

7 March 2017

Senate Standing Committees on Economics  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Dear Committee

**Submission into the inquiry into consumer protection in the banking, insurance and financial sector**

Thank you for the opportunity to contribute to the Senate Standing Committee on Economics consideration of this important issue.

Caxton Legal Centre (Caxton) is Queensland's oldest community legal centre. Since 2008 Caxton Legal Centre has operated a dedicated Consumer Law service focused on credit and debt. From 2011 to 2013 our Consumer Law Service also ran a Flood Recovery Unit to handle insurance disputes following the Queensland floods.

We have extensive experience in assisting families with banking and insurance matters and have acted in cases in relevant Ombudsman's Services, the Queensland Civil and Administrative Tribunal and in the Queensland Courts. Our other practice areas (including our Seniors' Legal and Support Service) inform our consumer law work and we have specialist knowledge of the way older people in particular are affected by banking, insurance and other similar matters.

***Are there any failures evident in the current laws and regulatory framework and/or the enforcement of those laws?***

Consumer protection law must remain flexible to respond to emerging and projected issues in the marketplace. There is a need to remain vigilant in ensuring that law and regulation responds to the often very rapid changes that occur.

There are, therefore, continuous reviews and inquiries in relation to one or another aspect of the consumer protection regime, many of which Caxton makes submissions to, often jointly with other organisations. We are awaiting the outcomes of some of those reviews and inquiries, including the *Review of the Financial System Dispute Resolution Framework (the Ramsay Review)* and the implementation of recommendations on others including the *Review of the small amount credit contract laws (the SACC Review)*.

Apart from the outcomes from those specific reviews and inquiries<sup>1</sup>, we draw your attention to a general lack of resourcing for enforcement across both the regulatory sector and the consumer advocacy sector. It is a persistent frustration that breaches of the existing regulatory regime so often go unchecked and our clients are restrained, by lack of resources, from seeking redress.

In addition, Queensland (as is the case across a number of areas of service delivery) has a much smaller consumer protection sector than in other states. Funding for financial counsellors, who are very often the first responders in consumer credit matters, is very limited in Queensland. There are just three consumer protection lawyers at Legal Aid Queensland, one at Caxton and one in the Cairns Community Legal Centre. These five positions cover the whole state, including attempting to provide quality services in our remote communities and in national non-compliance hotspots such as the Gold Coast. Demand is such that the services available naturally focus on advice, reaching the maximum number of people, at the cost of valuable casework which would have a broader regulatory benefit.

The value of casework services in consumer protection can be seen in this case-study:

*Fast Access Finance*

*In 2009 Caxton assisted a client, Rachel Charter, to commence QCAT proceedings against Fast Access Finance (Beautesert) Pty Ltd in relation to lending over the interest rate cap. The company had an unusual model which was characterised by the QCAT Member as “so highly unlikely, improbable and implausible as to be a complete fiction”<sup>2</sup>.*

*Having successfully brought attention to the problem and set a precedent, Caxton agitated for ASIC to bring regulatory proceedings.*

*ASIC investigated and ultimately commenced proceedings against a number of related companies. A successful outcome on liability was achieved in 2015<sup>3</sup> and the matter is still ongoing in relation to penalty.*

Whilst in this case the litigation successfully prompted action against this particular business practice, we routinely see other questionable practices by other lenders go on unrestrained.

There is such widespread and innovative non-compliance (or arguable non-compliance), particularly in sections of the credit marketplace, that it appears the low and distant risk of regulatory attention must be being weighed against the real and immediate profits to be made by risky practices. Without better resourcing for regulation and advocacy, good policy and good law can only achieve so much.

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<sup>1</sup> [http://consumercredit.treasury.gov.au/content/sacc\\_review.asp](http://consumercredit.treasury.gov.au/content/sacc_review.asp);  
<http://www.treasury.gov.au/ConsultationsandReviews/Reviews/2016/Review-into-Dispute-Resolution-and-Complaints-Framework>

<sup>2</sup> *Carter and Anor v Fast Access Finance (Beautesert) Pty Ltd and Anor* [2011] QCAT 525 at paragraph 27

<sup>3</sup> *Australian Securities and Investments Commission v Fast Access Finance Pty Ltd* [2015] FCA 1055

***The impact of misconduct in the sector on victims and on consumers and the social impacts of consumer protection failures in the sector, including through increased reliance of victims on community and government services***

Caxton regularly sees the impact on consumers and services from poor business practices in the banking and insurance industries. We provide a very small sample of real clients, each of whom is broadly representative of a large number of other matters.

*Colin and Maya*

*In 2016 Colin and Maya approached Caxton having lost entirely their formerly tenuous part time employment. Through the course of helping with their presenting issue we discovered that the real root cause of their present distress was an earlier experience of market failure.*

*Colin and Maya had owned their house for more than two decades. They had a productive, independent lifestyle. In 2011 their property flooded and the house itself was destroyed. They made a claim on their insurance but it was denied. Even though Colin was no longer able to work fulltime due to illness they were able to borrow money to repair the house. Being unable to meet the necessary loan repayments, in 2013 they sold the house under pressure from their lender. Because of the floods their home was no longer worth what it had been and they lost money.*

*When their house was sold Colin and Maya moved, with their pre-teen son, into a caravan where they have remained ever since, moving every so often from location to location. The distress at the loss of his former established life has worsened Colin's illness but still he continues to look for work though he is nearly 70.*

*It is only through their persistent self-reliance and determination to be independent that Colin and Maya are not more of a financial burden on Government, but living three to a caravan (including a teenager) is not ideal.*

*Amanda and Craig*

*In 2012 Amanda and Craig\* entered a vehicle lease which left them without enough money to purchase food for their family. The lessee assessed their income and expenses but used an extremely low household expenses amount for the young family, which fell far below the minimum benchmarks for household living expenses.*

*For almost two years Amanda and Craig (under intense pressure from the lender) prioritised repayments on the car lease which meant they struggled to afford basic necessities. They borrowed money from Amanda's parents and regularly went without food so their children could eat. Amanda described the experience of their period of financial hardship as being worse than when she was homeless, as at least she could eat when she was homeless.*

*Although they surrendered the vehicle in 2014 Amanda and Craig continued to be pursued for debts under the lease contract until they came to us for assistance in 2016.*

*\*names changed*

Alison

*Alison\* is 76 years and is the sole registered owner of a property. For about ten years the property has been mortgaged as security for money borrowed from a bank by some family members. The family members used the money to enter into some sort of investment from which Alison obtained no benefit.*

*The arrangement was set up with the assistance of a solicitor who wrote up a deed on behalf of everyone and had them all sign it. The bank was provided with a copy of the document and appears to have undertaken no other enquiries of Alison to determine whether or not she was getting any benefit from, or could ever pay back, the loan.*

*The borrowers have now defaulted on their loan (it appears they were only ever making interest payments) and Alison is facing the loss of her home. Caxton is assisting her. If Alison is successful in keeping her house, she will be able to retain her connection to the community she knows, and her independence. If the house is lost Alison is likely to need ongoing support from various government or community services, including with housing, for the rest of her life. The distress many of our clients experience at suffering such a loss in their older years often also contributes to a decline in health and social isolation.*

\*name changed

***The culture and chain of responsibility in relation to misconduct within entities within the sector***

Wherever there is disconnect between the decision maker in a particular transaction, and the responsibility for the compliance of that decision, there is a much greater likelihood that the decision will be in breach. We notice that the franchise model seems particularly vulnerable to rogue activity.

Caxton also regularly sees clients who have obtained credit secured by a vehicle through a car dealership. Very often the credit is unaffordable or is otherwise unsuitable. The dealerships rarely have an Australian Credit License and operate under the exemption from licensing for suppliers of goods and services in the *National Consumer Credit Protection Regulations 2010*. Despite this exemption requiring the dealership and its agents to perform the obligations of the financial services provider, our experience shows that these obligations are rarely properly discharged, if at all.

***Other matters – small business***

There is no free legal service for small business in Queensland. Community Legal Centres are unable to provide services to businesses, even when the business owner is financially eligible for our help with any other area of his or her life.

There is a strong argument to be made at least for a micro-business legal service helping those very small businesses that generate no more than a minimum wage level income for the business owner or partnership. The need for such a service was acutely apparent in the aftermath of the GFC in

2008/09 and in the 2011 floods. Caxton would be supportive of a small business legal service commencing in Queensland.

***Other matters – financial counsellors***

There is an urgent need for a properly resourced network of financial counsellors to meet the immediate needs of families in distress as a result of failures of the consumer protection regime. Financial counsellors also perform an important triage function, noticing systemic failures well before anyone else and filtering matters to legal services and regulators so that those services' resources are allocated most efficiently.

This submission was prepared by Caxton lawyers Bridget Burton, Gillian Welsh and Renea Hart.

If you have any questions in relation to this submission please contact Bridget Burton on

Yours faithfully

Scott McDougall  
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Caxton Legal Centre