

Submission by Redfern Legal Centre to the

Senate Economics Legislation Committee

Inquiry into the

National Consumer Credit Protection Bill 2009

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Contents	Page
1. About Redfern Legal Centre	2
2. Introduction	4
A. Background	4
B. Summary	4
C. Commentary	4

About Redfern Legal Centre

Redfern Legal Centre (RLC) was the first community legal centre in NSW, and the second in Australia. It was established in March 1977.

RLC provides face-to-face and telephone legal advice by appointment, night and day Monday to Thursday, and by day only on Fridays. We provide emergency advice on demand, where necessary, and have specialised appointments for ATSI clients.

RLC provides a number of legal services, including a Credit and Debt Legal Service. Our Credit and Debt Service provides free legal casework, including Court and Tribunal appearances, and legal advice, information and referral, to disadvantaged people and financial counsellors throughout NSW.

We give priority to people who cannot access the services of a private solicitor or obtain the assistance of the Legal Aid Commission. If it is apparent at an early stage that people are most appropriately referred to pro bono or commercial legal services, then this is done. In credit and debt matters, however, pro bono firms of solicitors often find themselves conflicted out of the proceedings because they represent the creditor banks and finance companies on the other side.

Our other objectives include the identifying and seeking to remove inequalities in the law, and educating disadvantaged people about their legal rights.

For many years, RLC's Credit and Debt Service has been active in a number of local, State-wide and national networks, including the Consumers' Federation of Australia; the Financial Counsellors' Association of NSW (FCAN); the Australian Financial Counsellors' Credit Reform Association (AFCCRA); the NSW Combined Community Legal Centres Group; and the National Association of Community Legal Centres.

Due to our position "at the coal face", we become aware of consumer problems at an early stage. This is also true of other community legal centres and not-for-profit financial counselling services. In addition,

because we are a small and flexible operation, we can usually respond very quickly to adverse circumstances affecting our clients.

Demand

ATSI clients usually comprise 10%, and CALD clients 48%, of RLC's total clients. Fifteen per cent of our clients have a disability.

Staff and Volunteers

RLC's main office has 4.8 FTE employed solicitors, 1.8 of whom are with the Credit and Debt Service.

We also have an extensive volunteer program, with an average of 200 volunteers per year. Volunteers include law students and solicitors who work during the day, and four nights a week.

Management Structure and Relationship with the Community

Redfern Legal Centre is a public company limited by guarantee. There are six elected volunteer Company Directors. The day-to-day management of the Centre is delegated to the staff.

Our Credit and Debt Service has a strong and close relationship with our local community, in part because one of our solicitors has lived near "The Block" in Redfern for more than 20 years, and has familial links with the local indigenous community.

INTRODUCTION

A Background

We refer to our previous submissions on the issues dealt with in the Exposure Draft of the National Consumer Credit Protection Bill 2009 (“the NCCPB”). These were made to the then Minister for Superannuation and Corporate Law, in July 2008 and May 2009.

B Summary

We continue to support Commonwealth legislation to regulate all credit and mortgages (and hence mortgage lenders and brokers), and continue to believe that State Courts and Tribunals should retain some power to hear minor credit and mortgage matters in their own jurisdictions. We say again that mortgage and finance brokers should be subject to stringent licensing requirements. We acknowledge that the NCCPB goes a long way towards this end.

We support the proposed increase to \$500,000 in the cap for hardship matters, and indexation thereof.

Due to lack of time and resources, the writer has not been able to review the entire legislation.

C Commentary on June 2009 edition of the NCCPB

Chapter 2 – Licensing of persons who engage in credit activities

In general, we support the principles set out in this Chapter, e.g. that there be a prohibition on engaging in credit activities without a licence.

Part 2-2 – Australian credit licences

Division 5 – Obligations of licensees

We strongly support the obligation upon licensees to a) comply with the general conduct provisions set out in s.47; and b) provide the prescribed information set out in these sections, including that sought by ASIC.

In particular, we applaud the requirement set out in s.47 (1)(a), that licensees must do things honestly. We support the requirement that licensee “representatives” be adequately trained, and are competent to engage in credit activities authorised by the licence [s.47(1)(g)].

Part 2-3 – Credit representatives and other representatives of licensees

Division 4 – Liability of licensees for representatives

We support the provision which states that the responsibility of licensees for representatives extends to loss or damage suffered by the client -s.77.

Chapter 3 - **Responsible Lending Conduct**

Part 3-1 – Licensees that provide credit assistance in relation to credit contracts

Division 2 – Credit guide of credit assistance providers

As we have said in our previous submissions, many of our clients will not be assisted by these provisions, because they can't read English, or can't read at all; have low-level education and/or reading skills; or have difficulty when confronted with masses of written information. Therefore, giving potential borrowers a "credit guide" setting out the information set out at s.113 (2) will not help everyone. On balance, however, it is better that a guide is provided, than not provided.

We believe that the civil penalty set out in sub-section (1) could in all fairness be more than 2,000 penalty units.

Division 3

We strongly support ss 114 - i.e. quotes should be provided about the cost of providing credit assistance in relation to credit contracts

Division 4 – Obligations of credit assistance providers before providing credit assistance for credit contracts

Reasonable inquiries etc. about the consumer - s.117

We support the tenets of this section. However, as discussed in our submission dated 22 May 2009, we are concerned that the collection, use and storage of sensitive financial information could be a massive breach of information privacy principles. We suggest that proviso be made in the Regulations under the Act, to inform licensees about relevant information privacy principles.

When the credit contract must be assessed as unsuitable – s.118.

We strongly support section 118(2), which provides that a contract will be unsuitable for a consumer if, at the time of preliminary assessment, the

criteria set out at sub-sections (a), (b) and (c) are not met. For similar reasons, we support s.119(2).

Division 5 – Disclosure of fees, commissions etc. relating to credit contracts

We support the disclosure of fees, commissions etc. in relation to credit contracts – s.121

Division 6 – Prohibition on suggesting, or assisting with, unsuitable credit contracts

We support the prohibitions set out in ss. 123 and 124

Chapter 4 - Remedies

Part 4-2 – Power of the Court to grant remedies

We support ss.177 (power to grant injunctions, on application of ASIC or any other person), 178 (court may order compensation to a consumer for loss or damage suffered) and s.179 (other orders to compensate loss or damage) in their entirety.

With very little time left, we have been unable to find the proposed limitation of six years [various, including REM 120 (2)(b) in the Exposure Draft of the Bill].

We support s.180 (orders in relation to unlawful credit activities). However, what is to be done in this regard in relation to contraveners who or which do not hold a licence?

We have concerns about s.183, which enables a Court to excuse a person contravening the legislation if they have “acted honestly” and “ought to be excused”. Our concern is that this appears to be unnecessarily prescriptive from the point of view of the Courts. In addition, the section is unclear.

Part 4-3 – Jurisdiction and procedure of courts

Division 2 – Civil jurisdiction

Subdivision D – Small claims proceedings

Generally speaking, we believe that in NSW, procedures should still be able to be brought by a consumer in the Consumer Claims Tribunal of

NSW, rather than in a magistrates court. It is not clear at this stage if that option is prevented by this Subdivision.

End.
Penny Quarry