



Feminist Legal Clinic Inc.

Submission to the Australian Banking Association Consultation on Better Banking for Vulnerable Customers

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By email: submissions@ausbanking.org.au

Feminist Legal Clinic Inc. ABN: 17 360 484 300

Benledi House, 186 Glebe Point Road, Glebe NSW 2037
PO Box 273, Summer Hill NSW 2130. Mobile: 0402 467 476

www.feministlegal.org.

About the Feminist Legal Clinic

Feminist Legal Clinic Inc. is a community legal service that works to advance the human rights of women and girls through a combination of targeted casework, community legal education and law reform work.

About the Financial Abuse Legal Clinic

The Financial Abuse Legal Clinic is a project of the Feminist Legal Clinic. It provides legal advice and representation to women affected by financial abuse.

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1. Introduction

The Feminist Legal Clinic (FLC) welcomes the Australian Banking Association issues paper on better banking for vulnerable customers. The FLC is focussed on the rights of women so this submission will be focussed on women as possible vulnerable customers of a bank. We have also commented on issues related to financial abuse and family violence.

As a community legal service, the FLC deals with women who are often vulnerable or have been vulnerable. Women are more likely to be vulnerable than men because of entrenched gender inequality in our society. Women can have far more difficulty engaging in financial services. Banks should be making specific and widespread changes to protect vulnerable customers.

This submission has not answered any specific questions but has made some general observations.

2. Defining vulnerability

We strongly recommend that a broad definition of vulnerability is used. Women can be vulnerable in a range of circumstances. Women are more likely to be vulnerable compared to men in some aspects of financial behaviour. Some examples are making ends meet, saving and choosing financial products.¹ Any definition for vulnerability needs to cover both personal characteristics and that the product itself can cause vulnerability.

3. Framework of the Guideline

This guideline will be non-binding and non-enforceable. For this reason, it is preferable that commitments on addressing vulnerability needs to go in the Banking Code of Practice. Banks should be making commitments that are binding on something as serious as vulnerability. The circumstances that led to the Banking Royal Commission must never happen again. Real commitments to vulnerable customers need to be included in the next review of the Code.

In the meantime, there needs to be a mechanism in place to measure the progress banks are making on implementing the suggestions in the guideline.

Recommendations

The Banking Code of Practice should include further commitments for vulnerable customers in the next review.

The implementation and success of the guideline on vulnerability (and the other guidelines) should be regularly assessed and reported.

¹ OECD Addressing women's needs for financial education 2013 https://www.oecd.org/daf/fin/financial-education/OECD_INFE_women_FinEd2013.pdf

4. Gender impact assessment

Gender impact assessment is a tool to highlight product design that can negatively impact women. It can provide insights into designing a product that reduces the vulnerability of women. Women are generally over-represented in vulnerable groups such as disability, victims of family violence and casual and low-income work.

A gender impact assessment would enable the bank to ensure that product design is fair and suitable for women.

Recommendation

A gender impact assessment should be conducted on products and services.

5. Communicating with customers

We strongly support improving communication methods with customers. This should include the following:

- A range of communication methods needs to be available which includes email, phone, text, webchat and ordinary mail.
- People need to know about the options available. This means telling people. Choice is empowering.
- Improving terms and conditions and all communication. Test whether it works with real people in a range of circumstances.
- Using a wide range of communication methods to tell people. Designing communications to give people options to solve their problem is also important.
- Simplifying products so the terms and conditions is not long and complicated.
- Removing tricky fees, interest charges and terms. Audit products to get rid of tricky profit-making hidden terms and disclose the true cost up front.

6. Product and service design

We support fair and suitable product design. This should include:

- A gender impact assessment
- Consultation with groups who may experience greater vulnerability
- Simplifying products where possible
- Actively assessing fairness and the possible impact on vulnerable customers

Recommendations

Include the above 4 actions in product design to ensure it is suitable and fair.

7. Proactive identification of vulnerable customers

FLC supports the proactive identification of possible vulnerable customers. This should occur by:

- Analyzing data already held
- Talking to customers about their challenges and concerns
- Recording and flagging people with ongoing challenges, for example a woman who cannot get to the branch due to disability

We support the use of all of the suggestions listed at 6.2.1. of the issues paper. We recommend the following further actions:

- Moving people on Centrelink (if detected that payments are being made to their bank account) to a basic bank account automatically or removing the fees;
- Giving access to basic bank accounts to people who work casually and have a low income (as measured by payments to the account).

Recommendations

Implement the recommendations outlined above in the guideline.

8. Financial abuse

We are aware that the ABA has a guideline on financial abuse. We support the guideline and would be interested on an update on the implementation of the guideline. A recent case study that demonstrates several problems faced by a person experiencing financial abuse appears below.

Case Study

Pamela is a mother and full-time carer of her two young sons. She is from an African village and knows no one in Australia who speaks her language, aside from her husband. It is also unavailable through interpreting services. In addition, she received very little schooling in Africa and so learning to read and write English has been a difficult challenge. However, with support from friends she has almost managed to complete a TAFE certificate and has obtained some casual employment working in aged care.

While Pamela does not claim any physical violence, her husband is extremely controlling and coercive. Until now Pamela has not had any assets or income in her name and did not have her own bank account or even a key to the letterbox. There is no home phone, computer or internet access. Her husband keeps all the paperwork securely hidden from her and pays all the bills, purchases the groceries and gives her only \$50 in cash each week. Pamela has been unable to obtain any assistance from Centrelink because of her husband's income and the fact that he holds the children's birth certificates and has falsely registered himself as their sole

carer. She is effectively trapped and controlled by her husband and lives in fear of him separating her from her children.

Pamela did not want her husband to know she was trying to obtain employment. She wants to save money so that she is in a position to move out when the time is right. However, setting up a bank account with a major bank proved a major challenge and was only possible with the intensive assistance of staff from a community legal service. The following difficulties were experienced:

- Despite very specifically requesting that correspondence, including bank statements, should be sent to an alternative PO Box address rather than her home address, the bank delivered the initial correspondence to Pamela's home address where it was opened by her husband placing Pamela at risk.

- Pamela was advised that once she stops studying her account will attract significant fees unless she maintains a certain balance. It was difficult to explain to Pamela that the bank penalises individuals with a low balance by imposing fees, while wealthier customers who can maintain a certain high balance are exempted. In the circumstances, it was difficult to convince Pamela to deposit her meagre savings into the account rather than continue carrying the cash about with her in her purse.

- Over the counter service attracts prohibitive fees so that a vulnerable customer like Pamela cannot obtain assistance from bank staff to operate her account. To make a modest transfer to her family in Africa to help pay for her mother's urgent medical expenses, Pamela was directed to use the on-line terminal in the branch despite the fact that this was well beyond her capacity due to her very limited literacy and lack of familiarity with the use of a computer.

- Even with the assistance of a lawyer, setting up Pamela's on-line banking and putting through the transfer took well over an hour. The setting of passwords and security questions was a major problem and took a great deal of explaining. Security questions as used by Centrelink and some banks are a particular concern as they require the customer to draw on personal details which are quite likely to be known by a spouse who typically poses the most obvious threat.

Most people in financial abuse do not disclose this to the bank. That is why it is essential that good practice about safety is embedded into the design of all products and services.

We recommend the following additional actions by the banks to protect people (predominantly women) affected by family violence by introducing the following additional measures:

- Taking care to send mail to the correct address.
- Flagging accounts where family violence has been disclosed for the protection of the victim. This should include additional security measures
- Offering women affected by family violence "silent accounts". This type of account would have limited access for staff to protect the victim from tracking.

- Redesigning joint savings accounts to make them safer for women. This should involve a radical rethinking on how the accounts work. It could involve changing joint and several liability and splitting notional funds and liability.
- Working on technological solutions to enable joint authorisation. As it stands, people have no way to stop an account being cleared out quickly even when the person is aware of the risk. When there are large sums of money in an account (or in redraw) there needs to be a way to manage the money safely.

Recommendations

Designing products and services with embedded consideration of financial safety for the customer.

Including the above recommendations in the guideline.