Submission No. 59
Date Received

RECEIVED
0 1 DEC 2006
BY: LACA

1 December 2006

NIT

The Secretary of the Committee
House Standing Committee on Legal and Constitutional Affairs

**By email: laca.reps@aph.gov.au**

Dear Secretary,

**RE: Inquiry into Older People and the Law**

Consumer Credit Legal Centre (NSW) Inc. (CCLC) is pleased to provide a submission to the Inquiry into Older People and the Law.

**About CCLC**

The Consumer Credit Legal Centre (NSW) Inc ("CCLC") is an independent community legal centre providing information, legal advice, legal representation, and education to NSW consumers in relation to credit, debt and banking matters. We provide legal advice and assistance to over one thousand clients each year, and represent over one hundred clients in disputes with credit providers and debt collectors, including matters in courts, tribunals and external dispute resolution schemes.

CCLC also operates the Credit and Debt Hotline, a financial counselling information and referral service, which is the first port of call for many troubled debtors in NSW. As part of this service, CCLC's financial counsellors and solicitors visit various rural and regional areas all over NSW to offer our support and assistance to financial counsellors, as well as to conduct workshops for members of the public and other community workers.

As CCLC's experience is confined to financial services we have only provided comments in relation to financial abuse and barriers to older Australians accessing legal services.

CCLC also quotes a large amount of data and case studies from its database of calls received through the Credit & Debt Hotline. The Fair Trading guidelines require us to classify older persons as those over 60. As a consequence the data quoted is for persons over 60 not 65. CCLC contends that the data is still indicative of the problems faced by older persons.

## Financial Abuse

In CCLC's casework experience we have encountered two types of financial abuse of older people:

1) Financial abuse by family members and friends of the family; and
2) Financial abuse by mortgage brokers and credit providers

There are also cases with a combination of both of the above elements.

**Financial abuse by family members and friends**

Most of this financial abuse revolves around an older person who owns their home (although there are a growing number of older persons with a debt still owed on their home after 65 years old).

There have been a number of key changes in lending that have left older people vulnerable to financial abuse. They are:

1) Property values have increased and many older people have homes worth a substantial amount of money.

2) Credit providers also offer a wide array of equity loans that enable people to access the equity in their home.

3) Lending standards have deteriorated considerably. This has meant that people can get loans with no ability to repay the loan and are forced to sell the home. This is called "asset lending". This type of lending is to be distinguished form "reverse mortgages" where the loan is not to be repaid until the home owners/borrowers die. This is discussed in further detail below.

4) Guarantees are still available. However, lenders and mortgage brokers now go to great lengths to avoid guarantees. Instead mortgage brokers and the person receiving the benefit structure the transaction for the older person to receive a benefit even though they did not want the benefit. There are also "family equity" products where the children and the parents sign agreements indicating a "benefit" was received. When a benefit is received it is much harder to show that the transaction was unjust.

5) There is now a proliferation of mortgage brokers. This means that it is possible for the mortgage broker to know the true nature of the transaction and the lender to be deceived along with the older person. This also interferes with the older persons access to justice because the lender claims innocence and the mortgage broker disappears.

6) Difficulties for people generally to raise money to buy a home. This has meant that many children ask their parents for financial help. This inevitably involves mortgaging the older person's home.

7) High levels of household debt across Australia have meant many people ask their older parents for money to relieve financial stress.

8) High levels of credit card debt for older persons have meant that many older persons have had to consider loans and reverse mortgages to repay credit card debt.

Each of the above matters is considered in more detail below.

1) *Increasing home prices*

Although growth has slowed in some states (such as NSW) recently, house prices have risen overall over the last 15 years significantly. This led to many older Australians having considerable equity in their home.

2) *Equity loans*

Equity loans are loans where the borrower can access the equity in their property by getting a loan. Equity loans are widely available and offered by all major lenders. The lender will usually lend up to 70% of the value of the property. This is to be distinguished from "reverse mortgages". Reverse mortgages are loans where the borrower repays the loans from their estate (after they have died) from the sale of the home. Lenders who provide reverse mortgages rarely lend more than 25% of the value of the property. This is because interest capitalises over many years and the lender wants to be sure that the sale of the property will cover the debt.

The significance of this is that a vulnerable older person can access up to 70% of the value of their home. This of course relies on the lender being willing to "asset lend". A number of lenders are willing to do this.

3) *Irresponsible lending*

Irresponsible lending is discussed below. It needs to be recognised that when older people are exploited by family members or friends it also often involves the lender failing to make prudent enquiries in relation to the older person's ability to repay the loan.

4) *Guarantees*

Guarantees still remain a problem for older persons. Many banks now offer products that allow parents to guarantee a child's home loan. Older persons are particularly vulnerable to the requests of their children.

**Case study 1**

A woman called CCLC to complain about the conduct of St George Bank in relation to her parents guaranteeing her home loan. The woman had used the family pledge product. Her elderly parents owned their own home and decided to guarantee the loan to enable their daughter to purchase a home. The complaint concerned the fact that the bank demanded the title deed to her parents' home just before the settlement of the purchase of the property. Her parents did not know they had to give the bank the title deeds to their home. The bank refused to settle the loan until they had the title deeds.

**Case study 2**

An older person couple owned their own home in rural NSW. Their son contacted them and asked that they guarantee a business loan for 12 months. He assured them over and over again and in writing that there was no risk. They believed him and signed a guarantee for a bank business loan. The guarantee was signed in the offices of the son's solicitor while the son was present. The son defaulted on the loan which meant the couple were at risk of losing their home. The couple were able to negotiate a reduction in the debt with legal assistance from CCLC but they still have to sell their home and buy a cheaper home.

**Case study 3**

An older woman was asked by her son and daughter-in-law to help them purchase their first home. The son and daughter-in-law approached a bank. The son had a default listing on his credit report. Although it is completely unclear how this occurred, the older person ended up as a borrower and a co-owner of the new property to be purchased. The older person's home also secured the loan. The older person did not want to be a co-owner of the home to be purchased. The son and daughter-in law stopped paying the loan. The older person then faced losing her home as the value of the property was falling in relation to the loan. Fortunately the daughter-in-law eventually agreed to sell the home with the older woman borrowing money to cover the shortfall.

**Case study**

Mr & Mrs M wanted to assist their son to buy a home. Their son approached a broker to arrange the loan. Mr & Mrs M owned their own home. It was their understanding that their son would make the payments and if he did not pay then they would have to make the repayments. Both Mr & Mrs M were on the aged pension at this time. They signed the loan documents in a hurry and were not given copies of what they signed.

The loan was drawn down and the loan money of $150,000 was transferred to their son and his wife. They found out later they were not guarantors at all they were the borrowers. Their son was not a borrower at all. In fact his name was nowhere on the loan documents. When the son stopped paying the loan they were forced to sell their home. Worse still, their pension was reduced significantly because Centrelink deemed they had gifted $150,000 to their son.

5) *The role of mortgage brokers*

The proportion of broker-originated home loans continues to rise and had reached about 35% in October 2005 (up 30% from 12 months previously).[1] Brokers are also capturing a larger share of the refinance market and over 45% of low doc loans are originated by third party brokers.[2] A survey of brokers conducted by JP Morgan Securities Australia Ltd and Fujitsu Consulting indicated that the size of the upfront commission and the speed of processing by the lender were important essential aspects of their decision where to place a loan. In contrast to this 50% of consumers surveyed thought a broker would give them "objective and independent advice".[3]

6) *Home affordability*

There are several measures of home loan affordability. However, there does seem to be a consistent trend in the home affordability indicators to show that home affordability is currently very poor.[4]

This results in pressure from children for assistance with affording a home.

7) *High household debt and credit card debt*

Consumer borrowing has been increasing at historically unprecedented levels for a number of years. The level of Australian indebtedness is rising and is rising faster than ever before. Reserve Bank of Australia figures shows that credit card debt alone reached $37.2 billion (in September 2006).[5] Housing debt was $610.1 billion as September 2006.[6] The Financial Stability Review March 2004 published by the Reserve Bank of Australia[7] notes that the level of outstanding household credit has risen at an annual rate of 15 per cent since 1996 and at an even faster rate of 22 per cent over the 12 months preceding January 2004. Household debt represented over 140 per cent of disposable income in 2003 compared with 105 per cent in early 2001, taking Australia from having a relatively low debt-to-income ratio by international standards a decade ago to having a relatively

---

[1] JP Morgan "Australian Mortgage Industry – Volume 2: Low Doc Loans - A growing segment", JP Morgan Securities Australia Limited and Fujitsu Consulting, Asia Pacific Equity Research, 11 October 2005.
[2] Id.
[3] Id.
[4] Research Note no. 8 2006–06, Home loan affordability—measurement and trends, Tony Kryger, Statistics and Mapping Section, 9 November 2006 at www.aph.gov.au/library
[5] Reserve Bank of Australia Bulletin Statistics published at www.rba.gov.au/ Statistics/Bulletin, Statistical Table C.1 Credit & Charge Card Statistics.
[6] Reserve Bank of Australia Bulletin Statistics published at www.rba.gov.au/ Statistics/Bulletin, Statistical Table D.2 Lending and Credit Aggregates.
[7] Financial Stability Review published at www.rba.gov.au on 25 March 2004.

high level of household debt when measured against income.

The figures show that household debt is relatively high in Australia. Older persons are affected by this. CCLC's experience clearly shows that older persons have higher levels of household debt despite their usually limited income.

**Financial abuse by credit providers**

*Irresponsible lending*

There are two main types of irresponsible lending that affect older persons:

1) Loans secured by their home. This includes equity loans, reverse mortgages, guaranteed loans.

2) Credit card debts.

The effects of irresponsible lending are usually devastating. The effects are:

(a) The loss of a home that was often the place of many family memories
(b) Feelings of failure in losing a lifetime of work to buy a home
(c) Leaving close friends in their community
(d) Severe stress of trying to pay a debt that they cannot afford
(e) The embarrassment of a sheriff coming to the door
(f) Harassment by debt collectors
(g) Serious fights with children leading to a breakdown in their relationship with their children.

It is CCLC's contention that lenders have a duty of care to borrowers to lend responsibly. This means acting prudently and making reasonable enquiries in relation to a borrower's ability to repay. There is support for this contention in legislation (section 70(2)(l) of the Consumer Credit Code and in a number of Supreme Court cases see *Perpetual Trustee Company Ltd v. Khoshaba* [2006] NSWCA 41; *Elkofairi v. Permanent Trustee Co Ltd* (2003) 11BPR 20841; *Permanent Mortgages Pty Ltd v. Cook* [2006] NSWSC 1104).

Unfortunately, the legislation and court cases have not stopped increasingly irresponsible lending by credit providers. In CCLC's view there is at least one simple explanation for this and that is there is no real or effective penalty for irresponsible lending. For example, in the recent asset lending (and predatory lending) decision of *Permanent Mortgages Pty Ltd v. Cook* [2006] NSWSC 1104, although the loan was found to be unjust, the lender had to be repaid the loan principle plus interest. The lender did not even have to pay Legal Aid's costs. There is no incentive in this decision for the credit provider to stop lending irresponsibly. As long as the lender makes sure there is sufficient equity in the property it will always get repaid from the sale of the property.

Loans secured by property

In CCLC's experience many older people are extremely vulnerable to financial difficulties leading them to consider obtaining a loan to pay for items like a car. Transport is a major issue for older persons as public transport can be difficult to use for mobility reasons.

**Case study**

Mr. R applied for a loan of $40,000 to buy a car as he needed a car for transport. Mr R's sole source of income is (and was at the time of applying for the loan) the aged pension. He approached a broker for assistance. At the time of approaching the mortgage broker he owned his own home. The broker talked Mr. R into a line of credit loan of $150,000 so all his expenses and needs would be covered. The broker included false information in the loan application form, obtained an ABN and even lodged a tax return on behalf of Mr. R. The broker arranged the loan with a major bank being ANZ. Mr. R was not aware of any of this. Mr. is now facing losing his home as he has now obtained a debt he cannot afford to repay.

**Case study**

Mr. T was approached by an investment adviser to invest in the Karl Suleman investment scheme. Mr. T's sole source of income at the time he was approached was the aged pension. He owned his home before he was approached. A loan of $260,000 was arranged for Mr. T to invest in the Suleman investment scheme. The loan was arranged through . Mr. T is now in the process of selling his home as he never recovered any money investment with Suleman and he cannot afford to repay the loan.

Credit card debts

CCLC recently conducted an analysis of data obtained from callers to CCLC with difficulties paying their credit card debt. From the period of September 2004 to June 2006 there were 2573 calls relating to credit card debt. 200 of those callers were over 60 years old.

Credit card debt is a significant problem for older people. A number of case studies appear below to illustrate this point.

The case studies can be divided into a number of categories:

1) Older persons with reverse mortgages who then accumulate further credit card debt
2) Older people who retire with significant credit card debt or a home loan debt (or both) and are unable to service the debt. In many cases this has carried on for many years before retirement with no real reduction in the debt.

3) Older persons with large credit card debt accumulated after retirement through unsolicited limit increases when their sole source of income was the aged pension
4) Older persons with comparatively smaller credit card debts but the accounts are held with GE which can have a high interest rate of 27% p.a. making it difficult to repay.

All of the case studies are samples of a larger set of problems CCLC regularly sees.

*1) Older persons with reverse mortgages who then accumulate further credit card debt*

**Case study**

Mr Y has a reverse mortgage of $105,000. She approached another bank for a personal loan. This was granted for the amount of $18100. He states he did declare that his income was the aged pension and that he also had a reverse mortgage when he applied for the personal loan. He cannot repay the loan. He has tried to increase his reverse mortgage but has been told that is not possible.

*2) Older people who retire with significant credit card debt or a home loan debt (or both) and are unable to service the debt. In many cases this has carried on for many years before retirement with no real reduction in the debt.*

**Case study**

Ms D is ill and needs to go into a nursing home for full time care. She has over $10,000 in credit card debt. She wants to know whether she is still responsible to pay the debt when all her pension will be taken up in paying for the nursing home.

**Case study**

Mr H was working earning $25,000 p.a. He owns his home. He has $43500 in credit card debt. The credit card was used to strata management fees and to buy household goods. Now he is on the aged pension and cannot afford to pay the credit card. The bank has suggested he get a reverse mortgage to pay the credit card debt.

*3) Older persons with large credit card debt accumulated after retirement through unsolicited limit increases when their sole source of income was the aged pension*

**Case study**

Mrs Q is on the aged pension and has a credit card debt with Westpac of $20000. Her husband has just died. She owns her own home. Mrs Q cannot afford the repayments on the credit card debt. Westpac is pressuring her to solve the problem by April or sell her home.

**Case study**

In 1998 Mrs C applied for a credit card with a bank. She declared on the application form that her sole source of income was Centrelink benefits. The application was declined. She queried this and then the bank offered her a credit card with a limit of $3000. Through unsolicited limit increases the limit on her credit card was increased from $5000 to $7000 to $10000 to $15000 to $25000 to $35000 to $45000. Mrs C has no way to repay the debt.

**Case study**

Ms. S called CCLC about her 81 year old father. He has a $15,000 credit card debt with a major bank. He has been on the aged pension as his sole source of income for many years. He has no ability to repay the debt.

**Case study**

Mr. B is a pensioner and 72 years old. He has 3 credit card debts totalling more than $35,000. He has no way to repay the debt.

**Case study**

Mr A obtained a credit card 10 years ago when his sole source of income was Centrelink. The limit was $500 on the credit card and he could manage this. The bank then offered limit increases on his credit card. The latest limit increase (just before Christmas last year) was from $17000 to $24500. Mr A is now considering bankruptcy.

**Case study**

Mr D is in his 70's. He has a credit card debt of $5000 with a major bank. He rang CCLC as he is being harassed by a debt collector for payments that he cannot afford.

**Case study**

Ms F is 62 years old and she jointly owns a home with her brother who is 70 years old. Ms. F had a credit card when she retired. Through unsolicited limit increases the credit card debt was built up to $30000. Ms. F had been receiving some payments from her superannuation but these have now finished. Her brother is very concerned about her debt and is worried that the sheriff will come and take their furniture and even their home. He wants her to get a loan. Ms. F wants to apply for a seniors equity loan (a reverse mortgage). The lender wants her to get advice from a solicitor. She cannot afford a solicitor so she calls CCLC for help.

**Case study**

Mrs H is 72 years old and her sole source of income is the aged pension. She has a credit card debt with a major bank of $15000. The bank is insisting she pay $4000 immediately. She does not have the money. The bank is also insisting she pay $300 per fortnight. The aged pension is around $400 pf. Mrs H is worried she will not have enough money for food.

**Case study**

CCLC was approached by an 81 year-old man for help. He had close to $100,000 in credit card debt across 7 credit cards. The debt had been accumulated through accepting unsolicited limit increases from the lenders. He had been using cash advances to pay the minimum monthly payment on other cards. The lenders were all aware of his age and his financial circumstances. His income was part pension and part payment from a superannuation fund. His income was low. His only asset was a share in a retirement village. The man was faced with losing his home. Fortunately, his daughter was able to negotiate and pay part of the debts.

4) *Older persons with comparatively smaller credit card debts but the accounts are held with GE which can have a high interest rate of 27% p.a. making it difficult to repay.*

**Case study**

Mrs S has a credit card debt with GE. The interest rate is 27% p.a. The debt is $4000 but despite making the minimum payments the debt is not reducing.

**Case study**

Mr G is 77 years old. He is on the aged pension. He is the sole carer for his son who was severely injured in a shooting accident. He bought a fridge through a department store and end up with a GE credit card at 27% p.a. He is very ill and cannot afford to repay the credit card.

**Barriers to older Australians accessing legal advice**

There are a number of barriers to accessing legal advice:

1) finding the right solicitor in the right area to get advice from
2) embarrassment about seeking advice (particularly in relation to financial matters)
3) Worries about getting their children or friends "in trouble".
4) Access to be able to make outgoing phone calls

Although the above issues are serious matters the biggest problem for older persons is a lack of access to free solicitor caseworkers to assist them to solve their problems. Older persons can face a number of disabilities and illnesses that mean that it is not possible for them to resolve their own disputes. There is a distinct lack of legal help available for older persons in this situation. Funding needs to be provided and dedicated to giving assistance to older persons in legal disputes.

If you have any questions please do not hesitate to contact me on

Yours faithfully,

**Katherine Lane**
**Solicitor**
**Consumer Credit Legal Centre (NSW) Inc.**