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Credit Law challenges and trends

Presented by Caxton Legal Centre and Maurice Blackburn Lawyers

2023

Caxton Legal Centre Incorporated and Maurice Blackburn Lawyers acknowledge the Jagera (Yuggera) and Turrbul peoples who are the Traditional Custodians of this land on which we work.

We recognise the ongoing connection to the land, waters and community of the Traditional Custodians and pay respect to Elders past, present and emerging.

We also recognise, respect and celebrate the cultural distinctions of the First Nations peoples and value their rich and positive contribution to Queensland and to broader Australian society.

With respect we strive to achieve justice and inclusion for Aboriginal and Torres Strait Islander peoples.

The Panel

- Josh Mennen – Principal Lawyer and National Litigation Leader:
 - Maurice Blackburn Lawyers
- David Maunsell – Solicitor and Convenor of the Credit and Debt Legal Clinic:
 - Caxton Legal Centre
- Kelly Morrow – Solicitor:
 - Caxton Legal Centre
- Hayley Stokes – Associate:
 - Maurice Blackburn Lawyers

Topics today

Scenario One – Scams

Scenario Two – Capital loss and Irresponsible
Lending



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Scenario One – Scams



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Scenario One - Scams

- Mary (82) sold her home following the death of her husband a year ago. The proceeds from the sale of \$95,000 were paid into Mary's account Reliable Big Bank (RBB) where she earned interest of 1.9%.
- Mary was on the aged pension (her sole source of income apart from interest on the RBB investment) and had no assets apart from the money in her RBB account.
- Mary and her husband had been customers with RBB for over 30 years. Their home loan had been with RBB and Mary's pension over the past 17 years had always been paid directly into her Safe Pension Account with RBB. The transactions on her RBB accounts had almost always been under \$500 and the \$95,000 deposit was by far the biggest transaction.
- Mary searched the internet with her granddaughter to try to find an investment account where she could earn better interest on her money and found the website of Wacky Road Bank (WRB) which indicated it was paying 5.2% interest.
- She rang WRB and spoke to Susan who said she would send her forms to complete and then the investment could proceed.

Scenario One – Scams

Mary completed and signed the forms and then returned them to Susan. Later Susan phoned Mary and gave her instructions as to the account into which the investment should be paid and gave her a deadline to do this or she would lose the opportunity.

Mary wrote the instructions on a piece of paper:

“Deposit money into following account”

- **Bank – Best Ever Big Bank**
- **Name – RACEK**
- **BSB. 666 – 777**
- **A/C No. 1237489.**
- **Reference - 52kx**
- **Due date 30 March 2022**



Scenario One – Scams

- Mary went to the local RBB branch and spoke with the teller. She said she was transferring all her money in her investment account to WRB to get a better interest rate of 5.2%. Mary handed the teller the note with instructions she had taken from Susan. The teller wanted clarification of the account details which Mary could not provide so Mary rang Susan. The teller spoke to Susan and then proceeded with the transaction as per the note.
- The money transferred to Best Ever Big Bank was taken out of that account and Mary never saw the money again.
- Mary has exhausted all avenues to get the money back except seeking compensation from RBB.

Scenario One – Scams

- What advice would you give Mary?
- What further instruction do you need from Mary?
- Would Mary's instructions change your advice – if so, how?

Scenario Two – Capital loss and Irresponsible Lending



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Scenario Two – Capital Loss and Irresponsible Lending

The borrower (W) at the time of the loan:

- Indigenous woman in her mid 40s;
- Blue collar worker;
- Owned their residential property with a liability of approx. \$250,000;
- Wanted to invest in property to assist with retirement income and build wealth;
- Had no prior investment experience (aside from holding a superannuation account).



Scenario Two – Capital Loss and Irresponsible Lending

The loan:

- Entered into a contract to build a new property in Central Queensland, during the mining boom (the IP);
- When entering into the loan, lender estimated value of the IP upon completion to be approx. \$480,000 (LVR approx. 120%);
- Was lent approx. \$575,000 for the purchase and construction of the IP, and the usual incidentals;
- Loan was crossed secured against their residential property;
- Following construction, IP value estimated at \$400,000 (LVR approx. 143%);
- Tenanted on fairly regular basis, but had difficulty maintaining repayments due to decreasing value and the end of the mining boom in Central Queensland;
- By 2021, IP estimated value was \$320,000.

Scenario Two – Capital Loss and Irresponsible Lending

AFCA complaint:

- Lodged by W against the lender for breaches of the *NCCP*, on the basis it was not affordable, and not suitable;
- Lender offered to settle for approx. \$90,000, with loans to remain on foot;
- AFCA decisions in W's favour, with losses calculated at approx. \$120,000, comprised of interest paid and some incidentals;
- No losses awarded for significant capital loss that would be incurred if the IP sold, as AFCA are of the view that (paraphrased):
 - The choice to purchase one property over another is the decision of the borrower, not the lender;
 - The lender cannot therefore be held responsible for the investment decisions of the borrower.

Scenario Two – Capital Loss and Irresponsible Lending

Litigation:

- W commenced litigation against the lender, claiming the usual heads of loss, plus capital losses which would be incurred if property sold;
- Capital loss head of damage sought under s178 *NCCP* pursuant to interpretations of similar provisions in other acts;
 - *Corporations Act 2001* (Cth) s 1041I; *Competition and Consumer Act 2010* (Cth) s 82, Schedule 2 s 236; *Australian Securities and Investments Commission Act 2001* (Cth) s12GF.
- During litigation, IP sold and capital loss realised, meaning their residential property at risk of recovery by the lender due to cross security;
- Litigated matter resolved on the basis that W could retain their residential property and owe no further funds with respect to IP (i.e. the loans were written off by the lender);
- By progressing through litigation of AFCA, she was well over \$200,000 better off

The Panel

Josh Mennen

Principal Lawyer and National Litigation Leader

Admitted to legal practice in 2007, Josh acts for consumers in financial services disputes including superannuation and insurance, financial advice and consumer credit claims.

He is passionate about increasing consumer rights/awareness and giving voice to those dis-empowered by illness, injury and socioeconomic barriers.



The Panel



Hayley Stokes Associate

An Associate in the Superannuation, Insurance, and Financial Services department, Hayley acts for clients in various matters including litigated insurance disputes, irresponsible lending claims, and professional negligence matters.

She is involved in the community sector through the Caxton “Credit and Debt” clinic, and the LawRight “Health Justice Partnership” at the Mater Hospital.

The Panel



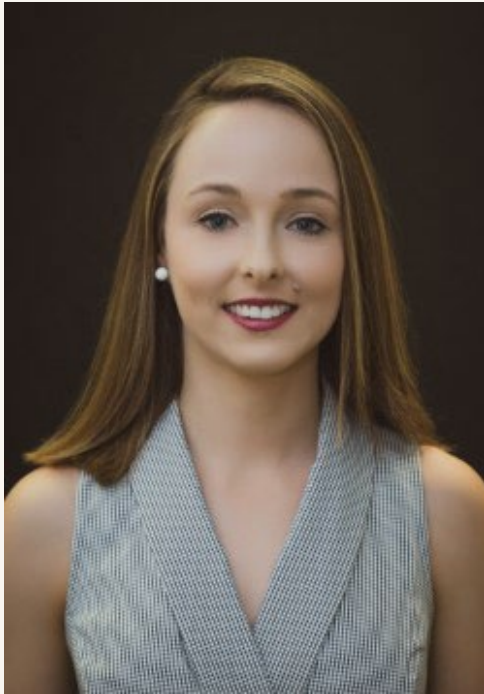
David Maunsell Solicitor

David has practiced as a solicitor for over 30 years mainly in commercial litigation in private practice before seeing the light and moving to the CLC sector 10 years ago.

More recently his focus has been on credit law, and he coordinates the Consumer Credit and Debt Clinic at Caxton Legal Centre.

David also volunteered for many years at Caxton whilst in private practice and lectured in law for a number of years at JCU.

The Panel



Kelly Morrow Solicitor

A former personal injuries lawyer, Kelly now provides assistance to vulnerable people through Caxton Legal Centre's Consumer Credit and Debt law services.

She is also involved in the community sector through her voluntary role with the Refugee and Immigration Legal Service.

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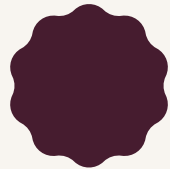
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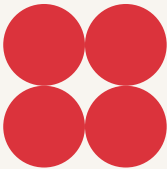
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Thank you