vulnerable customers need to know about the range of possible options available. The possible options should cover a broad range of vulnerability such as physical disability, age, non-English speaking, Aboriginal and Torres Strait Islander people, rural and remote and mental illness.

### Communicating with the customer advocate

The guideline should provide a specific path for customers experiencing vulnerability to access the customer advocate in relation to disputes.

The guideline should set up a clear and easy to use process for vulnerable customers to access the bank customer advocate.

## 5 Product and service design

### 5.1 Making products suitable and fair

We support using the seven Principles of Universal Design in the design of products and services. Making products and services suitable and fair is likely to have the biggest impact on reducing the harm to people experiencing vulnerability.

The challenge with the seven principles is how they translate in practice. It is very easy to fall into the trap of reading down the principles to suit profit incentives. More likely is that the principles are simply interpreted in a way that dilutes their effectiveness.

The proposal to include customers experiencing vulnerability in product design is commendable. However, it is only a partial solution. When people are vulnerable, they may not necessarily be able to report on that vulnerability. We would suggest that there are two key components in making products suitable and fair for vulnerable customers:

1. consulting and involving groups that advocate for people experiencing vulnerability in product design; and
2. specifically considering the impact on people experiencing vulnerability in product design.

In other words, consultation only is not sufficient, there needs to be a specific consideration of vulnerability and fairness in the product design process.

### 5.2 Proactive identification of vulnerable customers

In principle, we support the proactive identification of customers in groups that may be more likely to be vulnerable. This should not be obtrusive or patronising. It should be a direct attempt to offer further services and help. Enormous care needs to be taken on how the identification would occur to ensure that customers do not feel targeted for exclusion.

We suggest that where possible, customers in vulnerable groups are identified by their personal characteristics as given to the bank rather than by a direct question. The banks have a wealth of personal information. Banks already extensively use that personal information to market products. That personal information can also be used to target help.

Examples of people this would work for are:

- Low income people on Centrelink
- Elderly customers (including those on the Aged pension)
- People with a disability (in receipt of a disability support pension)
- People who are in financial difficulty

We want to specifically mention financial difficulty as a strong indicator of vulnerability. There is now evidence that people in financial difficulty are at an increased likelihood of vulnerability across all

dimensions.<sup>4</sup> This means that when a bank find people missing payments, it is likely that the customer is vulnerable.

Other groups would need a direct question and this could either be included when applying for a banking product or when dealing directly with a customer in a dispute (including financial hardship). Clause 38 of the Code commits member banks to taking extra care for certain groups of customers but “only if you tell us about it.” This is definitely a step forward, however, it does not go far enough. If a person was vulnerable and the bank should have been aware of this (even if the customer did not directly tell the bank) then an ethical, if not legal, duty arises. Bank staff need to be trained to ask direct questions in these circumstances to ensure that a person is not disadvantaged.

We suggest that when people open any account with the bank that the person should be asked to at least be given the option to indicate relevant personal characteristics. The election must be voluntary and a short explanation provided as to why the information is being collected (being to target services and not to discriminate). The suggested questions would be to identify whether a person is:

- Aboriginal and/or Torres Strait Islander
- A person with a Disability
- Earning a low income;
- A person with a serious illness; or
- Any other relevant issue.

Staff should be encouraged to keep this type of information updated. Again, this still requires direct questions.

Bank staff may need to overcome an aversion to direct personal questions. There is now a lot of evidence<sup>5</sup> that people are more comfortable if there is a direct conversation about a sensitive issue. Ignoring or skirting around a sensitive issue risks embarrassing the customer. When the bank knows about a problem, they are much better equipped to work with the customer to solve that problem.

#### **Recommendations**

Bank staff should ask direct questions about personal characteristics that may make it difficult for a person to engage with the bank.

Proactive identification through data analysis is also encouraged.

### **5.3 Helping after proactively identifying vulnerable customers**

We support the use of all the suggestions listed at 6.2.1. of the issues paper. We would add the following extra examples of actions:

- Using the data of people on Centrelink in bank accounts to remove fees or transfer to lower fee accounts;
- Flagging joint accounts when there is financial abuse to ensure that the victim can protect their funds;

<sup>4</sup> Consumer vulnerability across key markets in the European Union, Final Report, January 2016 page 395 at [https://ec.europa.eu/info/sites/info/files/consumers-approved-report\\_en.pdf](https://ec.europa.eu/info/sites/info/files/consumers-approved-report_en.pdf).

<sup>5</sup> For example, talking directly about suicide - see <https://www.suicidecallbackservice.org.au/resource/discussing-suicide-how-to-talk-to-somebody-about-suicide/>.

- Developing more flexibility with joint accounts to enable a quarantine of separate funds and joint authorisation procedures;
- Contacting customers in financial difficulty early to provide a range of flexible options.

## 5.4 Data security

The information about a possible vulnerable group should be recorded. It should remain confidential at all times. This is the most significant concern as people should never be publicly labelled and a breach of privacy could result in detriment.

## 5.5 Practical specific suggestions

### Multiple payment methods

Vulnerable customers need to be able to access multiple payment methods for loans. We are aware that the banks do offer multiple payment methods, however, customers are often required or steered towards direct debit. For people on low incomes and in financial difficulty, direct debits can be very difficult to manage. Financial counsellors report that direct debits remain difficult to cancel despite over two decades of complaints and a specific provision in the Code.

Changing to another payment method can help a vulnerable customer get back on track and manage their repayments.

#### Recommendations

Cancel a direct debit immediately on request.

Provide customers a range of payment methods for loans at no extra cost.

### Credit cards

There are many vulnerable customers trapped in revolving credit card debt. Revolving credit card debt refers to people who never repay the balance in full and make minimum, or only slightly above minimum, repayments. Some of these people were given a credit limit they could not afford to repay due to previous breaches of responsible lending requirements.

Credit card interest rates can be around 20% p.a. (unless the customer is on a low rate credit card). Interest rates on credit cards have not fallen in line with changes in the cash rate set by the Reserve Bank of Australia.

It makes no financial sense to be on a high interest rate credit card when the debt is never repaid in full. By definition, these customers are in a debt trap. These customers could be in financial hardship from a change of circumstances. However, if this situation has been going for some time it is likely they were given an unsuitable credit card. The banks should offer to transfer these vulnerable customers to a low rate card interest rate or to reduce the interest rate being charged.

#### Recommendation

Banks should recognise and act on existing vulnerable customers with high interest rate credit cards where the minimum repayment only is paid for many years. These vulnerable customers should have their interest rate reduced to remove them from this debt trap or the customers should be offered the option of a low rate card.

## Gambling

FCA put in a submission to the Royal Commission focusing on the way banks interact with customers who have issues with gambling.<sup>6</sup> In that submission, we provided evidence that gambling is a mental health disorder being an addictive disorder). People with a gambling addiction are often vulnerable customers. FCA made a number of recommendations:

- a) Credit cards should not be able to be used to transfer money to gambling companies;
- b) Unsolicited overdrafts should not be available as gamblers can incur further debt;
- c) If debts are consolidated into a personal loan, the credit card needs to be closed to prevent further gambling related debt;
- d) There needs to be limits in the amount that can be transferred to a gambling company each day from the customer's own savings; and
- e) Tools are required for gamblers to set alerts, set limits on expenditure, tracking gambling expenditure and providing referrals.

The ABA has since committed to developing a guideline about customers with gambling issues.

### Recommendations

The vulnerable customer guideline should provide a range of specific measures to assist vulnerable customers with gambling addiction. If a separate ABA guideline is released the vulnerable customer guideline could be amended to provide a cross-reference to this.

## Meeting customers where they are

The Final Report of the Royal Commission (Recommendation 1.8) recommended that chapter 14 of the Code include a specific commitment for banks to work with customers who live in remote areas. We assume that recommendation will be implemented. The guideline is an opportunity to give specific detail on how this commitment would be implemented.

A lack of access to basic banking services makes people vulnerable in remote areas. It leaves them vulnerable to dodgy loan products in order to meet basic needs. Basic banking services are a right, and minimum standards need to be set on accessibility. Ways to assist remote customers include fee-free ATMs and regular access to pop-up banking services.

## Aboriginal and Torres Strait Islander people

Many Aboriginal and Torres Strait Islander people live in remote communities. People in those communities face a number of barriers in engaging with banks:

- Access – many communities are located long distances from bank branches;
- Language and literacy – English may be a second, third or fourth language;
- Understanding – many Aboriginal and Torres Strait Islander people have very little understanding of how financial services products work;
- Culture and kinship – can create dependencies as a cultural obligation which can affect financial matters;

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<sup>6</sup> <https://www.financialcounselingaustralia.org.au/docs/submission-to-the-royal-commission-into-misconduct-in-the-banking-superannuation-and-financial-services-industry-issues-relating-to-gambling/>

- Trust - Aboriginal and Torres Strait Islander people may find it inappropriate to disagree or question others;
- Low income - Aboriginal and Torres Strait Islander people in remote communities are often on Centrelink as their sole source of income;
- Cost – the costs of food, products and services are much higher in remote communities.

All of this means that banks need to bring banking to remote communities. This needs to be a commitment that is entrenched. The CEOs of banks need to see this type of commitment as part of their ongoing core services.

Minimum standards need to include:

- a) access to fee-free ATMs;
- b) monthly access to pop up banking in remote communities that is on a schedule that is promoted;
- c) pop up banking covers at least basic services; and
- d) access to an interpreter.

### Recommendations

The guideline commits banks to provide banking services to remote communities which includes pop-up banking with basic services and access to fee-free ATMs.

## 6 Data and systems

### 6.1 Purpose of data collection

The objective of the Privacy Act is to give people control over their personal information. It is not the purpose of the Privacy Act to stop banks recording relevant information to assist their customers. We encourage the ABA to seek legal advice and clarification with the Office of the Australian Information Commissioner.

We support the list of proposals at 7.1.1. of the issues paper.

In answering question 1 at 7.1.2, we do not believe the explicit permission of the customer is required to record relevant information. Customers disclose relevant information all the time. The bank should be file noting that information. The customer is giving implied consent to record this information when it is voluntarily disclosed.

We make this point because seeking explicit consent for recording information is likely to act as a barrier or impediment to banks actually helping people. People can become immediately suspicious if explicit consent is requested. The ordinary customer may misunderstand courtesy for a legal rule about recording sensitive information. This type of approach may erode trust rather than build it. The bank should be recording relevant information in file notes and then taking action on those disclosures to assist the customer. The file notes or a relevant piece of information should be accessible when needed by other staff. Some types of disclosure should lead to a flag for the protection of the customer (for example, joint accounts and financial abuse).



## 7 Staff training

### 7.1 Proposals for staff training

We support and encourage banks to implement the proposals listed at 8.2.1. in the issues paper.

## 8 Other

### 8.1 Powers of attorney

We support the ALRC Report 131 recommendations as outlined at 9.1 in the issues paper. We would add the following further recommendations to protect vulnerable customers using powers of attorney:

- a) Train bank staff on what a power of attorney actually is and the powers it has. The powers are limited. For example, when financial counsellors and community lawyers give advice a power of attorney is not relevant. Powers of attorney do not apply to advice.
- b) Empower and support bank staff to question the use of a power of attorney when it appears to be inappropriate. There is never a problem with contacting the customer to check and confirm details. Maintaining a relationship with the bank customer is an important method to avoid abuse. Many people who give a power of attorney are capable and competent to give instructions. For example, it is compulsory to sign a power of attorney to enter a nursing home and yet the vast majority of people in a nursing home are still mentally competent.
- c) Referring the customer for advice if needed. Bank staff should always refer the bank customer for advice if they are concerned.

### 8.2 Bank third party authorisation forms

We support the proposals at 9.2.1. in the issues paper. We would urge the banks to go further than what is proposed.

Firstly, it is worth considering what third party authorisations actually do. There are three parts:

- a) *The Privacy Act Authority.* This is the explicit consent required under the Privacy Act to access the personal information held by the bank for the customer. It does not give a right to deal with the account. The customer has access to their own information (after proving identity). A third party can only have access with written or verbal consent from the customer. This remains important and a system needs to be in place to cover this need.
- b) *A professional third party acting for the customer.* These are people who represent the customer in dealing with the bank. Examples are accountants, lawyers, financial counsellors etc. These people represent the client and have professional codes of ethics that cover their conduct. They face serious consequences if there is misconduct. These professionals do not usually transact on the customer's account. They do not need a signed authority from the client unless they are accessing personal information and then they need the Privacy Act authority.

- c) *Individuals acting for a customer.* This is when a person acts for a customer. The person could be a relative, carer or friend. This is where we are most concerned. As highlighted in the issues paper there is no legal obligation for the third party to act to the benefit of the customer (like there is with a power of attorney). The customer is potentially exposed to abuse.

We believe that there needs to be greater controls on the use of third party authorisation where money can be withdrawn from a customer's account. We suggest that withdrawal should require a power of attorney. This would be to minimise potential misuse of third party authorisation.

### **8.3 Unsecured debt and collections**

We support covering the sale of unsecured debt and collections in this proposed guideline. We strongly support the expansion of the provision on the sale of debt in the financial abuse and family and domestic violence industry guideline to cover further categories of vulnerable customer. We suggest that the vulnerable customers outlined under clause 38 of the Code should be covered by a similar provision. In our experience, most member banks are already doing this (not selling the debt or buying the debt back) when they become aware that the customer is vulnerable.

### **8.4 Scams**

People who are vulnerable are more likely to be the victim of scams. We support industry level guidance on preventing scams to be included in the guideline. We are aware that many banks already actively protect people from scams by calling people to warn them about the scam and delaying the transaction. We strongly support these actions. Banks are well positioned to detect scams and expanding that role would save many people from harm.