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Christine Cupitt
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Australian Banking Association

By email to: submissions@ausbanking.org.au

Dear Ms Cupitt

Consultation on Better Banking for Vulnerable Customers

Thank you for providing the Banking Code Compliance Monitoring Committee (CCMC) with an opportunity to comment on the Australian Banking Association's (ABA's) consultation about a new industry Guideline on supporting customers experiencing vulnerability.

The CCMC and the Code of Banking Practice

The CCMC is an independent compliance monitoring body established under clause 36 of the 2013 Code of Banking Practice (the 2013 Code). It is comprised of an independent chair, a person representing the interests of the banking industry and a person representing the interests of consumers and small business.

The CCMC's purpose is to monitor and drive best practice Code compliance.

To do this the CCMC will:

- examine banks' practices
- identify current and emerging industry wide problems
- recommend improvements to bank practices, and
- consult with and keep stakeholders and the public informed.

The CCMC's Mandate (which is an attachment to the 2013 Code) sets out its powers and functions, which include:

- monitoring Code subscribing banks' (banks) compliance with the Code
- investigating an allegation from any person that a bank has breached the Code, and
- monitoring any aspects of the Code that are referred to the CCMC by the ABA.

Fourteen banking groups currently subscribe to the Code. These banking groups cover approximately 93% of the Australian retail banking industry.[1]

New Banking Code and the Banking Code Compliance Committee

[1] APRA Monthly Banking Statistics for January 2019 – Household lending

Following reviews of the 2013 Code and the CCMC, the ABA redrafted the Code and ASIC announced it had approved the new Banking Code of Practice (2019 Code) on 31 July 2018. The ABA created a new Code monitoring body under the 2019 Code, the Banking Code Compliance Committee (BCCC), and its powers and functions are set out in its Charter.

The 2019 Code and the BCCC Charter will come into effect on 1 July 2019 and are available on the BCCC's website.[2]

Code obligations

Both the 2013 and 2019 versions of the Code incorporate protections to assist customers experiencing vulnerability, evident throughout many clauses in both versions of the Code.

The CCMC is encouraged to see the banking industry incorporate new and express commitments to customers experiencing vulnerability in the 2019 Code, particularly for those customers experiencing:

- age related impairment
- cognitive impairment
- elder abuse
- family or domestic violence
- financial abuse
- mental illness
- serious illness, and
- any other personal or financial circumstance causing significant detriment.

In its preparation for the 2019 Code and its transition to the BCCC, the CCMC has shared its expectation that banks' commitment to customers in vulnerable circumstances go beyond the express protections and must become part of the foundations of their culture and conduct.

For banks to comply with the obligation to engage customers in a *fair, reasonable and ethical manner*,[3] bank staff should have vulnerability and the potential for a customer's vulnerability, front of mind.

CCMC monitoring activities

Financial Difficulty Inquiry

In 2018, the CCMC conducted an own motion inquiry to investigate banks' compliance with the financial difficulty obligations of the 2013 Code. The CCMC's Inquiry, *Assisting customers in financial difficulty* (Financial Difficulty Report) was published in November 2018.

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[2] https://bankingcode.org.au/
[3] 2019 Banking Code of Practice, clause 10.

During this Inquiry, the CCMC identified several gaps in banks' policy and processes and made recommendations for improved industry practice. Of particular concern, the CCMC found:

- banks took a siloed approach to financial difficulty with many customer-facing staff inadequately trained to identify financial difficulty and make the appropriate referrals
- in some cases, banks took an inflexible and burdensome approach to requesting and requiring supporting documentation, and
- difficulty in customers appointing, and banks' accepting, authorised third-parties.

Comments on Consultation Paper

Framework of guideline

The CCMC supports the development of a new industry Guideline on supporting customers experiencing vulnerability that is underpinned by the Guiding Principles in the 2019 Code.

Definition and Language

The CCMC supports the ABA amending the 2019 Code in line with Royal Commission recommendation 1.8 to include that banks will:

- work with customers who live in remote areas, or when English is not their first language
- adopt the AUSTRAC guidance to identify and verify a person of Aboriginal and Torres Strait Islander heritage, and
- not allow informal overdrafts or charge dishonour fees on basic accounts.

The CCMC agrees with the position in the Consultation Paper, that anyone can experience vulnerability, and that it may be due to temporary, permanent or situational circumstances.

Through engagement with consumer stakeholders and community support services, the CCMC heard extensively about language and its impacts on customers experiencing vulnerability. Specific feedback has been that the current use of 'vulnerable customer' could be disempowering or offensive in some cases. Stakeholders have told us, and the CCMC agrees, that there should be careful consideration about the language used, whether it be in a definition or otherwise, to deter labelling a customer as vulnerable.

Communication with customers

The CCMC agrees with the ABA's position that at a minimum, banks should make available information outlined in 5.3 of the Consultation Paper to customers in a simple and accessible format and using plain English.

In response to 5.3.2. Q1 and Q2, the CCMC supports the proposal that the Guideline should commit banks to make available an easy to understand explanation of their commitment to customers in vulnerable circumstances.

The CCMC suggests additional consideration be given in the Guideline about the ABA's following proposal:

> *'The bank's approach to financial hardship assistance and where customers can go for help'*

Customer awareness was a focus in the CCMC's Financial Difficulty Inquiry. Overwhelmingly we were told by consumer advocates, financial counsellors and customers that there was a lack of awareness about who to contact at the bank for help and the options available. In an effort to address this, the CCMC recommended that banks:

> *Ensure that financial difficulty assistance information is prominently presented and readily accessible on bank websites and other digital platforms, such as smartphone or tablet applications.*

In addition to this, through its research and industry and consumer stakeholder engagement, the CCMC has identified that much of the financial difficulty communication material available primarily targets retail lending customers. The CCMC encourages banks to contemplate how their approach to financial difficulty assistance will vary for small business and agricultural business customers.

Product and service design

The CCMC considers that the 2019 Code's promise to take 'extra care' with customers that experience vulnerability is broad and inclusive and extends to the design and distribution of products and services. We encourage banks to consider a customer's vulnerability and potential for vulnerability when designing and distributing products and services.

SPECIAL REPORT: Access to Banking Services by Indigenous Customers

The CCMC's 2017 Special Report provides an example about how banks can consider vulnerability and the potential for vulnerability in the design and distribution of its products and services.

Frequent and repeated loss of bank cards is a major service challenge and barrier to account access in remote Indigenous communities. Banks report that in these communities, many Indigenous customers see bank cards as having little or no value, and so do not keep them securely. In some cases, we heard that customers believe that the cards are single-use and discard them after only using them once.

The First Nations Foundation suggested that banks might consider how they could increase the personal value of bank cards for Indigenous customers – for example, by incorporating photographs or Indigenous artwork.

This report sets out a range of recommendations for service enhancements and good practice initiatives that can assist banks to uplift their services to Indigenous customers.

Staff training

Current Training

The CCMC has always emphasised the importance of training to ensure that all bank staff can competently fulfil their duties and obligations under the Code. The obligation to take extra care with customers experiencing vulnerability is a broad and inclusive one and the CCMC expects that banks will need to develop targeted training to assist staff build competency in this area.

The CCMC cautions banks against creating role-based training that results in siloed competency to identify and respond to customers experiencing vulnerability, as was found in our Financial Difficulty Report.

CCMC research

In October and November 2018, the CCMC surveyed 200 branches and 60 call centres to assess banks' compliance with the direct debit obligation under clause 21 of the 2013 Code. During this exercise we also tested bank staff's ability to identify a customer in financial difficulty and provide them with appropriate assistance or a referral. In all encounters, the mystery shopper provided the bank with a common financial difficulty indicator.

Concerningly, the CCMC found that in 74% of interactions, bank staff failed to recognise that the customer was showing signs of financial difficulty and further made no mention of the availability of financial difficulty assistance.

The CCMC hopes that this information is useful for the ABA and banks to identify gaps in training and competency, as they transition to the 2019 Code and uplift their financial difficulty and vulnerability training capabilities.

The Code

The CCMC supports the proposal to include additional principles surrounding staff training in the Guideline. In relation to the additional principles listed in 8.2.1, the CCMC would make the following additional comments in relation to the ABA's proposal:

'Are equipped with the knowledge, skills, competencies and information to sensitively and discretely help customer when there is 'disclosed' or 'suspected' financial abuse'

The CCMC refers to clause 9 of the 2019 Code which sets out banks' training obligations. When clause 9 is overlayed with Part 4 of the 2019 Code, the CCMC considers that bank staff already have a broad obligation to be competent in the Code and be able to comply with it, when carrying out their day to day tasks. This includes the broad obligations set out in Part 4 of the Code to take 'extra care' and to treat customers with 'sensitivity, respect and compassion'.

In light of the above, the CCMC encourages the ABA to consider whether this additional training principle should extend beyond circumstances of financial abuse to incorporate a broader range of vulnerabilities in its Guideline.

Other

Bank third-party authorisation forms

In response to 9.2.2. Q1, the CCMC supports the implementation of the ALRC recommendations relating to Power of Attorney (POA) reforms, a national register and an organisation to investigate 'good faith' reports of financial abuse.

The CCMC has also consulted with consumer stakeholders about the challenges faced by customers concerning front-line staff and their generally limited understanding of basic POA obligations.

The CCMC was informed of instances where elderly customers with an appointed POA are declined requests for documents or information on the basis that the nominated POA was not present. In other instances, the POA has been required to produce the original POA documentation at each interaction with the bank, causing the POA difficulties when they seek to carry out the day to day banking needs of the customer.

To overcome these difficulties, consumer stakeholders have told the CCMC that they would like to see:

- greater training and levels of competency for frontline staff, in particular for branch staff, in their understanding, interpretation and actioning of POA requests
- a central, bank wide register of POAs that track registered POAs and sets out in plain language the powers granted to the Attorney
- notification from the bank to the customer that a POA has been activated along with a plain language explanation about what the Attorney is able to do, and the action the customer can take if they are concerned that the POA is not acting in their best interest. Advocates suggest that this be an annual reminder, and
- active monitoring of any accounts subject to a POA to ensure irregularities or 'red flags' are swiftly identified and acted on.

In response to Q2 and Q3, the CCMC agrees with the proposed inclusions relating to third-party authorisations forms. The CCMC suggests that the Guideline also contemplate the following:

- the development of an industry agreed, standardised third-party authority form, as mentioned above, and
- the steps staff should be required to take in the event they identify 'red flags' or suspect that an authorised third-party is not acting in the best interests of the customer.

During the CCMC's research into banks' financial difficulty practices, banks reported that they accept their own standard authority forms and other external forms. Despite this consumer advocates raised concerns with the CCMC that banks' authorisation processes are often inconsistent and unnecessarily burdensome. Consumer advocates shared examples where they had been required to use the bank's form, even when their nonstandard form contained all the necessary details. They described other onerous requirements for the physical presence of the customer and their representative or for information that was unavailable or beyond that specified in the Debt Collection Guideline.

As a result, the CCMC recommended in its Financial Difficulty Report that banks:

> *Adopt or revise written policy on third party authorisations to ensure it requires only such information necessary to satisfy privacy obligations and is not needlessly inflexible or burdensome.*

Unsecured debt and collections

In response to 9.3.1. Q1 and Q3, the CCMC supports the inclusion of collections arrangements in the Guideline.

The CCMC notes the Code obligation for banks to take 'extra care' should be considered throughout the customer journey. This includes how banks approach enforcement activity and the provision of information.

The CCMC also encourages the ABA to consider collection arrangements in the context of banks' outsourced third parties and debt collection agents. We note that clause 31.1 of the 2013 Code states:

> ***We*** *and* ***our*** *collection agents will comply with the* ***ACCC****'s and* ***ASIC****'s "Debt Collection Guideline: for Collectors and Creditors" (the "****Debt Collection Guideline****") dated May 2010 (as amended or replaced from time to time) when collecting amounts due to* ***us*** *and* ***we*** *will take all reasonable steps to ensure that* ***our*** *representatives do likewise. If* ***we*** *become aware that* ***our*** *collection agents or representatives are not complying with the* ***Debt Collection Guideline we*** *will direct them to comply.*

Conversely, clause 180 of the 2019 Code states:

> We will comply with the ACCC's and ASIC's *Debt Collection Guideline: for Collectors and Creditors*.

The CCMC was disappointed that obligations on banks when undertaking debt collection activities were lessened under the 2019 Code. The CCMC encourages the ABA to consider this when it sets out its expectations in the new Guideline and to take positive steps to ensure customers experiencing vulnerability are not disadvantaged by the change.

Concluding remarks

Should the ABA wish to speak with the CCMC to obtain any further information about the banking codes or its monitoring work, we invite you to contact us c/o the CCMC's CEO, Sally Davis, by email at sdavis@codecompliance.org.au.

Yours sincerely,

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