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By email: submissions@ausbanking.org.au

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Dear Ms Pullinger

The Australian Banking Association Consultation on Every Customer Counts: Better Banking for Vulnerable Customers

Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the Australian Banking Association (**ABA**) 'Every Customer Counts: Better banking for vulnerable customers' (the '**Guideline**'). It is essential that customers experiencing vulnerability are offered banking services that meet their needs and contribute to their social participation rather than exacerbate their vulnerability.

Generally, we are supportive of the Guideline. However, to address the needs of customers experiencing vulnerability, the Guideline should recognise that anyone can be vulnerable, and thus banks should, as far as reasonably possible, design systems, processes, service and products to respond to this reality.

Banks should also proactively identify customers who may require additional support, instead of placing the onus on the customer to identify themselves as vulnerable. This will require a commitment by banks to establish a broad range of indicators to help identify those that need additional or personalised support, comprehensively train staff on how to apply these indicators in practice and a clear plan on how the bank will respond when they identify such needs.

About Consumer Action

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians.

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The principles

4.1.3 Question 1:

Do you agree with our proposal to use these Guiding Principles to underpin the Guideline?

We generally support the Guiding Principles in the Banking Code of Practice (the **Code**) but consider that they do not effectively constitute guiding principles for a guideline on customer vulnerability. In some respects, the Guiding Principles place the onus on the customer to self-identify as vulnerable. For example, one of the principles is that “we will raise awareness of the basic (low, or no fee) banking products we may offer”. This requires the customer to then identify whether they are eligible. In Consumer Action’s experience, even if people identify themselves as eligible, most do not take the next step to open a basic account. As such, raising awareness is not sufficient to respond to vulnerability.

This problem is repeated throughout the Code. Chapter 14 titled ‘taking extra care with customers who may be vulnerable’ states that the bank ‘may become aware’ of the customer’s vulnerability *only* if told about it. This is not an effective way to respond to vulnerability as customers will rarely share this information. It is crucial for bank staff to be proactive in identifying if there are any risk factors or triggers present which may alert require tailored assistance. Whilst some characteristics, such as a physical disability, may be easier for staff to identify, there are others that staff should work to proactively identify, as they may not be flagged by the customer at a branch or over the phone. Banks may also become aware of customers requiring additional help, for example:

- hardship assistance is requested on a credit facility;
- account activity indicates regular government support payments (i.e. Centrelink income);
- account activity includes large overseas transactions or cash withdrawals, which may indicate a scam or gambling activity;
- inward payment dishonours threshold is exceeded;
- there are failed scheduled payments; or
- an account is overdrawn.

This information is readily available and should be considered by banks to better meet the needs of their customers. This could include the provision of a basic bank account or the details of a free financial counselling service. There are also things a bank should not do for particular groups, such as not selling a low-income customer’s debt which can often exacerbate stress and vulnerability.

Consumer Action also flags the development of an International Organization for Standardization (ISO) standard on 'Inclusive service – Identifying and responding to consumers in vulnerable situations',¹ which is intended to provide best practice principles and measures. Once this standard is completed and publicly available, it should be reviewed and considered for incorporation into the Guidelines.

RECOMMENDATION 1. Guiding Principles for the new guideline should not imply or require that customers need to identify their own vulnerability.

RECOMMENDATION 2. That ABA should incorporate best practice principles from the new ISO standard on inclusive service.

Vulnerability

5.2 Question 1

Are there additional issues relating to 'vulnerability' that should be considered in defining the concept of vulnerability? Note, we encourage stakeholders to provide examples and case studies that assist interpretation.

Consumer Action supports the following definition of a consumer experiencing vulnerability from the European Commission:

'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;*
- *is less able to buy, choose or access suitable products; or*
- *is more susceptible to certain marketing practices.'*²

This definition acknowledges that there are many reasons for and various indicators of potential vulnerability. We thus welcome the acknowledgements in the consultation paper that anyone can be vulnerable, that banks' actions can contribute to vulnerability, and that the concept of vulnerability should be sufficiently broad. We agree that banks should not take a narrow approach by making an exhaustive list of factors indicating vulnerability. The concept of vulnerability should be used to assist banks to design their entire processes, systems, service models and products, so that they are effectively servicing the whole community.

RECOMMENDATION 3. Any definition used should reflect the understanding that vulnerability can be temporary, situational or permanent. Factors indicating vulnerability are so varied, it is impossible to create an exhaustive list.

¹ International Organization for Standardization (ISO), 'Inclusive service: identifying and responding to consumers in vulnerable situations' (ISO/WD 22458, Under development), Available at: <https://www.iso.org/standard/73261.html?browse=tc>.

² European Commission, *Understanding consumer vulnerability in the EU's key markets* (January 2016) Available at: https://ec.europa.eu/info/publications/understanding-consumer-vulnerability-eus-key-markets_en

5.2 Question 3

Should the ABA change the term 'vulnerable customer' in the Code, and other industry guidance, and if so, what expression or term is preferred by stakeholders?

Consumer Action recommends using the term 'customers experiencing vulnerability' as this reflects the understanding that vulnerability can be temporary, situational or permanent.

Extra care

6.3 Question 1

Where a customer is identified as potentially being vulnerable, what action should banks take (i.e. what could constitute "extra care")?

Consumer Action recommends that banks design products and processes on the basis that anyone can be vulnerable. Reference to Universal Design Principles would help to ensure that banking products are suitable for more people.³

As stated in response to 4.1.3 Question 1, banks must also undertake proactive action to identify customers that require additional assistance. 'Extra care' should not be limited to post-identification of a potentially vulnerable customer; rather, taking care to listen and consider customer needs will inherently help to identify vulnerability.

Bank staff should be trained to listen to customers with reference to the Guideline, noticing signs of vulnerability and being responsive to the customer's situation. This will require training and culture that:

- encourage emotional intelligence, empathy and listening skills
- create an environment where staff are not overly sales focused and can be empathetic
- enables staff flexibility to take the time to listen, respond, ask relevant questions and pick up on any warning signs.

Banks should undertake reasonable measures to assist a customer understand the options available to them. Information should be provided in plain language (not simply plain English⁴). Information should be provided in a number of languages, particularly languages commonly spoken in areas near the particular bank branch, and/or interpreter services should be engaged.

³ National Disability Authority, Centre for Excellence in Universal Design, The 7 Principles (1997) Available at: <http://universaldesign.ie/What-is-Universal-Design/The-7-Principles/>

⁴ E.g. in 5.3 Communicating with customers, the Guideline proposes using 'plain English' rather than 'plain language'.

Basic bank accounts

There is a community expectation for banks to proactively provide basic bank accounts to new and existing customers who are eligible. However, Ms Thy Do's evidence at the Royal Commission suggested that ANZ may have actively put barriers in place to her client opening a basic bank account and opened a different account that was inappropriate for the needs of her client. This was despite multiple inquiries by Ms Do, which indicated that her client would be eligible for a basic bank account.⁵

Basic bank accounts should be fee-free, including no late fees, default fees or fees in the case of overdrafts. They should enable customers to access a scheme debit card and should enable electronic and in-person transactions without cost. Basic bank accounts should be promoted at the same level as other account options, including through promotion materials and in online searches.

Hardship variations, defaults and debt collections

Effective hardship arrangements should be offered where a customer is clearly experiencing financial vulnerability, as well as provided upon request. Unfortunately, the evidence suggests that hardship assistance is only provided to customers who seek it out. For example, research suggests that only 14.3% of eligible customers get hardship assistance.⁶

In Consumer Action's experience, loans in default that banks refer to external debt collectors can cause further hardship for an already vulnerable person, particularly where the debt collector seeks recovery including through bankruptcy resulting in escalating trustee fees and the potential loss of a home. Banks should commit to not sell a debt of customers in hardship arrangements or customers living on low incomes given the probable deleterious consequences for that customer.

Proof of circumstances

Eligibility for basic bank accounts or hardship arrangements should not be contingent on the customer substantiating proof of their vulnerability unless the bank has a firm basis to suggest otherwise. Proof can be complicated to obtain, and its requirement may exclude many. For example, a person should not be required to show an intervention order is in place to prove that they are experiencing abuse. There are a multitude of reasons why victims may not have a current intervention order, including: fear that an order may lead to further violence or expiration of a previous order. Requiring proof of vulnerability will deter customers from actively engaging with the bank.

⁵ Thy Do, Commonwealth, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Transcript of Proceedings Day 39* (2018), 4146.

⁶ The Conversation, *What 1,100 Australians told us about the experience of living with debt they can't repay*. (February 2019) Available at: <http://theconversation.com/what-1-1000-australians-told-us-about-the-experience-of-living-with-debt-they-cant-repay-105296>

5.2 Question 2

Are there other terms in this context which you think would benefit from an agreed definition for example "extra care"? Note: we encourage stakeholders to provide examples and case studies that assist interpretation.

See our response to 6.3 Question 1. Any definitions of 'extra care' will not be conducive to change unless the strategy and culture around treatment of customers experiencing vulnerability is overhauled to recognise that anyone can be vulnerable.

RECOMMENDATION 4. Bank staff should be trained to listen, be responsive to the customer's disclosed or potential vulnerability and work towards a solution with the customer that will be appropriate to their circumstances.

RECOMMENDATION 5. The Guidelines should reflect the community expectation that basic bank accounts be provided to eligible customers through proactive assistance from banks, including through automated review of accounts and proactive discussion of options with trained staff.

RECOMMENDATION 6. Customers should not be required to substantiate proof of vulnerable circumstances unless the bank has a firm basis to suggest otherwise.

Communicating with customers

5.3.2 Questions 1, 2,3

Do you support the proposal that the Guideline should commit banks to make available an easy to understand explanation of their commitment to vulnerable customers? Do you have any additional suggestions about what else this explanation should include? What practical measures or examples should be included in the explanation?

Consumer Action supports this proposal; however, an explanation of commitments to customers experiencing vulnerability is ancillary to processes that will create substantive change. It is merely a written document, and unless banks are obliged to proactively deliver results for customers experiencing vulnerability, the commitment will not create change within the industry.

Furthermore, any explanation of the commitment to vulnerable customers will only address problems related to customers having difficulty understanding complex information. It will not address all types of vulnerability, as highlighted in the definition at 5.2 Question 1. Examples of measures which would address these would be communicating information to remote communities through outreach programs, creating pamphlets with information in languages other than English, visual tools to aid understanding of commitments to Aboriginal and Torres Strait Islander communities.⁷

⁷ Such as those used by Lynda Edwards at Financial Counselling Australia to explain how various bank cards operate; Witness Statement of Lynda Edwards for the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (dated 22nd June 2018, used in hearing in Darwin on 3rd of July) Available here: <https://financialservices.royalcommission.gov.au/public-hearings/Documents/exhibits-2018/3-july/EXHIBIT-4.140.pdf>

Communication methods should reflect Universal Design Principles. The Money and Mental Health Policy Institute in the UK has provided evidence that people with a lived experience of mental ill-health can find certain communication channels difficult to engage with.⁸ Banks should be sensitive to this by providing multiple channels of communication, asking customers proactively for their preference and ensuring it is the primary method used to contact customers in every instance.⁹

Opening products often requires standard information, such as provision of residential address. This may serve to exclude vulnerable customers, such as a person fleeing domestic violence or a person who is sleeping rough. It is important that requirements such as these do not exacerbate the situation of customers who are already experiencing vulnerability by denying them access to essential financial services.

RECOMMENDATION 7. Banks must commit to addressing customer vulnerability substantially rather than simply providing customers with an explanation of their commitment.

RECOMMENDATION 8. Any explanation of commitments should include measures to address multiple types of vulnerability and should include information for remote communities, information in other languages and visual tools.

RECOMMENDATION 9. Banks should provide multiple channels of communication and proactively ask customers for their preferred method of communication. They should ensure that this is the primary method used to contact customers in every instance.

Product design

6.1.2 Question 1

Do you think practical measures for considering vulnerable customers in product design should be incorporated in the Guideline? If yes, do you have any suggestions about what these measures could be? Do you have examples of banking product design that means the needs of vulnerable customers are not met/and or have contributed to a customer experiencing vulnerability?

Yes, banks should focus on customers experiencing vulnerability when designing a product. Banks have an obligation under the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019* (Cth) to design products with an appropriate target in mind, take steps to ensure that marketing occurs in line with that market determination without its products resulting or being likely to result in significant detriment to consumers.¹⁰

⁸ House of Commons, Treasury Committee, *Consumers' access to financial services, 29th Report of Session 2017-2019* (8th May 2019) p.44. Available here:

<https://publications.parliament.uk/pa/cm201719/cmselect/cmtreasy/1642/1642.pdf>

⁹ Ibid. p. 46

¹⁰ Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019, Part 7.8A and 7.9A, See also King & Wood Mallesons, *Bill for new design and distribution, and ASIC product intervention powers, introduced*. (September 2018) Available here: <https://www.kwm.com/en/au/knowledge/insights/bill-for-new-design-and-distribution-and-asic-product-intervention-powers-introduced-20180926>

Consumer Action encourages banks to explore the following areas when developing strategies and managing interactions with customers experiencing vulnerability:¹¹

- audit their current practices and strategies;
- ensure a consistent approach to customer vulnerability is embedded across all operations, and all staff are aware of relevant policies;
- implement appropriate and sufficient frontline staff training to facilitate a proper conversation with the customer experiencing vulnerability and to know about internal expertise to address the customer's needs;
- have efficient processes for referring consumers to specialist teams with the authority to make flexible decisions in the application of terms and conditions of products and services;
- have good policies and practices on data protection to handle customer information that discloses vulnerability in a sensitive way; and
- provide clear, simple information about products and services throughout the product life cycle, based on inclusivity per the Universal Design Principles.

Product design should include considerations about customers' changing life circumstances, including temporary vulnerability. Banks should put into place procedures to identify when the customer's circumstances change and offer customers options that are tailored to their needs. Alternatively, products (particularly long-term products) should be designed on the assumption that vulnerability will occur at some point. For example, a mortgage is generally a long-term product however it is designed so as to expect regular repayments. The product design itself could be improved to recognise that a person's ability to repay is likely to fluctuate over the term of the product. This will reduce the chance of circumstances leading to adverse outcomes for the customer.

There is also a pressing need to consult with Aboriginal and Torres Strait Islander communities and community organisations to identify issues relating to banking products. Existing policies and procedures do not go far enough to assist Aboriginal and Torres Strait Islander people in overcoming obstacles associated with remoteness, cultural barriers, linguistic barriers and financial literacy.

As a result, these communities are amongst the most financially excluded in the country, so it is critical that there be consultation with how to ensure access to services.¹² This consultation should be carried out with culturally appropriate, best practice methodologies, to ensure the information-gathering is meaningful, respectful, ethical and appropriate. The needs of Aboriginal and Torres Strait Islander peoples must be considered in product design to ensure access to services that is adequate, appropriate and meets community expectations.

RECOMMENDATION 10. Customer vulnerability should be a core design concept in relation to any financial product.

¹¹ Financial Conduct Authority, *Occasional Paper No. 8: Consumer Vulnerability*. (2015) Available at: <https://www.fca.org.uk/publication/occasional-papers/occasional-paper-8.pdf>

¹² Exhibit 4.138, Witness Statement of Nathan Boyle, 25 June 2018, [25]-[26]; In 2012, CIS found that among survey respondents who identified as Aboriginal, 43.1% were either severely or fully excluded compared to the 2012 national average of 17.2%.

RECOMMENDATION 11. Aboriginal and Torres Strait Islander communities should be consulted in line with best practice to ensure the design of banking products meet community needs.

Data collection and privacy

6.3 Question 2

What ethical and privacy issues should banks consider where deploying data analysis techniques to proactively identify customers who may be vulnerable?

Data analysis techniques must be secure and be accompanied by sufficient staff training on requirements such as mandatory data breach notifications. Banks are assumed to be able to review their customer's transaction account data for functions such as responsible lending. Privacy concerns in relation to a customer's account data should not be used as an excuse for inaction on proactive identification of customers who may be experiencing vulnerability and who would benefit from different banking services and products.

Consumer data has been used for activities such as pre-screening to tailor products and marketing to the most profitable customers.¹³ ANZ acknowledged in its Round 4 Submission for the Royal Commission that it can identify when a customer receives government benefits for the purposes of assessing whether it will provide an informal overdraft.¹⁴ We recommend customer data be used to tailor products that are appropriate for the needs of the customer, which is of particular importance for customers experiencing vulnerability.

7.1.2 Question 1

Should banks, with the explicit permission of customers, record information about vulnerability that banks discover or customers disclose in their internal records e.g. through flags/notes in the internal bank system? If yes, what kind of information should be collected and how should it be used?

Yes, banks should also be recording their interactions with the customer with consent, especially when they are asking questions that may indicate that a customer is experiencing a particular kind of vulnerability. This information that will help guide a customer towards appropriate services, such as hardship variations or the provision of a basic bank account. Recording the information relevant to a customer's vulnerability will help to avoid the customer needing to retell their story.

¹³ Harrison, P, Gray, CT, and Consumer Action Law Centre, *Profiling for Profit: A Report on Target Marketing and Profiling Practices in the Credit Industry*, 2012, pp 5-6, available at: <http://dro.deakin.edu.au/eserv/DU:30064922/harrison-profilingfor-2012.pdf>.

¹⁴ ANZ, Submission on Round 4 Hearings, 16 July 2018, [97], <https://financialservices.royalcommission.gov.au/public-hearings/Documents/Round-4-written-submissions/ANZ-written-submission.pdf?>; Commonwealth, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Transcript of Proceedings Day 39*, (2018), 4075-4078.

7.1.2 Question 2

How should banks balance the desire to support customers fully and ensure that they don't have to repeat their story, with the customer's right to privacy?

In Consumer Action's experience, shuttling a customer back and forth between departments and requiring them to tell their story multiple times is frustrating and re-traumatising for the results in the customer needing to 'push' for appropriate services such as hardship arrangements or a basic bank account. Customers experiencing vulnerability should not have to tell their story multiple times in order to access assistance or appropriate banking products. Fatigue from reliving difficult or traumatic circumstances may result in the customer disengaging from contact with the bank.

Banks should Implement frameworks to manage the sharing of information between their departments so that customers will not have to repeat themselves every time they deal with a different department as an issue is escalated up the chain. This issue could be addressed by setting up a service similar to the UK Government 'Tell Us Once' Service,¹⁵ which allows individuals to report a death to most Government organisations without having to repeat information.

7.1.2 Question 3

Should banks take more active steps to seek personal information from customers, such as whether they are Indigenous or receive Government support payments?

Yes. We are supportive of banks taking a more proactive approach to seek personal information from customers for the purposes of identifying appropriate services that are suitable to their needs. As identified above in Question 6.1.2 Question, Aboriginal and Torres Strait Islander people are amongst the most financial excluded in the country, so identifying customers that are Indigenous and directing them to services that are appropriate for their needs is imperative.

Given the asymmetry of information that exists between banks and customers, banks are in a better position to know what products and services their institution provides and match these to the needs of the customer. They should bear the onus of identifying and anticipating their customer's needs, particularly those that are experiencing vulnerability.

RECOMMENDATION 12. Banks should use available account transaction and default data to proactively identify customers who may be experiencing vulnerability. Identification through automated systems should lead to enquiries with the customer about their circumstances and offers to switch to more suitable products, such as basic bank accounts.

RECOMMENDATION 13. There should be data sharing between departments within a bank so customers do not have to repeat their story multiple times to access services.

¹⁵ Gov.uk, *Tell Us Once*. Available at: <https://www.gov.uk/after-a-death/organisations-you-need-to-contact-and-tell-us-once>

Staff training

8.2.2 Question 1, 2

Do you agree with inclusion of the proposed staff training provisions in the Guideline? Do you think any additional guidance or provisions for staff training should be included in the proposed Guideline?

Yes, we support staff training provisions in the Guideline, but we believe they should be extended beyond front-line staff and staff involved with product design and testing. Anyone along the bank's escalation pathway should be trained to support customers experiencing vulnerability.

Training should cover a wider range of vulnerable circumstances that customers may experience. Money Advice Trust for the UK noted that staff should be receiving training for circumstances including 'serious illness, addiction, mental capacity limitations and bereavement.'¹⁶ Staff should be responsive to the needs of the customers, aware of services provided by the banks to increase accessibility.

In addition to staff training, banks must reduce problematic sales structures that incentivise staff for prioritising a sale over the customer's needs. A number of international studies have confirmed a strong correlation between target-based sales incentives and consumer harm.¹⁷ The Royal Commission Interim Report noted that the customer's needs 'are formed by reference to what the entity has to sell.'¹⁸

RECOMMENDATION 14. Staff throughout a banks should receive training on customer vulnerability.

7.1.2 Question 4

Are there any other questions banks should ask customers when they open an account to assess if they may be at risk of being vulnerable?

Consumer Action is supportive of the existing red flags identified in the ABA industry guideline relating to financial abuse, family and domestic violence policies.¹⁹ This particular approach of identifying red flags should be taken with other types of vulnerability. For example, the following red flags may indicate vulnerability (in particular abuse or that a person is a victim of fraud), which should trigger further inquiries from bank staff:

- online applications that are electronically signed;
- English as a second language or poor literacy skills;

¹⁶ House of Commons, Treasury Committee, *Consumers' access to financial services, 29th Report of Session 2017-2019* (8th May 2019) p.54. Available here:

<https://publications.parliament.uk/pa/cm201719/cmselect/cmtreasy/1642/1642.pdf>

¹⁷ A summary of this research is available in: Consumer Action Law Centre, Submission to the Retail Banking Remuneration Review Issues Paper (12 February 2017), 3–5 < <https://consumeraction.org.au/wp-content/uploads/2017/02/170212-Consumer-Action-Submission-Sedgwick-Review-Issues-Paper-FINAL.pdf>>.

¹⁸ Royal Commission into misconduct in the Banking, Superannuation and Financial Services Industry, *Interim Report* (September 2018) p. 64. Available at: <https://financialservices.royalcommission.gov.au/Documents/interim-report/interim-report-volume-1.pdf>

¹⁹ Australian Banking Association, *Industry guideline: financial abuse and family and domestic violence policies*. (2016) Available at: https://www.ausbanking.org.au/wp-content/uploads/2019/05/ABA_Industry_Guideline_-_Financial_Abuse_and_Family_and_Domestic_Violence-Nov-2016.pdf

- large withdrawals and transfers overseas;
- mortgaging a previously unencumbered home;
- credit arranged by brokers or other introducers;
- refinancing single debt to joint debt; or
- car loan when the borrower already has a car or the car to be purchased is placed in another person's name.

Other issues

9.2.2 Question 1

Do stakeholders support the implementation of the recommendations of the Australian Law Reform Commission relating to power of attorney reforms, a national register and an organisation to investigate 'good faith' reports of financial abuse?

Yes, Consumer Action supports the implementation of the recommendations of the Australian Law Reform Commission in relation to power of attorney reforms, including standardisation and a national online register. Consumer Action also supports a dedicated organisation in every state to which bank staff can report suspected financial abuses for investigation. These recommendations are particularly helpful for customers who are elderly or have difficulties assimilating information.²⁰

9.2.2. Question 2,3

Do you agree with our proposed inclusions relating to third party authorisation forms in the Guideline? Are there any changes or additional comments relating to third party authorisation forms which you think should be included in the Guideline?

Yes. The inclusion of the proposal to simplify third-party authorisation forms as much as possible will go some way to alleviating problems faced by customers who have difficulties with assimilating information.

However, we recommend implementing safeguards to prevent the use of third-party authorisation forms to financially abuse a customer experiencing vulnerability. If the customer has been previously identified as experiencing vulnerability, bank staff should ask questions that may illicit indicators of abuse. They should check whether the party signing over their rights has obtained advice separately and understands the effects of doing so.

Collection arrangements

9.3.1 Question 1, 2, 3

Should collections arrangements be included in this Guideline? If yes, what do you think are the appropriate parameters that should be applied to collections arrangements for vulnerable customers? If yes, should these arrangements be applied to all categories of vulnerable customers?

²⁰ Council on the Ageing (COTA), *Urgent action needed on financial abuse* (7 June 2018). Available at: <https://www.cota.org.au/news-items/media-release-urgent-action-needed-financial-abuse/>

Yes, this Guideline should include reference to collection arrangements. Banks should commit to not selling unsecured debts low income earners (e.g. those on a Centrelink income) to debt collectors, in addition to the commitments made in the industry family and domestic violence guideline. In particular, debts must not be sold while a customer has entered into a hardship arrangement with the bank. Instead, banks should direct vulnerable customers to financial counselling services.

While the ACCC has published a debt collection guideline for collectors and creditors, this guideline remains voluntary and there are few provisions under the law to prosecute bad practice in debt collection. There should be greater oversight by banks of the debt collection process as these processes can have devastating consequences for people. Banks could incorporate the terms of the ACCC collections guideline into their contracts with debt collectors and proactively ensure their compliance.²¹

Our experience shows us that vulnerable consumers being pursued for debts by a debt collector may also turn to services that exacerbate their financial harm. So called 'debt management firm' specifically target vulnerable consumers in debt and often 'sell' them a Part IX debt agreement—a type of insolvency under the Bankruptcy Act. These unqualified, unregulated firms charge exorbitant fees, can't deliver on many of their promises, and leave financially struggling families with even less money to repay existing debts.

Banks should also consider the impact of bankruptcy proceedings on a customer already experiencing vulnerability, for example, that a person may lose their home over a \$5,000²² bank loan.

If a bank sells a debt for an irresponsibly lent loan leading to a customer's bankruptcy, the customer has little incentive to obtain recourse for irresponsible lending as any compensation would form part of the debtor's bankrupt estate.²³ This does not seem fair and is a devastating outcome for a person experiencing vulnerability.

RECOMMENDATION 15. Banks should not sell debt of customers experiencing vulnerability and/or on low incomes; instead, they should direct them to financial counselling and appropriate support services.

9.4.1 Question 1

Do you support including industry level guidance on preventing scams in the Guidelines?

Yes. We support guidance on preventing scams. According to the ACCC, those who are older, Indigenous or have a disability are likely to be scammed.²⁴ Further, it is a worsening problem: in 2018 there were \$489

²¹ See Debt Collection Guidelines for Collectors and Creditors: Practical Guidance by the ACCC, The role of independent external dispute resolution schemes. Available here: <https://www.accc.gov.au/publications/debt-collection-guideline-for-collectors-creditors/debt-collection-guideline-for-collectors-and-creditors/part-2-practical-guidance/24-the-role-of-independent-external-dispute-resolution-schemes>

²² As per *Bankruptcy Act 1966* (Cth) s44(1).

²³ Consumer Action Law Centre, *Australian Financial Complaints Authority Rule Changes* (April 2019) p 4. Available at: <https://consumeraction.org.au/submission-on-the-australian-financial-complaints-authority-afca-rules-changes/>

²⁴ Australian Competition and Consumer Commission Media Release, *Vulnerable consumers lose record amount to scammers*, 3 May 2019. Available online at: <https://www.accc.gov.au/media-release/vulnerable-consumers-lose-record-amount-to-scammers>

million in losses from scams as compared to \$340 million in losses reported in 2017, a 44% increase.²⁵

Common indicators of scams, such as large overseas transactions or withdrawals should be flagged for inquiry. Banks also have institutional knowledge and programs to enable them to identify scams. Banks should continue to improve scam detections to block scam transactions and recover funds for victims of scams. Banks may also be able to cooperate with organisations such as the ACCC to provide information to raise awareness of scams as they will have a greater level of engagement with their customers. A compensation scheme, such as the new UK model,²⁶ directed at these customers may also go some way to providing redress for scam victims.

RECOMMENDATION 16. Banks should improve scam detections to block scam transactions and recover funds as they have the institutional knowledge to do so as compared to customers experiencing vulnerability.

Please contact Senior Policy Officer **Brigette Rose** at **Consumer Action Law Centre** on 03 9670 5088 or at brigette@consumeraction.org.au if you have any questions about this submission.

Yours Sincerely

CONSUMER ACTION LAW CENTRE



Gerard Brody
Chief Executive Officer

²⁵ Australian Competition and Consumer Commission Report, *Targeting scams*, May 2019. Available online at: <https://www.accc.gov.au/system/files/Targeting%20scams%E2%80%944Report%20of%20the%20ACCC%20on%20scams%20activity%202018.pdf>

²⁶ Gareth Shaw, 'Bank transfer scam victims to get refunds from May 2019' *Which?* (28 February 2019), available at: <https://www.which.co.uk/news/2019/02/bank-transfer-scam-victims-to-get-refunds-from-may-2019/>.

APPENDIX 1

SUMMARY OF RECOMMENDATIONS

- RECOMMENDATION 1.** Guiding Principles for the new guideline should not imply or require that customers need to identify their own vulnerability.
- RECOMMENDATION 2.** That ABA should incorporate best practice principles from the new ISO standard on inclusive service.
- RECOMMENDATION 3.** Any definition used should reflect the understanding that vulnerability can be temporary, situational or permanent. Factors indicating vulnerability are so varied, it is impossible to create an exhaustive list.
- RECOMMENDATION 4.** Bank staff should be trained to listen, be responsive to the customer's disclosed or potential vulnerability and work towards a solution with the customer that will be appropriate to their circumstances.
- RECOMMENDATION 5.** The Guidelines should reflect the community expectation that basic bank accounts be provided to eligible customers through proactive assistance from banks, including through automated review of accounts and proactive discussion of options with trained staff.
- RECOMMENDATION 6.** Customers should not be required to substantiate proof of vulnerable circumstances unless the bank has a firm basis to suggest otherwise.
- RECOMMENDATION 7.** Banks must commit to addressing customer vulnerability substantially rather than simply providing customers with an explanation of their commitment.
- RECOMMENDATION 8.** Any explanation of commitments should include measures to address multiple types of vulnerability and should include information for remote communities, information in other languages and visual tools.
- RECOMMENDATION 9.** Banks should provide multiple channels of communication and proactively ask customers for their preferred method of communication. They should ensure that this is the primary method used to contact customers in every instance.
- RECOMMENDATION 10.** Customer vulnerability should be a core design concept in relation to any financial product.
- RECOMMENDATION 11.** Aboriginal and Torres Strait Islander communities should be consulted in line with best practice to ensure the design of banking products meet community needs.
- RECOMMENDATION 12.** Banks should use available account transaction and default data to proactively identify customers who may be experiencing vulnerability. Identification through automated systems should lead to enquiries with the customer about their circumstances and offers to switch to more suitable products, such as basic bank accounts.
- RECOMMENDATION 13.** There should be data sharing between departments within a bank so customers do not have to repeat their story multiple times to access services.
- RECOMMENDATION 14.** Staff throughout a banks should receive training on customer vulnerability.
- RECOMMENDATION 15.** Banks should not sell debt of customers experiencing vulnerability and/or on low incomes; instead, they should direct them to financial counselling and appropriate support services.

RECOMMENDATION 16. Banks should improve scam detections to block scam transactions and recover funds as they have the institutional knowledge to do so as compared to customers experiencing vulnerability.

