

HOW THE CONSUMER POLICY FRAMEWORK AFFECTS PROBLEM GAMBLERS AND THEIR FAMILIES

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Introduction

Wesley Community Legal Service (WCLS) is a unique community legal centre that specialises in assisting problem gamblers and those affected by problem gambling. Established in 1994, WCLS has extensive experience in consumer issues relevant to this significant social group.

Wesley Mission has a strong interest in the welfare of the poor and vulnerable in the Australian community. In 2006 Wesley Mission commissioned an independent study of financial stress in Australiaⁱ, which showed that this is a significant consumer issue in Australia. The research indicated that:

- Almost one in three households do not feel they are managing their household finances well
- Despite facing financial pressures, more than half the population do not seek advice.
- When faced with financial difficulties the most common action is inaction. Only 17 percent took steps to alleviate financial stress such as budgeting or seeking expert advice, while 18 percent sourced additional funds such as further borrowing, selling assets or working longer hours.

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Problem Gambling Issues

Problem Gambling affects about 2.1% of Australia's adult population. In 1999, the Productivity Commissionⁱⁱ, found that about 300,000 adult Australians have significant gambling problems. If each of these affects 7 othersⁱⁱⁱ, then over 10% of the population are affected in some way by problem gambling.

Problem Gambling in its severe form ("pathological gambling") is recognised as a psychiatric disorder rather than as a form of 'bad behaviour'. For example, the American Psychiatric Association in its Diagnostic and Statistical Manual for Mental Disorders, 4th Edition revised (APA, 2000), has identified pathological gambling as a psychiatric disorder characterised by an impulse to gamble that is so strong that the

disordered person will continue to gamble in the face of clearly understood and significant negative consequences, an approach that has no rational basis and often leads to a raft of personal, interpersonal, and legal problems^{iv}. This compulsion to gamble, even when the consequences are personally catastrophic, make problem gamblers a significant group of disadvantaged and vulnerable consumers.

It should be noted that the arguments made in this paper about problem gamblers may also be applicable to other disadvantaged and vulnerable consumer groups, including those with other addictions, those with disabilities and health problems, indigenous Australians, and those from a non-English speaking background.

Problem gambling is characterised by growing levels of debt to the point where access to gambling funds is exhausted. Problem gamblers will sometimes steal money to gamble, or to pay creditors when they are under pressure from debt collection processes. Problem gamblers invariably conceal the extent of, or the existence of, their gambling problem. They will lie on loan application forms that enquire about the purpose of loan applications. Lenders never get applications from people who disclose the purpose of the loan as “gambling”. Because of this lack of candour, it is impossible to state the extent to which problem gamblers borrow from non-conforming home loan lenders and predatory lenders.

The close relationship between predatory lenders and problem gambling can be ascertained by examining the physical distance between these lenders and local gambling venues. Typically, predatory lenders locate within a short walking distance of local gambling venues.

State and territory governments have taken different approaches to this issue.

In New South Wales, the law limits gaming machine prizes to a maximum of \$2,000 in cash (recently increased from \$1,000)^v. The balance must be paid by a crossed cheque payable to the prize-winner. The law provides that prize cheques can only be deposited in reputable financial institutions such as banks, building societies and credit unions. This law was passed to reduce the activities of predatory lenders in targeting problem gamblers. Notwithstanding this law, many predatory lenders continue to cash gambler’s prize cheques. The N.S.W. Director of Gaming and Racing has recently prosecuted Cash Stop^{vi} under for cashing numerous gaming machine prize cheques. No decision has been made by the Licensing Court at the time of this submission

Whilst there are some criminal elements operating within or nearby gambling venues in New South Wales, they are very small in number, and it is absolutely incorrect to suggest that “... *Lebanese and Vietnamese Australian gangs ... control cheque cashing in the casinos and larger licensed clubs in New South Wales*”^{vii}.

Case studies

To assist the Commission, we provide some examples of cases we have seen involving predatory lenders.

Case study 1

In a recent case brought by our service in the N.S.W. Consumer Trader and Tenancy Tribunal against a **Money Centre** franchise, the lender had made at least 18 loans to the one debtor over a period of 18 months. The lender had simply rolled over the outstanding debt into fresh loans, so that the total indebtedness exceeded \$10,000 at the time the Tribunal application was commenced. The contract pretended that the applicable interest rate was 9%, but included a number of fanciful fees and charges, that made the effective rate far in excess of the N.S.W. limit of 48%. Establishment fees were equivalent to about 70% of the actual amount received from the debtor. The debtor had a history of depression and over the years had received financial assistance from a number of charitable organisations. She had been bankrupt twice before, and may well have ended up in bankruptcy a third time if Money Centre had succeeded in the Tribunal.

Case study 2

Rapid Loans is a Gold Coast predatory lender that offers loans to N.S.W. borrowers by advertising in the Sydney press. To avoid the consumer protection requirements of the Consumer Credit Code, Rapid Loans has disguised its loan contract as a “Promissory Note Discount Facility”. A N.S.W. borrower signed up for a “Promissory Note Discount Facility” of 14 weeks. He got a loan of \$750, but had to repay \$1,120 at the end of 14 weeks. Fees and charges totalled \$370, or about 180% per annum. A pile of disclosure documents in tiny type were provided, but of no use to this borrower, as he didn’t understand he was being exploited.

Case study 3

Local Finance Centre operates on the N.S.W. Central Coast. It has also hopped on the “Promissory Note Discount Facility” bandwagon. A migrant couple, with limited English borrowed \$500 from Local Finance. The interest rate is about 100% per annum, so they will be repaying double the loan after a year. There is no risk for Local Finance, as they have taken security over the borrowers car as well.

Case study 4

Cash Stop Financial Services use the “Broker” method of avoiding the Consumer Credit Code. A loan to another migrant with limited English borrowed \$2,000 from Cash Stop in late 2006. Although interest was only charged at the rate of 45% p.a. he was additionally required to pay a “Brokerage Fee” of \$561.

Case study 5

City Finance Loans and Cash Solutions is one of the worst predatory lenders. It secures its loans by taking a Bill of Sale over the personal property of the debtor. City Finance staff will often attend at the debtor’s residence to make an inventory of the furniture and other property and these inventories reveal the poverty in which City Finance borrowers live. In one loan, City Finance Blacktown lent \$300 to a debtor for 36 weeks and charged \$586 in interest and charges. The debtor was in receipt of \$259 a week Centrelink benefits and City Finance prepared a “budget” showing a “surplus” of \$28.50 per week. This was done by allowing only \$40 per week for all groceries and food and nothing for most other basic consumer needs. City Finance then took a Bill of Sale over the debtor’s pitiful possessions which were carefully listed as:

“2 Seater Sofa Bed
Coffee Table (BROWN)

Chest of Drawers (BROWN -10 DRAWERS)
Television PHILIPS
Stereo with 2 Speakers TOSHIBA SJ-3438
Refrigerator WESTINGHOUSE---221
1 Double Size Bed
1 Side Table with 2 drawers (GREY)
1 Side Table with 3 drawers (WHITE)
Washing Machine LG FUZZY LOGIC WF-402”

Like all City Finance debtors we have encountered, this debtor lived in great fear of being unable to service his City Finance loan and losing his property.

Interestingly, we have never encountered a case where City Finance has actually attempted to seize personal property the subject of its Bills of Sale. City Finance relies upon threats to terrorize the poor and vulnerable borrowers with whom it deals.

Reported cases involving predatory lenders

Permanent Mortgages v Cook [2006] NSWSC 1104 is a well-publicised decision of the N.S.W. Supreme Court. It illustrates well the downward spiral of debt that is facilitated by subprime lending and predatory lending. The debtors in that case took out a series of loans secured by their home. It should have been apparent that they could not afford the repayments, and the end result was that their equity in the home was substantially eroded.

Moussad v Cash King Pty Limited [2003] NSWCTTT 818 is a good example of the business declaration problem where predatory lenders get borrowers to sign a false business declaration. In this case the borrower had a gambling problem and the judgment illustrates the difficulties which problem gamblers find themselves in.

Why do consumers borrow from predatory lenders?

Firstly, it is important to consider the social profile of consumers who are borrowing from predatory lenders. They are invariably people who are struggling to participate in normal society, by reason of addiction, disability or other disadvantage. Pensioners may borrow because they are unaware that they can get an advance on their pension from Centrelink. Some people borrow to pay utilities bills because they didn't know that they could make an arrangement with their utility provider to pay off their debt with no extra charge or a minimal extra charge. Others simply don't understand just how expensive loans from predatory lenders are.

This vulnerable group are not going to be assisted by broad-based financial literacy programs. They may have limited literacy, education, intelligence or other psychological or emotional factors that inhibit them from breaking out from the cycle of poverty. They may well have poorly developed money management habits whereby pensions are spent pretty much as soon as they arrive, and then they live on credit or charitable handouts until the next pension day. For many, this lifestyle is completely normal, and they may not want to be pushed into developing a more middle-class money management regime.

Consumers and poverty

However, from a wider community perspective, there is considerable concern about poverty.

Debt is a particularly destructive factor for people living in poverty. Social security payments such as Newstart or the age pension are set at subsistence levels. Once rent, food, transport and utilities are taken out, there is usually little left over for clothing, household replacements and a bit of entertainment. If the consumer incurs a debt, then it is very difficult to make ends meet and also clear the debt. Throughout Australia, there are charitable agencies providing welfare aid to people living in poverty. Part of the welfare process is to try to lift people out of the cycle of poverty. This can be done through education, e.g. to help people learn to budget and to get better value from their grocery shopping expenditure. Part is to simply ensure that people have a roof over their head and don't go hungry.

Bankruptcy

Bankruptcy is one response to consumer debt. In 2005, 21,076 Australians became bankrupt. Of this group, 16% had an annual income of less than \$10,000 and 69% had an income less than \$30,000 in the year prior to bankruptcy. 39% had unsecured debts totalling less than \$20,000 and 72% owed less than \$50,000. 87% had no realisable assets^{viii}. Although unemployment was the number one cause of bankruptcy at 35% of consumer bankruptcies, excessive use of credit at 26% came in at second most prevalent.

As far as creditors were concerned, finance companies accounted for 31% of creditor listings, which was the same as banks. By contrast, credit unions accounted for only 2% of creditor listings.

Consumer Choice

Consumer choices for those at the bottom of the financial heap are different to those in other economic groups. The following is a generalisation from 12 years of experience that we consider fits a majority of those at the bottom of the economic pile.

Most poor people are aware of their poverty and this affects their self-confidence. Many have experienced rejection from mainstream lenders such as banks and have found that rejection to be a humiliating experience. By contrast, they may feel more comfortable in the environment of the local cash lender which can be first approached by telephone and then in a personal face-to-face shopfront office. Poor people have been conditioned to sign forms they don't really understand, particularly if they have been on Centrelink benefits. Hence very few ever read what they sign.

Whether or not the documentation complies with the Consumer Credit Code is not going to have any influence on their decision to borrow. It is more a question of whether they are good enough to be accepted by the lender. Having been lent money, they feel they have been done a favour, and may go to great lengths to repay the debt. Most borrowers know that they are being charged a lot for the loan. However, they simply accept being ripped off as their lot in life. They value the personal contact

that comes with the collection process. Although many predatory lenders charge fees for reminder calls, the borrowers will not realise this, as the fees simply get added to the total debt.

Once the debt has been repaid, the borrower considers their relationship with the lender as an asset. If they need cash they can borrow from the same lender again. So the cycle of debt may continue for the rest of the person's life.

Conclusion

Firstly, the concept of a rational, informed consumer does not have much relevance to the poor or those with an addiction or disability. Whilst they may be rational, they have different priorities to shopping around for a good financial deal. For example, they may be concerned to avoid humiliating rejection from mainstream lenders.

Secondly, there is a general expectation that government will regulate the activities of the businesses and protect consumers, especially the poor and vulnerable. It is no longer adequate to simply require businesses to provide information about their products. There is often too much information provided, possibly intentionally, so that consumers can neither read nor understand it. The expectation in our society now is that government will prohibit business activities that are harmful to consumers.

The examples of predatory lending practices outlined above would be abhorrent to the vast majority of the population. Indeed, most people would consider that a loan at 48% is outrageous. Very few people are aware of the current situation where the poor are being charged over 100% per annum on loans but would expect the government to immediately legislate to ban it.

ⁱ Financial stress and its impact on the individual, family and the community. Available at <http://www.wesleymission.org.au/homepage.asp>

ⁱⁱ Productivity Commission Report No. 10, Australia's Gambling Industries

ⁱⁱⁱ *ibid*, at p.7.34

^{iv} American Psychiatric Association. (2000). Diagnostic and statistical manual of mental disorders (4th ed. revised). Washington, DC: American Psychiatric Association.

^v Reg.30 Gaming Machines Regulation 2002 (NSW)

^{vi} s.47A Gaming Machines Act 2001 (NSW)

^{vii} (as alleged by Philip Smiles at p.529 of the oral submissions)

^{viii} Insolvency & Trustee Service of Australia, Profile of Debtors 2005