

Inquiry into the adequacy of existing financial protections for Queensland's seniors

Submission by Legal Aid Queensland

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Introduction and background

Legal Aid Queensland (LAQ) welcomes the opportunity to make a submission to the Communities, Disability Services and Domestic and Family Violence Prevention Committee's inquiry into the adequacy of existing, financial protections for Queensland's seniors.

LAQ provides input into State and Commonwealth policy development and law reform processes to advance its organisational objectives. LAQ is established under the *Legal Aid Queensland Act 1997* for the purpose of "giving legal assistance to financially disadvantaged persons in the most effective, efficient and economical way" and is required to give this "legal assistance at a reasonable cost to the community and on an equitable basis throughout the State". Consistent with these statutory objects, LAQ contributes to government policy processes about proposals that will impact on the cost-effectiveness of LAQ's services, either directly or consequentially through impacts on the efficient functioning of the justice system.

LAQ always seeks to offer policy input that is constructive and is based on the extensive experience of LAQ's lawyers in the day to day application of the law in courts and tribunals. We believe that this experience provides LAQ with valuable knowledge and insights into the operation of the justice system that can contribute to government policy development. LAQ also endeavors to offer policy options that may enable government to pursue policy objectives in the most effective and efficient way.

LAQ's Consumer Protection Unit provides legal advice and limited case work services in the area of consumer protection with a focus on consumer credit. LAQ also operates the Farm and Rural Legal Service that provides legal advice to primary producers facing financial hardship and representation at mediations with financial institutions. The clients of both these services include seniors.

We note that in undertaking the inquiry the Committee is required to consider:

- the current levels of financial literacy of seniors and how that can be improved, for example by education programs
- what support and advice is available to assist seniors with their independent financial decision-making
- online and internet based vulnerabilities and the prevalence and vulnerability of seniors to scams
- agencies and organisations that provide advice and support to seniors requiring financial protection
- the role of the financial sector in ensuring adequate safeguards for seniors in relation to financial decision-making.

This submission is primarily about the agencies and organisations that provide advice and support to seniors requiring financial protection and the need for Government to continue to support these agencies by way of adequate funding, although it may touch on some of the other areas.

Agencies and organisations that provide support

Seniors approach LAQ's services directly or are referred by financial counsellors, rural financial counsellors and community based organisations. Financial counselling services assist clients with a range of financial issues. These include information and options on:

- rights and responsibilities
- understanding debt and debt recovery processes
- assistance with budgeting and money management
- assistance in dealing with creditors
- insolvency options

Rural financial counsellors assist farmers, fishers and small rural businesses to identify options relating to their operation, including information and options on:

- cash flow budgeting and business planning
- business analysis to determine current situation and available resources
- access to drought support measures and other forms of financial and professional assistance
- identification business risks.

These services are often free of charge. An early approach to a financial counsellor or rural financial counsellor, and in appropriate cases, early legal advice and assistance, can not only result in the relief of financial hardship, but also avoid debt recovery litigation and bankruptcy. This is of particular importance for seniors, who are generally precluded from rebuilding financially by age and limited capacity for participating in the workforce. Early resolution of financial issues and the avoidance of litigation and bankruptcy have benefits across the community and economy. They are also able to assist the clients to follow through on actions suggested as part of the advice provided by LAQ's Consumer Protection Unit and the Farm and Rural Legal Service. For these reasons it is important that these services are provided sustainable funding to enable them to continue to provide services.

Due to increased demand for its Farm and Rural Legal Service, LAQ is conducting a \$150,000 pilot to expand services in 2015-16. LAQ can make further details of this pilot available if the Committee wishes.

The case studies set out below demonstrate the types of consumer and financial issues faced by seniors and how LAQ's services have been able to assist, either following referral by a financial counselling service, a rural financial counselling service or community based organisation or after a direct approach to LAQ by the client.

Need for continued funding

In the 2013-14 financial year approximately one third of the legal advices provided by LAQ's Consumer Protection Unit were provided to clients referred to LAQ by a financial counsellor or were telephone advices provided to a financial counsellor for relaying to a client of the counsellor.

In the 2014 calendar year the Farm and Rural Legal Service undertook 63 farm debt mediations. The majority of clients were referred to this service by rural financial counsellors.

It is submitted that funding for financial and rural counselling services should be maintained at current levels because of the significant benefit these services provide to seniors and other vulnerable consumers seeking assistance to protect and enforce their financial and legal rights.

Case studies

Case Study 1 - Reverse Mortgage

Mr. Q entered into a reverse mortgage 18 years ago and borrowed \$30,000.00. Mr. Q was in his seventies at the time and Mrs. Q was under fifty years of age.

Reverse mortgages are generally payable on the death of the borrower, when the property is sold or when the borrower no longer resides in the property. They do not require any payments until one of these events occurs. However, the outstanding balance continues to increase as interest is charged.

When Mrs. Q approached LAQ, Mr Q was in his late 80's and the wife was in her late sixties.

Mrs. Q sought assistance from a financial counsellor in relation to managing the couple's financial affairs. She was concerned that as Mr. Q's health was deteriorating, he might soon be placed in care and was unsure how this would affect them financially.

Mrs. Q was referred for legal advice by the financial counsellor in relation to the reverse mortgage as the financial counsellor correctly identified that this issue might have a substantial impact on her.

Mrs. Q was not a borrower under the loan nor was she recorded as a joint owner of the property. When she sought assistance the outstanding balance of the loan was over \$100,000.00. She was advised that if Mr. Q was placed in aged care the reverse mortgage became payable. She could not afford to repay the reverse mortgage without the house being sold.

LAQ argued that the reverse mortgage was unfair as the proceeds of the loan were paid to a third party, that the terms of the loan meant that if Mr Q needed to go into aged care, Mrs. Q would be forced to sell the property and the loan paid out. Given that Mrs. Q was under 50 years of age at the time the mortgage was entered into it was a real possibility that Mr. Q would need care before she did. It was clear that Mr Q did not understand how the loan operated.

After negotiation, the bank agreed to reduce the amount owing to \$30,000 and accept repayments which Mrs. Q would be able to sustain.

Most of the advice given by LAQ to Mrs. Q took place at the office of the financial counsellor, with the support of the financial counsellor. Furthermore it was relatively easy for the client to bring in relevant documents that could be forwarded to LAQ. The financial counsellor was also able to assess whether the proposed payment arrangement was sustainable

Without the assistance of the financial counsellor Mrs. Q would have had difficulty accessing LAQ's services.

Case study 2 - Unfair Enforcement of Contract

In 2006 Mr. S borrowed approximately \$50,000 secured by his home to repay a debt. Mr. S was 54 years of age at the time. In 2008, Mr. S fell into arrears with payments. The lender obtained judgment in 2009 for a total of \$48,000.

The lender accepted post judgment payments for a period of 4 years. In 2013 over a period of approximately 6 months Mr. S missed 6 weekly payments or a total of approximately \$750.00.

The lender sought to rely on the judgment to take possession of the property.

Mr. S, who was reliant on a disability support pension, sought assistance from a local financial counsellor to negotiate a new payment arrangement. The financial counsellor referred the borrower for legal advice and assistance as the borrower did not have any legal right to ask for a variation of the contract because the lender had obtained a judgment.

If the lender had taken possession of the property, Mr. S would have been evicted and, given the location of the property in a flood prone area, there is a real likelihood that the property would have been sold for a very low value.

Mr. S's insurance premium had also increased to \$4000 per annum which he was unable to pay, constituting a further breach of his loan agreement.

LAQ raised the legal issues with the lender. The lender agreed to enter into a variation agreement which allowed Mr. S to remain in his home. The repayments were reduced to an amount which Mr. S could sustain on his income. He was also able to obtain comprehensive insurance with another provider for an amount of \$600.00 per year though this policy did not provide 'flood cover'. This meant that he was no longer in breach of any of the terms and conditions of his agreement with the lender.

Most of the advice was provided by LAQ at the office of the financial counsellor, who also acted as an intermediary for the passing of documents between LAQ and Mr. S. The counsellor was also able to assess that the arrangement negotiated was sustainable on Mr. S's income.

Without the assistance of the financial counsellor Mr. S would have had difficulty accessing LAQ's services.

Case Study 3 - Unpaid rates Collaboration with local community group

Mrs. J sought legal advice three weeks before the local Regional council was due to sell her property to recover \$16,000 in unpaid rates. The property was also home to her adult daughter whose affairs were managed by the public trustee and her adult son who could not find alternative accommodation because of his antisocial behavior.

On taking instructions from Mrs. J, it became apparent that she had a cognitive impairment that rendered her incapable of taking any steps to rectify her situation.

LAQ's lawyers realised that unless we could partner with a local community organisation to assist her Mrs. J would lose her home. They had already experienced difficulties in providing the initial advice because it was very difficult to reach Mrs. J by telephone.

There were no financial counsellors in the community but LAQ's lawyer was able to access a local community organisation whose worker agreed to provide assistance. Whenever legal instructions were required, the worker would go Mrs. J's home and bring her into the office. The worker could determine whether Mrs. J understood what was being asked of her and she would assist Mrs. J to follow through with the advice.

The lawyer recommended that Mrs. Jones apply for an interest free loan repayable over 10 years through the Department of Housing. The community worker contacted the Department of Housing and organised the completion of the application which included a number of documents and the arrangement of insurance over the property.

In the meantime, the lawyer attempted to negotiate a stay of the auction of the property based on Mrs. J's loan application to the Department of Housing.

The Council refused to stay the auction even after they received written advice from the Department of Housing that the loan was approved. They were only prepared to withdraw the property from sale if the amount was paid before the date of the auction.

The lawyer took instructions to take legal action to stay the sale on the basis that the notice provided by council was ineffective. LAQ was about to lodge an application in the court when the local council agreed to withdraw the property from sale.

If the council had proceeded with the sale we believe that the sale price achieved would have been significantly less than the market value of the property, further disadvantaging Mrs. J.

Without the assistance of the community worker, Mrs. J could not have applied for and finalised her application for finance with the department of housing, obtained insurance over the property, applied for legal aid or given instructions to enable LAQ's lawyers to negotiate with the regional council. In addition the community worker's assistance meant that LAQ did not have to make the court application, saving thousands of dollars in legal costs.

Case Study 4 - Credit Card, Debtor Harassment of elderly man with severe disability

Mr. K was a 78 year old pensioner who suffers from a severe disability following illness. Mr. K presented with multiple issues. One of those issues concerned a credit card with EG which Mr K had no money to pay out of his pension. Despite this, Mr. K felt company EG was harassing him.

LAQ assisted Mr. K in negotiating with EG which resulted in EG agreeing not to pursue the debt on compassionate grounds.

Case Study 5 - Reverse Mortgage where elderly woman taking out mortgage obtained no benefit

Ms. K was an 84 year old woman who, in 2003 at the request of her daughter in law and her daughter in law's son, entered into a loan to assist them to start a business. Ms. K understood that she was entering into a guarantee and understood that her family members would be making the repayments on the loan. When monthly statements arrived at Ms. K's residence she did not open them and instead forwarded them directly to her daughter in law.

In late 2012, after Ms. K fell ill, she was being cared for by another daughter Ms. Y who saw one of the statements arrive in the mail and opened it. Ms. K was not the guarantor for a loan, instead she had entered into a reverse mortgage with Bank SG that saw her owing Bank SG in excess of \$140,000. Ms. K's daughter in law and her daughter in law's son had made no payments on the loan. Ms. K was considering selling her home to allow her to move into an aged care facility but due to the reverse mortgage she could not afford the bond for the facility once her home was sold and so could not obtain the care she needed.

Ms. K's relatives who arranged the loan had no money and so no ability to meet the repayment obligations they had agreed to with Ms. K. When approached about the debt, Bank SG maintained their position that Ms. K was liable for the entire loan.

LAQ represented Ms. K before the Financial Ombudsman Service. LAQ argued that as Ms. K did not gain a benefit from the loan and Bank SG was on notice of that, SG had breached its obligations under its internal practices, the industry code of practice and the consumer law. Consequently, Ms. K should not be liable to repay the now \$150,000 owing on the loan.

The Financial Ombudsman Service delivered a recommendation agreeing that Ms. K was not liable to repay the \$150,000 owing on the loan and that the mortgage secured against Ms. K's home should be removed. This mortgage has now been removed.