

A Background Paper on the use of Blackmail Security by Fringe Lenders

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INTRODUCTION

This report will discuss the practice (commonly referred to as 'blackmail security') of fringe credit providers taking security over a borrower's essential household goods. The discussion will examine some of the reasons why there is a need for legislative reform in relation to the use of blackmail security, with particular reference to the effect of the practice on vulnerable consumers and the achievement of policy objectives underlying legislation. The report will highlight the fact that use of 'blackmail security' is not a new problem, but rather, one that financial counsellors and consumer advocates have been combating for over two decades. The author will argue on the basis of these discussions that the best approach to targeting the issue of 'blackmail security' is amendment of the *Consumer Credit Code* to prohibit mortgages over essential household property.

The research on which this project is based was a review of the available literature and certain relevant legislative provisions. In addition to this, valuable material was gained from examination of a number of case studies and experiences of staff at the Banyule Community Health Service, conducted as part of the author's placement at West Heidelberg Community Legal Service.

THE FRINGE CREDIT INDUSTRY AND BLACKMAIL SECURITY

Fringe Credit Providers

The credit industry in Australia can roughly be divided into 'mainstream credit providers' and 'fringe credit providers'. The term 'fringe credit providers' refers to lenders that are not banks, building societies, credit unions, non-bank mortgage originators or national finance companies. These companies operate on the fringes of the industry and tend to provide smaller, shorter term finance, than mainstream lenders.¹ Consumers who take out loans with fringe credit providers tend to be low-income earners who have difficulty accessing mainstream credit providers.²

Blackmail security

The term 'blackmail security' (or 'blackmail mortgage') is used to describe the practice of fringe credit providers taking security for loans over essential household goods which are of little or no monetary value. The borrower's fear that these essential items will be repossessed is used by the lender as emotional leverage to enforce repayment of the loan. It is argued that the lenders involved never have any intention of repossessing the mortgaged goods, as it would not actually be financially beneficial for them to do so.³

Blackmail mortgages are most commonly used in conjunction with a class of products which have been described as 'micro loans'. These loans are similar to 'payday' loans in the sense that they are loans for relatively small amounts of money, for relatively short periods, with high interest rates and substantial fees and charges attached. However they tend to be for slightly longer terms, usually between 3 and 12 months.⁴ Where security is taken over these loans in Victoria, the interest rate is capped at 30%.⁵

The way blackmail security operates is a far cry from the fundamental purpose of goods mortgages - to provide the creditor with tangible security.

The following case study illustrates this.

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Case Study A

Ms Z took out a loan with a credit provider which was secured with a mortgage over her household furniture. She fell behind in her repayments and the credit provider began to telephone her and threaten to take possession of her furniture

¹ 'Fringe Credit Providers-Decision Making Regulatory Impact Statement and Final Public Benefit Test' (2006) [14] Consumer Credit Code Website

<<http://www.creditcode.gov.au/display.asp?file=/content/whatsnew.htm#fringe>> at 24 May 2007

² Ibid, [14-15]

³ Interview with solicitor as part of placement at BCHC, 24 May 2007; Fringe Credit Providers-Decision Making Regulatory Impact Statement and Final Public Benefit Test' (2006) [20] Consumer Credit Code Website

<<http://www.creditcode.gov.au/display.asp?file=/content/whatsnew.htm#fringe>> at 24 May 2007

⁴ 'Fringe Credit Providers-Decision Making Regulatory Impact Statement and Final Public Benefit Test' (2006) [13-14] Consumer Credit Code Website

<<http://www.creditcode.gov.au/display.asp?file=/content/whatsnew.htm#fringe>> at 24 May 2007

⁵ *Consumer Credit (Victorian) Act 1995*, s 40

if she did not repay the loan. The mortgaged furniture was not saleable and was financially worthless to the credit provider.

Ms Z sought legal representation. Her solicitor contacted the credit provider and requested that they take possession of the mortgaged furniture. The credit provider refused.

The solicitor then offered to have the furniture dropped off at the credit provider's offices. The credit provider responded by threatening to have the police intervene if client attempted to bring the goods to them.

The credit provider subsequently agreed to tear up the Bill of Sale over the furniture.⁶

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IMPACT ON CONSUMERS

Blackmail mortgages can be seen as a 'savage means of debt collection,'⁷ that is used by lenders to prey on vulnerable consumers at the lower end of the socio-economic scale.⁸ The predatory behaviour of lenders who engage in this practice is often evidenced by marketing techniques. Advertisements for fringe lenders offering small loans 'welcome' pensioners, Centrelink recipients and those with bad credit ratings.⁹ Leaflet drops which advertise services are carried out in areas with high levels of public housing.¹⁰ Some of these leaflets offering small loans specifically suggest they may be used to pay off gas and electricity bills.¹¹

Of even more concern, is recent evidence that fringe credit providers have been door-knocking in public housing estates, calling themselves 'mobile lenders' and offering to sign residents up for small, short term loans on the spot. These lenders then make a list of all the furniture in the house and require that the debtor signs a mortgage document.¹² This conduct is an example of credit providers preying on vulnerable consumers and appears to be a clear contravention of section 146 of the *Consumer Credit Code*, which prohibits credit providers from visiting residential premises for the purpose of inducing residents to purchase credit without prior arrangement.¹³

Credit providers using blackmail mortgages will take security over almost anything in the borrower's house. Furniture, crockery, cutlery, beds, cots, refrigerators, microwaves, children's toys and picture frames are just some of the items that were named.¹⁴ In one instance, a credit provider happily took security out over most of the furniture in the borrower's residence, without actually enquiring whether the borrower owned it. The furniture in fact belonged to

⁶ Interview with solicitor as part of placement at BCHC, 24 May 2007.

⁷ Margaret Roberts and Denis, Nelthorpe, 'A new consumer approach: The Collective king hit' (1985) 10(1) *Legal Service Bulletin*, 27

⁸ Interview with financial counsellor as part of placement at BCHC, 31 May 2007.

⁹ 'Loan Information' displayed on credit provider's website at 5 June 2007.

¹⁰ Interview with financial counsellor as part of placement at BCHC, 31 May 2007.

¹¹ Ibid.

¹² Anna Madoki, 'Payday Lenders- Door-knocking Housing Estates' (2007) 170 *Devil's Advocate: Official Newsletter of the Financial and Consumer Rights Council Inc*, 5.

¹³ *Consumer Credit Code*, s 146(1)

¹⁴ Interview with financial counsellors and solicitors as part of placement at BCHC, 24, 25 and 31 May 2007.

another family member.¹⁵ What makes this practice even more unsettling is the willingness of credit providers to list *all* the goods in the house on the mortgage,¹⁶ thereby instilling the genuine fear in debtors that if they do not continue to make repayments on their loan, they will have *everything* they require for day-to-day living taken from them.

Blackmail mortgages are used to harass, threaten and intimidate borrowers.¹⁷ Fear may cause borrowers to prioritise loan repayments over food, rent and utility bills, or even to borrow more money in order to cover the debt and avoid losing their essential household goods.¹⁸ It is a harsh and unconscionable practice used by fringe lenders to target vulnerable, low-income consumers.¹⁹ This will be discussed later in this paper.

Case Study B

Ms X, a single mother with a young daughter, took out a loan with a credit provider. This loan was secured with a mortgage over all the furniture and other chattels in her home. Ms X subsequently went bankrupt. The credit provider was informed of her bankruptcy, but continued to harass her for repayment of the loan. The credit provider called her repeatedly and threatened to take possession of all her furniture if she did not recommence payments on the loan.

Ms X was a quiet, softly spoken woman, who was extremely intimidated by the conduct of the credit provider and fearful that they were going to take away the basic household items she and her daughter needed to live. The financial counsellor involved was contacted by a neighbour of Ms X's, who told them that Mrs X was extremely distressed because a debt collector had turned up at her front door saying he had come to take her furniture.

Notably, the debt collector had not brought a truck, or any other means with which to transport Ms X's furniture, with him that day.

After speaking to a solicitor, Ms X decided to challenge the contract under the Consumer Credit Code and filed for an injunction to prevent the credit provider from taking possession of her furniture.

The parties agreed to settle the matter privately shortly before the hearing.²⁰

The above case study is indicative of a common outcome in cases where a client decides to challenge a blackmail mortgage. Credit providers usually offer to settle the matter privately before it reaches the courtroom.²¹

¹⁵ Interview with financial counsellor as part of placement at BCHC, 25 May 2007.

¹⁶ Ibid, 24 May 2007.

¹⁷ Interview with financial counsellors and solicitors as part of placement at BCHC, 24, 25 and 31 May 2007.

¹⁸ Nicole Rich, 'A consumer advocates views on fringe lending' (Presentation given on behalf of the Consumer Action Law Centre at the 2007 Min-it Software Micro-lenders Conference, Gold Coast May 2007) <<http://www.consumeraction.org.au/>> at 4 June 2007

¹⁹ Interview with financial counsellors and solicitors as part of placement at BCHC, 24, 25 and 31 May 2007.

²⁰ Interview with financial counsellors as part of placement at BCHC, 24, 25 and 31 May 2007.

²¹ Ibid, 24 and 25 May 2007.

BACKGROUND

The issue of blackmail mortgages and their impact on low-income consumers first gained significant publicity in the mid-1980s. This was the result of a campaign initiated by financial counsellors in Geelong who became aware that a finance company operating in the area was taking security over its customers' household furniture, in order to emotionally blackmail them into keeping up with loan repayments.²² When the finance company refused requests to waive their right to repossess basic household furniture, a public demonstration was staged involving the 'dumping' of the furniture which the company had been threatening to repossess at the company's office. This demonstration received widespread media attention and caused the finance company significant embarrassment. As a result, the customers involved were released from their Bills of Sale.²³

The financial services industry body, the Australian Finance Conference, was also prompted to take action. It undertook that its members would cease the practice of taking security over necessary household property and clothing, as well as ordinary tools, equipment, professional instruments and reference books which did not exceed \$500 in aggregate.²⁴ This undertaking only applied to AFC members and was not actually legally enforceable against those lenders who were members.²⁵ However, it appears that the undertaking and the campaign that prompted it, were fairly effective in stamping out the use of blackmail security in Victoria for many years after that.²⁶

In the late 1990s, factors such as decreasing employment security,²⁷ declining growth rates of household disposable income, aggressive marketing by the financial industry (as a result of deregulation 1980s) and changing social attitudes to debt, fuelled increasing consumption of consumer credit in Australia.²⁸ As both mainstream and fringe credit industries expanded,²⁹ significant changes were made to their regulation. Many of these changes were a result of the introduction of the *Consumer Credit Code* in 1996. Around this time of rapid expansion in the late 1990s, financial counsellors began to note the re-emergence of the use of blackmail mortgages by fringe lenders.³⁰

Significant improvements have been made to the regulation of fringe credit providers in Australia with reforms to the *Consumer Credit Code*. However, as household debt³¹ and the credit industry itself, continue to grow at a rapid rate,³²

²² Margaret Roberts and Denis, Nelthorpe, 'A new consumer approach: The Collective king hit' (1985) 10(1) *Legal Service Bulletin*, 26; Denis Nelthorpe, 'Financial Counsellors and the Legal System' (Paper presented at the Improving Access to Justice : the future of paralegal professionals conference, Canberra, 19-20 February 1990)

<<http://www.aic.gov.au/publications/proceedings/03/nelthorpe.html>> at 15 May 2007

²³ Margaret Roberts and Denis, Nelthorpe, 'A new consumer approach: The Collective king hit' (1985) 10(1) *Legal Service Bulletin*, 26-27

²⁴ Australian Law Reform Commission, *Debt Recovery and Insolvency*, Report No 36 (1987) 113-114

²⁵ *Ibid*, 114

²⁶ Interview with solicitor as part of placement, 24 May 2007.

²⁷ Dean Wilson, *Payday Lending in Victoria- A research report* for the Consumer Law Centre Victoria (2002) 36.

²⁸ Margaret Griffiths, 'The Sustainability of consumer credit growth in late twentieth century Australia' (2002) 24 *Journal of Consumer Studies and Home Economics*, 23.

²⁹ Ian Manning and Alice de Jong, 'Regulating the cost of credit' (Research Paper No 6, Consumer Affairs Victoria, (2006) 13-14.

³⁰ Interview with Consumer Lawyer, 24 May 2007.

³¹ Gordon, Josh and Moncrief, Marc, 'The Home Front', *The Age* (Melbourne) 2 June 2007, Business 1.

not only have new exploitative practices emerged,³³ but gaps in the regulatory framework that allow 'old plays'³⁴ to continue become more apparent. The use of blackmail mortgages by fringe lenders targeting low-income consumers is one such ploy. The re-emergence of this practice continues to be an issue of concern for financial counsellors and consumer groups³⁵ and the author argues that it draws attention to gaps in the *Consumer Credit Code*.

CONSUMER CREDIT CODE

Policy objectives

The *Consumer Credit Code* is intended to provide a uniform set of rules to regulate the provision of credit for personal, domestic, or household purposes in Australia.³⁶ In Victoria, the *Consumer Credit Act (1995) Vic* incorporates the *Consumer Credit Code* into Victorian law.³⁷ One of the main aims of the Code is 'to prevent many of the credit problems faced by consumers',³⁸ and its underlying policy involves recognition that it is important to provide legislative protection for consumers who 'get into trouble' with credit.³⁹

The Code approaches its objective of consumer protection using the principle of 'truth in lending'.⁴⁰ Obligations imposed on credit providers focus on providing consumers with clear information about their rights and obligations when they purchase credit so that they can make informed choices.⁴¹ This legislation generally relies on market forces to restrain price, but 'provides significant redress mechanisms for borrowers in the event that credit providers fail to comply with the legislation'.⁴²

The 'truth in lending' approach relying on market forces as a restraint does not necessarily offer adequate protection to vulnerable consumers.⁴³ Consumers tend to act 'irrationally and emotionally' when purchasing credit in spite of clear provision of information by credit providers about contractual terms.⁴⁴ This may be further

³² Howell, Nicola, 'Poverty, Credit Law and Social Justice: Examining the links' (Paper presented at the Australian Lawyers and Social Change Conference, Canberra, 23 September 2004) 2.

³³ Financial and Consumer Rights Council Victoria, 'Submission to the Consumer Affairs Victoria Consumer Credit Review' (2005) 15

³⁴ Richard Brading, 'City Finance Loans and Cash Solutions', (2002) 3(2) *Sharkwatch* <<http://www.wesleymission.org.au/centres/creditline/sharkwatch0206.asp>> at 23 March 2007

³⁵ Interview with Financial Counsellor, 24 May 2007; Richard Brading, 'City Finance Loans and Cash Solutions', (2002) 3(2) *Sharkwatch*

<<http://www.wesleymission.org.au/centres/creditline/sharkwatch0206.asp>> at 23 March 2007;

³⁶ Andrea Beatty and Andrew Smith, *Annotated Consumer Credit Code and Regulations* (3rd ed, 2006) xv.

³⁷ *Consumer Credit Act 1995 (Vic)* s 5

³⁸ *How the Code will Benefit You*, Consumer Credit Code Web Site (2007)

<<http://www.creditcode.gov.au/display.asp?file=/content/consumer.htm>> at 15 May 2007

³⁹ *Ibid.*

⁴⁰ Explanatory Notes, Consumer Credit (Queensland) Bill 1994 (Qld)

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ Financial and Consumer Rights Council Victoria (Submission to the Consumer Affairs Victoria Consumer Credit Review, 2005) 13

⁴⁴ *Ibid.*

exacerbated in the case of low-income earners or those with bad credit histories who do not have any real choice about where they access credit.⁴⁵

Failure to prohibit blackmail security is inconsistent with policy and other legislation

The Bankruptcy Act protects certain property from being divisible amongst creditors in the event that a debtor goes bankrupt.⁴⁶ Such property includes: kitchen equipment; heating and cooling equipment; a telephone; a television; a stereo; a radio; a washing machine; a clothes drier; a refrigerator; a video recorder; burglar alarms, bedding; sufficient household furniture; and children's sporting/educational/recreational goods.⁴⁷ This is a non-exhaustive list. The regulations more generally state that divisible property does not include, 'household property (including recreational and sports equipment) that is reasonably necessary for the domestic use of the bankrupt's household, having regard to current social standards'.⁴⁸

These same goods are protected from seizure⁴⁹ when an order is made against a debtor under the *Judgment Debt Recovery Act*.⁵⁰ The basic policy underlying these provisions at both a state and federal level seems to be that people have a right to retain the basic household items they need to live, irrespective of how much debt they have accumulated.⁵¹ The fact that the Consumer Credit Code (by not prohibiting mortgages over essential household goods) allows for these same items to be taken from a debtor is clearly inconsistent⁵² and defeats the underlying policy objectives of the other legislation.

This is not only out of step with policy objectives behind the Code which emphasise providing protection for consumers who 'get into trouble' with credit,⁵³ but it can also directly undermine the effectiveness of the protections offered by other legislation such as the Judgment Debt Recovery Act and the Bankruptcy Act. Case study B (see above) is a good example of this. One of the primary objectives behind the concept of bankruptcy is enabling the bankrupt person to have a 'fresh start'. This 'fresh start' entails protection from harassment of creditors seeking repayment of debts.⁵⁴ The blackmail mortgage over Mrs X's furniture clearly prevented her from utilising the beneficial elements of bankruptcy.

⁴⁵ Nicola Howell and Therese Wilson, 'Access to Consumer Credit: the Problem of Financial Exclusion in Australia and the Current Regulatory Framework' 7 *Macquarie Law Journal*

⁴⁶ *Bankruptcy Act 1966* (Cth) s 116(2)

⁴⁷ *Bankruptcy Regulations 1996* (Vic) reg 6.03

⁴⁸ *Bankruptcy Regulations 1996* (Vic), reg 6.03(2)

⁴⁹ *Supreme Court Act 1986* (Vic) s 42(1)

⁵⁰ *Judgment Debt Recovery Act 1984* (Vic) s 27

⁵¹ Australian Law Reform Commission, *Debt Recovery and Insolvency*, Report No 36 (1987) 114

⁵² Fringe Credit Providers-Decision Making Regulatory Impact Statement and Final Public Benefit Test' (2006) [20-21] Consumer Credit Code Website

<<http://www.creditcode.gov.au/display.asp?file=/content/whatsnew.htm#fringe>> at 24 May 2007

⁵³ *Ibid.*

⁵⁴ John King, 'Moving Beyond the 'Hard'-'Easy' Tug of War: A Historical, Empirical and Theoretical Assessment of Bankruptcy Discharge' (2004) 22 *Melbourne University Law Review*

Appropriateness of 'unjust transaction' provision as a mechanism for dealing with the issue of blackmail mortgages

One of the mechanisms in the Code designed to provide a means of redress for vulnerable consumers who 'get into trouble' with credit is section 70. This section allows a court to reopen a transaction giving rise to the contract, mortgage or guarantee, where it considers that it is 'unjust'.⁵⁵

Section 70(2) provides a non-exhaustive list of factors the court may have regard to in determining whether an agreement is 'unjust'. The following may be particularly relevant to credit contracts involving 'blackmail security':

- *'the consequences of compliance, or non-compliance, with all or any of the provisions of the contract, mortgage or guarantee'*⁵⁶

This can be seen as relevant because enforcement of a blackmail mortgage is unlikely to be financially beneficial to the credit provider once the expense of enforcement and resale (if the mortgaged goods are even saleable) of the goods is taken into account.

- *'the relative bargaining power of the parties'*⁵⁷

It has been noted that consumers who use fringe lenders are, 'invariably vulnerable consumers who have virtually no market choice in terms of credit',⁵⁸ and loans are most frequently taken out in order to pay for daily living expenses and bills.⁵⁹ It is clear that consumers willing to mortgage their essential household items in order to secure a relatively small loan, will almost always be bargaining from a position of extreme disadvantage in comparison to the lender.

- *'whether or not any of the provisions of the contract, mortgage or guarantee impose conditions that are unreasonably difficult to comply with, or are not necessary for the protection of the legitimate interests of a party to the contract, mortgage or guarantee'*⁶⁰

Credit providers argue that taking security over goods for small loans 'is not unreasonable having regard to the history of most of these borrowers'.⁶¹ In response to this, the author would argue that a mortgage over goods that are financially worthless, or that the lender has no intention of repossessing could never be considered necessary for the protection of their legitimate interests.

- *'whether the credit provider or any other person exerted or used unfair pressure, undue influence or unfair tactics on the debtor, mortgagor or guarantor and, if so, the nature and extent of that unfair pressure, undue influence or unfair tactics'*⁶²

⁵⁵ *Consumer Credit Code*, s 70(1)

⁵⁶ *Ibid*, s 70(2)(a)

⁵⁷ *Consumer Credit Code*, s 70(2)(b)

⁵⁸ Dean Wilson, *Payday Lending in Victoria- A research report* for the Consumer Law Centre Victoria (2002) 81.

⁵⁹ *Ibid*, 67.

⁶⁰ *Consumer Credit Code*, s 70(2)(e)

⁶¹ Letter from fringe credit provider to financial counsellor, 13 September 2002.

⁶² *Consumer Credit Code*, s 70(2)(j)

The deliberate construction of a mortgage agreement to facilitate the use of emotional blackmail as a means of enforcing repayment of a debt could be seen as an 'unfair tactic'.

Section 70(2) requires that the court have regard to the 'public interest' in determining whether a transaction is unjust. The 'public interest' consideration involves balancing the public interest that credit providers should not engage in harsh, oppressive or unconscionable conduct and the interest that people should honour their contracts.⁶³ The author argues that in the case of blackmail mortgages, the former interest will generally outweigh the latter, if the premise that such mortgages are taken out by the credit provider for the sole purpose of emotional blackmail is accepted.

Utilisation of 'unjust transaction' provision by consumers

Theoretically, as the above discussion indicates, section 70 of the code provides a viable avenue for consumers to challenge credit contracts which rely on blackmail security as unjust. However, there is no evidence of a successful challenge to a blackmail mortgage or even any kind of payday loan contract under this provision.⁶⁴

There may be a number of reasons for this. Firstly, many consumers never seek financial counselling or legal advice and consequently remain unaware of their rights.⁶⁵ Further, low-income consumers may not have the resources or inclination to bring applications before a court or tribunal.⁶⁶ Finally, as noted above and evidenced by Case Study B, where the individual consumer does decide to challenge such contracts as unjust, credit providers usually offer private settlement before the matter reaches court.⁶⁷ Private settlement often provides the best resolution for the individual consumer, who is unlikely to be able to afford the luxury of pursuing the dispute in court on principle.⁶⁸ However, the result of this pattern of outcomes is that nothing is done to improve industry practices at a broader level.

Why the Code should specifically address blackmail security

The author argues that the above discussion of the unjust nature of blackmail mortgages as a class of contractual term and the lack of usage of section 70 as an individual means of redress, suggests that blackmail mortgages need to be dealt with by the Code specifically as a class of contractual terms.

⁶³ *Dale v Nichols Constructions Pty Ltd* (2003) QDC 453 at 105

⁶⁴ 'Payday lending in South Australia- options to increase consumer protection' (Discussion Paper, Government of South Australia Office of Consumer and Business Affairs, 2006) 11

⁶⁵ Interview with financial counsellor as part of placement at BCHC, 31 May 2007.

⁶⁶ Nicola Howell and Therese Wilson, 'Access to Consumer Credit: the Problem of Financial Exclusion in Australia and the Current Regulatory Framework' 7 *Macquarie Law Journal*

⁶⁷ The Consumer Law Centre of the ACT and Care Inc. Financial Counselling Service (Submission to the Standing Committee of Officials of Consumer Affairs Working Party on Unfair Contract Terms, March 2004)

<[http://www.fairtrading.qld.gov.au/oft/oftweb.nsf/AllDocs/CB0A9D21A156FEDF4A256ED1000ADCC7/\\$File/Subm%20CLC%20and%20Care_44_.pdf](http://www.fairtrading.qld.gov.au/oft/oftweb.nsf/AllDocs/CB0A9D21A156FEDF4A256ED1000ADCC7/$File/Subm%20CLC%20and%20Care_44_.pdf)> at 28 May 2007

⁶⁸ Interviews with financial counsellors as part of placement at BCHC, 24, 25 and 31 May 2007.

While there have been some arguments made that the Code needs to provide a more flexible provision for addressing unjust contract terms, the author argues that the most natural and logical way for the Code to deal with the issue of blackmail mortgages is with direct prohibition. The Code already contains some provisions dealing with classes of unfair contractual terms. Section 40 states that mortgages which do not identify the property which is the subject of the mortgage⁶⁹ and those which charge all the property of the mortgagor, are void.⁷⁰ Section 46 prohibits a mortgage being taken over an employee's remuneration, benefits or superannuation⁷¹ and securing a credit contract with a cheque, bill of exchange or promissory note issued by the debtor.⁷² These types of mortgages are rendered void.⁷³

RECOMMENDATION

The author recommends that section 46 of the *Consumer Credit Code* be amended to list mortgages over essential household property as a form of security that is prohibited in contracts covered by the Code. The best way to define 'household property' may be by reference to the Bankruptcy Regulations⁷⁴ discussed above, thus ensuring consistency with other legislation.

⁶⁹ *Consumer Credit Code*, s 40(1)

⁷⁰ *Ibid*, s 40(2)

⁷¹ *Ibid*, s 46(1)

⁷² *Ibid*, s 46(2)

⁷³ *Ibid*, s 46(3)

⁷⁴ *Bankruptcy Regulations 1996* (Vic) reg 6.03(2)

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