



Every customer counts Better banking for vulnerable customers consultation

Submission to the Australian Banking Association

May 2019

Introduction

The position of Public Advocate is established under the *Guardianship and Administration Act 2000* (Qld). The primary role of the Public Advocate is to promote and protect the rights, autonomy and participation of Queensland adults with impaired decision-making capacity in all aspects of community life.

More specifically, the Public Advocate has the following functions:

- promoting and protecting the rights of adults with impaired capacity (the adults) for a matter;
- promoting the protection of the adults from neglect, exploitation or abuse;
- encouraging the development of programs to help the adults reach the greatest practicable degree of autonomy;
- promoting the provision of services and facilities for the adults; and
- monitoring and reviewing the delivery of services and facilities to the adults.¹

The Public Advocate welcomes the opportunity to comment on the *Every Customer Counts: Better banking for vulnerable customers* guideline (the guideline), released for public consultation by the Australian Banking Association (ABA) on 19 March 2019.

Banking is a fundamental every day task for everyone, however there are considerable barriers experienced by people with impaired capacity when trying to access and utilise key banking services. Addressing these barriers will enhance banking experiences, and assist people with impaired capacity to exercise more autonomy by being able to organise and manage their finances efficiently and effectively, which will potentially contribute to improved financial outcomes for this cohort into the future.

The better banking for vulnerable customers guideline

The draft *Every Customer Counts: Better banking for vulnerable customers* guideline (the guideline) prepared by the Australian Banking Association (ABA) has been developed in response to a series of factors, including recommendations from the Financial Services Royal Commission (2019).

The purpose of the guideline is to outline a commitment from members of the ABA to 'ensuring that all customers can access appropriate banking products, services and support and that banking products and services are suitable and fair'. Additionally, the guideline also aims to facilitate banking environments where customers feel comfortable telling their bank if they are experiencing vulnerability and/or financial hardship and be confident that they will be treated with 'sensitivity, respect and compassion'.²

Definition and principles applying to vulnerability

In the context of the guideline, vulnerability is defined, as per the relevant Banking Code of Practice, as including customers that are experiencing;

- age related impairment;
- cognitive impairment;
- elder abuse;
- family or domestic violence;
- financial abuse;
- mental illness;

¹ *Guardianship and Administration Act 2000* (Qld) s 209.

² Australian Banking Association, *Every Customer Counts: Better banking for vulnerable customers*, consultation document, Sydney New South Wales, 19 March 2019



- serious illness; or
- any other personal, or financial, circumstance causing significant detriment.

The consultation guideline proposes extending this definition to include, the recommendations of the Financial Services Royal Commission in relation to customers: who live in remote areas; for whom English is a second language; and who experience difficulty providing proof of identity if of Aboriginal and Torres Strait Islander descent.³

Further, the guideline proposes noting in relation to 'vulnerable customers' that;

- Anyone can be vulnerable and vulnerability can be temporary, permanent or situational.
- Banks should be careful not to assume that just because a customer is for example, elderly, they are vulnerable.
- It is not the role of the bank to solve a customer's underlying problem however banks acknowledge our actions can contribute to customer circumstances.
- Banks want to use the concept of vulnerability to ensure they are helping their customers.
- The concept of vulnerability should be sufficiently broad.⁴

The Public Advocate supports the proposal to expand the definition of 'vulnerable customers' to include the conditions outlined, while recognising that vulnerability does not have to permanent, it can also be situational or temporary as people move through their lives. For many people with progressive conditions that cause cognitive impairment, such as dementia, even the time of day can impact the level of impairment they experience.

It is also suggested that a definition of or notes about vulnerable customers should recognise that people with disability, or an impairment, have an equal right to make decisions for themselves.

Over the last decade, following the development of the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD), there has been a worldwide cultural shift, which recognises people with disabilities as persons who are equal before the law and their right to make choices for themselves.⁵

The Australian Law Reform Commission's 2014 report *Equality, Capacity and Disability in Commonwealth Laws*,⁶ recommended that the banking sector develop new guidelines to encourage supported (as opposed to substitute) decision-making by people with disability. The ALRC recommended the adoption of four national decision-making principles:

Principle 1: The equal right to make decisions

All adults have an equal right to make decisions that affect their lives and to have those decisions respected.

Principle 2: Support

Persons who require support in decision-making must be provided with access to the support necessary for them to make, communicate and participate in decisions that affect their lives.

Principle 3: Will, preferences and rights

The will, preferences and rights of persons who may require decision-making support must direct decisions that affect their lives.

Principle 4: Safeguards

Laws and legal frameworks must contain appropriate and effective safeguards in relation to interventions for persons who may require decision-making support, including to prevent abuse and undue influence.⁷

³ Ibid, p7

⁴ Ibid, p8

⁵ Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws*, ALRC Report 124, Sydney Australia (2014)

⁶ Ibid

⁷ Ibid



Accordingly, it is recommended that the ABA guideline should also reference the national decision-making principles and encourage their application by banks in their engagement with vulnerable customers. The application of these principles should be part of the banking sector's commitment to 'taking extra care with vulnerable customers'. The adoption of the four National Decision-Making Principles in the guideline will ensure recognition of the rights of people with disability (physical and/or cognitive, temporary or permanent) to make their own decisions, to receive support to make those decisions, to have their will and preferences guide decisions, as well as having the protection of appropriate safeguards in all of their engagements with the banking sector.

Key features of the guideline

The five key features of the guideline include; communications, product and service design, data and systems, staff/competence and other. Each feature is considered below under separate headings.

Communications

The Communications section of the guideline includes the definition of vulnerability (addressed above). This section of the guideline also requires that banks should, at a minimum:

- Make certain types of information (about key terms and conditions, fees and charges, contact information, billing and payment information, dispute resolution processes, making informed financial choices and decisions, accessing the Customer Advocate) available to customers in a simple and accessible format, using plain English;
- Take reasonable care to ensure that customers have received and understood necessary information, and advising of any changes to information provided in the past;
- Make available to customers an easy to understand explanation of their commitment to vulnerable customers.⁸

The Public Advocate supports each of these initiatives and the proposal that banks should make available easy to understand explanations of their commitment to vulnerable customers.

Communication with customers could potentially be further enhanced with the production of easy read versions of documents and notices. The easy read format can assist people with learning disabilities to easily understand information – it can also be helpful for other audiences, including members of the community who are not fluent in English. Easy read provides essential information on a topic without a lot of background information and uses pictures to support the meaning of text. It can be used by a carer or support person to talk through an issue with someone with a cognitive impairment to help them understand the issue and make decisions about it.⁹

While the objects of the guideline are supported, the difficulty for the banking sector will be ensuring that the spirit of the guideline is carried into practice. Because these types of engagements with vulnerable people can be complex, it will be difficult for the banking sector to get this right the first time. It is suggested that the new materials developed to address these issues be user-tested with vulnerable people and amended based on feedback before they are formally adopted for use. It should be acknowledged that other parts of the guideline are recommending designing accessible products and services using customer feedback. Further, there should be a timeframe set for a more comprehensive review of this approach (perhaps in three years' time) to assess its success from the point of view of vulnerable customers, their supporters and carers, and bank staff.

⁸ Australian Banking Association, *Every Customer Counts – Better banking for vulnerable customers*, consultation document, Sydney New South Wales, 19 March 2019 p 8-9.

⁹ UK Department of Health, *Making written information easier to understand for people with learning disabilities*, Mental Health and Disability Division, Department of Health, London, England, 2010.



Product and Service Design

Making Products suitable and fair

The Product and service design section of the guideline commits to ensuring all customers can access suitable and fair banking products. The draft guideline refers to the commitment by banks (under other ABA Accessibility Principles for Banking) to appropriate universal design principles, that encompass an inclusive design process which ensures that, wherever possible, products and services are accessible to all customers.¹⁰

The guideline seeks input on whether it should include practical steps for considering vulnerable customers in product design, which banks can put into operation. The Public Advocate supports the inclusion of these type of measures, which could incorporate including vulnerable customers in market research activities and implementing a consultation strategy associated with major product and service design projects. This could incorporate consultation and feedback from, for example, peak advocacy bodies that represent vulnerable people, including, Aged and Disability Australia (ADA), Queenslanders with Disability Network (QDN) Queensland Advocacy Incorporated (QAI), Women With Intellectual and Learning Disability (WWILD), just to name a few currently active in Queensland. These organisations interact with vulnerable people on a daily basis and as such are in a strong position to provide practical and relevant insights to assist with product and service design.

Proactive identification of vulnerable customers

This section of the draft guideline proposes that banks use data analysis to identify potentially vulnerable customers and then supply them with relevant information and referrals.

This proposal raises some significant privacy and ethical issues for banks, as contact via these methods:

- Is subject to error – data analysis techniques to identify customers experiencing vulnerability are not exhaustive or ‘foolproof’ and there have been numerous examples over the past few years of this type of approach failing to reach the customers or clients for which it was intended. Should this occur it could cause significant damage to the banking sector, if customers are offended by being incorrectly identified as vulnerable and where they are upset that their personal financial information is being used or analysed in this way. Such an outcome would be particularly unfortunate given that the intent of the guideline is about building trust and stronger relationships with customers.
- Has the potential to exacerbate volatile situations – the receipt of communications from a bank by a person that may be experiencing domestic violence or elder abuse may, if read by the perpetrator, place the vulnerable person in a dangerous situation. There could be serious repercussions associated with the bank's proactivity, particularly if it is interpreted by a perpetrator as the vulnerable person informing the bank of their situation.

A more appropriate method of identifying vulnerable customers may be for banks to send a letter to ALL existing customers on a semi-regular basis (potentially once or twice a year), inviting them to make an appointment to visit or telephone the bank to talk about product and service accessibility and their individual vulnerabilities. This would consolidate the banking sector's commitment to inclusivity and openness, inviting vulnerable customers to engage with the bank on their own terms and in their own time or to exercise their choice not to do so. New customers could also be informed of this policy when they open accounts at the bank, which may encourage a discussion regarding their vulnerabilities or alternatively, they could be informed that the bank offers services for vulnerable customers that they may need or wish to access in the future.

Banks should also consider sending staff to people's homes (with their consent) when it is difficult for a vulnerable customer to attend at a bank branch. Banks offer many mobile services for new

¹⁰ Australian Banking Association, *Every Customer Counts – Better banking for vulnerable customers*, consultation document, Sydney New South Wales, 19 March 2019 p 9-10..



customers and those seeking to access new products and services. Their mobile services could also complement the banking sector's commitment to accessibility and personalised service.

Data and systems

Under this proposed guideline, there will be a requirement for banks to have a policy detailing: what personal details they will collect regarding vulnerable customers; how this information will be collected; to whom, within the bank, it will be available; how it will be protected; protocols for dealing with third parties representing customers; and how the data will be managed if the bank is made aware that a customer is no longer vulnerable.

The development of such policy is critically important to ensuring that all vulnerable customers are treated fairly and equally, and that personal information about their vulnerabilities are only available when and where necessary to banking decisions.

The development and application of policy in this area requires the vulnerable customer to be at the centre of all decisions. Vulnerable customers have a right to know all of the information outlined above about why and how their details will be collected and stored, as well specifying how much of this information they wish to have available when they contact the bank, either by phone or face to face, and formally consenting to these information sharing arrangements to facilitate responsive customer service.

Staff Training

The Public Advocate supports all training that can be adopted to assist banking staff to support potentially vulnerable customers.

The proposals included in the guideline in relation to staff training provisions do, however, appear to place a strong focus on customers that may be experiencing some type of abuse. While it is acknowledged that training for staff to support these type of customers is essential, there also exists a strong need for the guideline to incorporate training in relation to things like, for example, disability awareness and decision making. This includes topics and subjects like; supported decision making, enduring power of attorney (EPOA) documents, guardianship and administration orders and working with decision makers. Various disability advocacy organisations (including the ADA Australia in Queensland) provide training courses for people from all professions and walks of life to improve their understanding of the law in relation to capacity and how to support people experiencing impaired capacity.

Other

Formal arrangements

Formal arrangements referred to in the guideline include the use of Power of Attorney (PoA) documents by bank customers. This clearly is referring to formal substitute decision-making arrangements. It is understood that the ABA has released a self-regulatory guideline (Responding to requests from a power of attorney or court-appointed administrator¹¹) agreed to by member banks to assist with requests from power of attorneys.

This guideline provides detailed information as to what constitutes a power of attorney, how it can be used, who can be an attorney and what type of decisions they can make, including the information they can request from the bank on behalf of the person they legally represent.

The Public Advocate supports this guideline (or the vulnerable customer guideline currently being considered) being extended to include the four National Decision Making Principles developed by the ALRC (and referred to earlier in this submission).

¹¹ Australian Banking Association, *Responding to requests from a power of attorney or court-appointed administrator*, accessed online 2 May 2019, <https://www.ausbanking.org.au/images/uploads/ArticleDocuments/207/Industry_Guideline_Responding_to_requests_from_a_power_of_attorneys_or_court-appointed_administrator2.pdf>



These principles (in accordance with the CRPD) provide for the implementation of a model of supported, rather than substitute, decision-making. They recognise the rights of the person to still express their will and preferences and participate in the decision making process even when they have an appointed substitute decision maker, such as a financial administrator or an enduring attorney.

For banking staff, the implementation of supported decision-making in accordance with the principles means actively involving, where possible, the person in the decision making process and providing them with access to relevant supports if necessary. As noted above, training can be provided to bank staff by organisations, such as ADA Australia in this area.

In addition to the inclusions described above, the Public Advocate also supports the ABA's position in favour of the implementation of the ALRC recommendations to provide for additional protections for vulnerable customers, including the establishment of a safeguarding entity to which reports of suspected abuse can be made and investigated.¹² However, we would warn that the establishment of a national register for powers of attorney would not protect people from financial and other abuse at the hands of their formal substitute decision-makers, and banks and other institutions must remain vigilant and have appropriate processes in place to identify inappropriate and conflict transactions by attorneys that should give rise to further investigation and action.

Bank third-party authorisation forms

The Public Advocate is not familiar with third-party authorisation forms but questions why banks would create another form that essentially replicates the purpose of a power of attorney form for financial matters. While it is apparent that such a form could simplify people's banking arrangements using an informal process, it is the informality of the process that raises concerns. How can the bank be sure the person who has signed the authorisation did so voluntarily and without duress? What happens when the customer has made a valid power of attorney that commences immediately and has authorised someone else under a third-party authorisation form? Will banks continue to use these forms after a national register of powers of attorney has been established and if so, what will be their status? It would appear that these documents create more opportunities for financial abuse of vulnerable customers. Can the ABA provide information about how many of these forms have been abused or misused by third parties to the detriment of the customer?

Unsecured debt and collections

The Public Advocate supports the inclusion of collection arrangements in the guideline, along with the explanation of collection arrangements as they appear in the financial abuse and family and domestic violence industry guideline.¹³ The collection arrangements identified should be applied to all categories of vulnerable customers included in the guideline.

Scams

The Public Advocate supports the inclusion of industry level guidance on preventing scams in the guideline.

Conclusion

Overall, the development of a guideline to promote improved banking services for vulnerable customers is supported by the Public Advocate.

¹² Australian Banking Association, *Every Customer Counts – Better banking for vulnerable customers*, consultation document, Sydney New South Wales, 19 March 2019 p 13-14..

¹³ Australian Banking Association, *Every Customer Counts – Better banking for vulnerable customers*, consultation document, Sydney New South Wales, 19 March 2019 p 15



Some suggestions have been made to enhance guideline implementation and alignment with contemporary thinking and practice in regard to decision-making, which includes the concept of supporting a person's will and preferences as opposed to acting in their best interests, and employing strategies to actively involve vulnerable people in decision-making processes.

Thank you again for the opportunity to contribute to this consultation. Should the opportunity arise, I would be pleased to be part of further discussions in relation to the guideline and the needs of vulnerable customers in the future.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mary Burgess', written in a cursive style.

Mary Burgess

Public Advocate (Queensland)

