



**Submission in response to the National Credit Reform Green Paper
“Enhancing confidence and fairness in Australia’s Credit Law”**

**Prepared by
National Policy Office**

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Introduction

COTA National - Council on the Ageing - is the national policy arm of the eight State and Territory Councils on the Ageing in NSW, Queensland, Tasmania, South Australia, Victoria, Western Australia, ACT and the Northern Territory. COTA National has a focus on national policy issues from the perspective of older people as citizens and consumers and seeks to promote, improve and protect the circumstances and wellbeing of older people in Australia.

This submission is informed by input from across Australia through the State and Territory COTAs who get a relatively high volume of queries relating to financial products and reverse mortgages in particular. People are seeking general information as well as assistance in sourcing more detailed personal advice. Many of the COTAs are active on consumer protections issues, e.g. COTA Victoria has done quite a lot of work around reverse mortgages, collaborating with Consumer Credit Legal Centre (NSW), CHOICE and National Information Centre Retirement Investments (NICRI) and COTA WA has strong links with the Centre for Consumer research at UWA and with the Consumer Credit Legal Service.

COTA welcomed the development and implementation of the National Consumer Credit Protection (NCCP) Act which came into effect on 1 July this year as we saw them as a significant step forward in protecting consumers in an increasingly complex financial environment. We now welcome the opportunity to have input into the enhancements being considered as Phase Two of the reform package.

We support the Government's aim of reducing the regulatory burden on business whilst also providing better protection for consumers and keeping the credit market competitive and fair. To achieve this there must be an increased emphasis on community education and advocacy services that inform consumers of their rights, the nature of often complex credit arrangements and avenues of redress. This would ideally be provided through the non government sector. We believe that an important part of Phase Two is to provide a framework that ensures information on all credit products is provided in a way that allows people to compare products and make more informed decisions.

Reverse Mortgages

We are focussing on the reforms affecting reverse mortgages and equity release products as these are of particular concern to older Australians as they seek to use the assets they have built over their lifetimes to provide for their retirement years. For many older people their most valuable if not only asset is the house they live in and so any product which reduces their control over that asset also has the potential to compromise their accommodation options in later life.

We have concentrated on reverse mortgages here as they are covered by the NCCP. However as reverse mortgages and home reversion schemes are commonly used for similar purposes by essentially the same demographic group COTA believes that there should be consideration given to bringing them under the same legislation or at least requiring them to meet similar standards of consumer protection even though they are covered by different regulatory arrangements.

Most of the literature suggests that there is a role for reverse mortgages in freeing up assets when a person is asset rich and income poor. However research into people's experiences of reverse mortgages highlights the fact that many older people who take out a reverse mortgage are poorly informed and

prepared for the long term implications of the product. Alarming older people have also indicated that they see a reverse mortgage as potentially their only avenue for funds to supplement their low income and for other purposes such as home maintenance, and despite their concerns about these products feel that they may have no choice but to resort to them.

The current available products are poorly structured and much work needs to be done on encouraging the development of better products. In addition more community awareness and education is needed to redress the fundamental issue of seniors as vulnerable and disadvantaged consumers suffering consumer detriment as a result of market failure.

Reverse mortgages are subject to all the conditions of other credit products under the NCCP but COTA agrees that there is a need for some additional reforms and our comments on the proposals in the Green Paper are set out below.

Protection against negative equity

COTA welcomed the introduction of the "no negative equity" guarantee as this was an area of serious concern. Whilst generally the current industry self-regulation appears to offer adequate protection the projected growth in the sector with potentially many more providers raises concerns that more lenders will operate outside of the industry code and so consumers will get less protection.

COTA's preference is for statutory protection against negative equity that provides for a uniform approach with appropriate penalties and sanctions. This gives all consumers the same level of protection.

COTA wants to ensure that any reasons for voiding the guarantee are for significant breaches of the contract and that for more minor infringements there will always be the opportunity for people to rectify the problem before the guarantee is voided. We believe that the reasons given in option ii for voiding statutory protection meet that criterion and do not undermine the integrity of the guarantee.

Provision of advice to consumers

The first option of requiring consumers to obtain legal and/or financial advice before entering into a reverse mortgage raises the question as to at which stage should advice become mandatory. If not appropriately targeted, costs could be incurred for a large percentage of consumers who never get past initial investigation into reverse mortgages. It could also deter those who perhaps are most in need of the funds.

There are also significant issues around who would supply the appropriate legal and financial advice and people in rural and remote areas may have considerable difficulty accessing such advice.

COTA prefers the second option i.e. improve pre and post contractual generic advice. We see that this would probably have the most beneficial impact and the widest application. Any approach taken should allow people to get as much general information as possible to be able to decide at an early point in their deliberations whether the reverse mortgage product is likely to be appropriate for them and therefore worth investigating further.

We see an Information or Product Disclosure Statement written in plain English as the first step to

empowering consumers. All statements would cover the same information in a way that facilitates easy comparison of products. A similar approach has been taken to the Product Disclosure Statements for Managed Investments and Personal Superannuation and these could provide a useful starting point for the proposed reverse mortgage statements.

This statement would begin with the basics of characteristics and terminology as critical to allowing consumers to either reject the reverse mortgage offering or to sufficiently “educate” them so that they can have an informed dialogue with independent sources of information before discussions with individual lenders. This Statement would also set out any ongoing fees, default processes and termination clauses. This could avoid situations like this example from WA where an older woman had taken out a reverse mortgage (\$100k at age 60) and her family was extremely upset that she had done so. On making enquiries about how much she owed, it was discovered she was charged \$100 for a statement which she was not aware of at the time.

A list of “approved” information sources should be in the Information Statement and any charges or fees associated with that advice indicated. The Information Statement should be readily available in both hardcopy and on the internet. The non-government sector is well placed to be the provider of such advice and COTA believes government should provide some funding for this service in addition to the fees individuals would pay.

Consumers could then go onto stage three and have detailed discussions with lenders before making a decision.

Contractual advice from lawyers may still be needed and recommended before signing a contract but would at this stage be of a very specific nature thus limiting both the cost to the individual borrower and the potential for misunderstanding.

Product features

a) Default procedures

COTA supports the development of a reverse mortgage specific default procedure. Loan default will be catastrophic for an older person as the borrower will lose their home and so we want to ensure that there is a clear process of identifying default and that it is seen as an option of last resort when every other option has been explored with the borrower.

Current reasons for considering a loan going into default would appear to be wide and somewhat harsh. An approach that aims to prevent loans from going into default would be of more benefit to both borrowers and lenders.

In addition, given the relatively early stage of development of the reverse mortgage market the provision of a more personalised standard of service from lenders should become the base for future expansion. This would be especially appropriate for the more senior age group. For example, requirements for members to personally contact (or make a reasonable attempt to contact) the borrower prior to the expiry date of a default notice and ensure the borrower has received and understood the notice should be mandatory and legislated.

Summary action or threats of the same are to be particularly avoided. A defined period of grace

should be given before a lender can proceed to take action against a defaulting borrower and attempted negotiation of an agreement to address the situation is required. Potentially the same organisations accredited to provide independent advice could also have qualified negotiators to assist.

There must be a prescribed process for any defaults on a reverse mortgage. This process must include a review process by an External Dispute Resolution (EDR) scheme before any court proceedings can be commenced to seek possession of the home.

Default conditions on reverse mortgages should be limited to serious contract breaches involving either fraud or willful neglect.

As the borrower expects in a reverse mortgage that the home will be sold only after they have died or vacated the premises or defaulted on the loan (after EDR and court processes), it is critical that this expectation be legislated.

b) Protection of non-title holding residents

COTA believes there should be uniform protection for non-title holding residents. The lender must allow for other non-title holding residents to be registered on the loan, (within the confines of any age-related limits that apply to borrowers) to ensure that they are not rendered homeless as a result of the death of the title holding borrower.

c) Monitoring of level of debt

Additional guidance is required throughout the lifetime of the loan. We recommend forecasts on the amount of the debt to be disclosed at regular 5 year intervals (based on prevailing conditions and reasonable assumptions) at the beginning of the loan.

CONCLUSION

The Green Paper outlines recent development in credit protection and identifies some areas for further developmental work. The equity release product market is growing in Australia and COTA believes that there is a need for enhanced protections for people using such products. The provision of first class information and access to advice for consumers is at the centre of such enhancements. We have supported a more uniform approach to protections and that it should move from industry self-regulation to a statutory approach with appropriate sanctions and penalties.

In this Submission we have focused on reverse mortgages but we believe the same principles should apply to all consumer credit products and that there needs to be more investment in community education and information on all credit issues.