

SCRUTINY OF ACTS AND REGULATIONS COMMITTEE
Inquiry into exceptions and exemptions in the Equal Opportunity Act

Melbourne — 4 August 2009

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Ms C. Shand, Corporate Lawyer, Australian Finance Conference.

The CHAIR — Thank you for attending at the public hearing. The purpose of these hearings is to report to the Parliament on whether any amendments should be made to exceptions and exemptions in the Equal Opportunity Act 1995. Anything you say or publish before the committee today is protected by parliamentary privilege. However, once you leave the hearing anything you say or publish outside the room is not so protected. I invite you now to make a brief statement to the committee on the relevant issues that you consider important for your organisation concerning this inquiry. We will conclude with a series of questions.

Ms SHAND — Thank you for the opportunity to address the committee. Ron Hardaker sends his apologies. His voice is not good, so I am appearing in his place.

The Australian Finance Conference and its affiliated body, the Australian Equipment Lessors Association, represent around 120 non-bank financiers, although some of the major banks are members of ours. The age-related exception to the act is an important one as part of our members' ability to assess credit and whether to provide credit to particular applicants. That is our interest in looking at the age-related exception. We have had a longstanding involvement in this at the federal level and in various other states.

I guess in summary, from our submission, age is an important, but by no means the only, factor in looking at whether to provide credit to somebody. Age can result in positive decisions. You might say that someone who has moved jobs and residence several times in the last four years or so might look as though they are unstable. If they were in their middle age and married with children, that might indicate instability, whereas if they are young, it might look like something that is to be expected for someone who is aged between about 18 and 23. They may be moving houses and moving jobs as they get settled into life. Also it could be a factor in saying that a particular amount of loan for someone who has only recently become employed would not be appropriate to be lend to them because they may not be able to meet their obligations under that loan.

At the other end of the spectrum are of course people who are older and may be looking at retiring and wanting to take out a standard home loan of 20 or 30 years. You may say that it would be relevant to look at whether the person's current capacity to pay will continue when they retire. They may well have capacity because of their investment assets and what they are expecting from their superannuation. If not, then it may be relevant to look at age.

An important thing that we in the AFC are involved in at the moment are the new responsible lending obligations which are about to be enshrined in national law under the National Consumer Credit Protection law, which is currently before federal Parliament. There is a Senate inquiry going on into that. That is expected to start next year and will actually enshrine responsible lending obligations, so that credit providers will have to not provide credit which is unsuitable or which the consumer does not have capacity to pay. That is part of the move of saying that you should not be increasing people's credit limits or providing loans that they are clearly not able to pay. Some of that relates back to people who try to drum up business when it is just not appropriate and you end up with hardship for people who cannot pay, because they may be bankrupt or the guarantor of the loan is called on to repay the loan.

There are similar exceptions to the credit provider requirements in Victorian law under the Commonwealth Act and also in New South Wales and Tasmania. In all those cases we would say that age is just one factor which you would be looking at in providing credit.

Just to look at a couple of suggestions for the options for amendment, one was that if credit is rejected on the basis of a credit-scoring system, the person should be able to ask for a copy of that data. We would say that that data is often extremely complicated actuarial algorithms, which the average person or any of us here — certainly I — would not be able to even make any sense of. Age is just one of a number of factors in that.

Also we already have the protection in that section 44(a) requires the discrimination to be reasonable in all the circumstances, which supports our submission that the section is appropriate as it is and does not need any amendment to water it down or require any further action to be taken by the credit provider. I guess in summary section 44 allows appropriate credit decisions to be made, and to repeal it or amend it would be a retrograde step in the current economic climate and given federal proposals.

The CHAIR — Thank you, Catherine. I am still a bit perplexed, though. It seems to me that the argument you put is that people's creditworthiness is what is at stake and what is assessed. I am not quite sure why age is a determining factor there.

Ms SHAND — There are a number of factors. It could be age. Current employment, income and residential stability are all factors you can look at and put in to decide whether someone is an appropriate or high risk. Therefore you might look at it and ask for more security or decide that they are an inappropriate risk to borrow this particular amount of money over this term. Age could be reflected in the fact that younger people may have less employment stability, so it may be harder for them to take on a long-term obligation to meet credit, because they may lose their job. Someone who is in a more mature phase of employment and is of a certain age may be more likely to continue to have the ability to meet their obligations, and therefore it is more appropriate to provide a particular credit to them.

The CHAIR — I can understand the argument. I am just trying to figure out why age really matters. Given you are looking at a whole lot of other criteria, why should there be that exemption from discrimination? It suggests to me that there are certain age groups that are almost marked, if you like, as being less creditworthy just because of their age. Is that essentially how it works?

Ms SHAND — Age is more “explanatory”. If you add age to the mix, it will mean that the fact that someone is 20 but has moved jobs and residence is not unusual and therefore providing them with a car loan or a loan to buy a computer is appropriate; whereas you might say that if they were a different age, then it would not be appropriate, as you would think that it is unusual that they are not able to maintain a job and have employment stability. This is one of the factors that inform the decision, rather than that you single out certain ages to say yes or no to.

Mr O’DONOHUE — Thank you for your evidence. You say your group represents Australian equipment financiers, amongst others. This is a little bit off the topic, but can you give a comment on what impact the federal government bank guarantee has had on your members?

Ms SHAND — The bank guarantee insofar as it is guaranteeing deposits, you mean?

Mr O’DONOHUE — For banks but not for non-banks.

Ms SHAND — It has had a bad effect on some members. They guaranteed not just banks but authorised deposit-taking institutions, and there are a number of regional financiers who are not ADIs in that sense who have raised money from the public who have not had the benefit of that guarantee. In one case there is an organisation called Bidgee Finance, which is short for Murrumbidgee — I am not sure if their base is in northern Victoria or southern New South Wales — which was not able to keep its funding up, so from that point of view, the non-bank or non-ADI financier’s point of view, it distorted the market. The ADIs, not just the banks but the other ones that might be the regional building societies, think it is good because it has helped them to compete, but the ones who have not had that status, who have for many years raised money from the public — there is Profinance in Wagga, I think there is a number of them; Westlawn Finance in northern New South Wales — they have not had the benefit of the guarantee, so it has distorted that fund raising market for them, and it reduces competition ultimately. People are not going to their regular financier in the local town, they are dealing with a large bank that they may not particularly want to deal with for various reasons.

Mr SMITH — In a nutshell, with regard to this particular exemption obviously it is credit providers to commercial business. If it was commercially viable to ignore this exception, then I am sure the providers would ignore it. The fact is that it is through experience or a range of other things. Obviously this exception is required in order to make commercially viable decisions.

Ms SHAND — It assists in making them. I guess it is not so much required, but it assists.

Mr SMITH — It assists, sorry, yes.

Ms SHAND — And it will certainly assist in meeting the responsible lending obligations which the federal government is imposing on all the states and their power to regulate credit is going to be referred to the federal government, so they go hand-in-hand, and it will be consistent with the federal Act as well. Its continuation is consistent with the federal Act.

Mr SMITH — So to remove it would make decisions that are commercially necessary to make more difficult.

Ms SHAND — Yes, that is right. It makes it a less-informed decision, I suppose.

Mr LANGUILLER — So if you are too young or too old, do not look for a friend in the credit — that is the simple conclusion that I draw. No, I am going to — —

Ms SHAND — It explains why a young person has moved jobs and moved houses. It says, ‘Okay, that’s fine and that is understandable’, and they want a car loan now.

Mr SMITH — If credit providers could make money out of lending money to young people without any risk, then they would do it, believe me.

Ms SHAND — But also they want to get their money back. They do not particularly want to repossess the car or sue the parents who have guaranteed the personal loan. That is not really the — —

Mr SMITH — It is a commercial decision.

Mr LANGUILLER — Quite seriously, I am all in favour of ethical and responsible lending because I have too many recollections of credit providers giving credit to young kids who hardly sought that credit — and credit cards and so on. But the question I ask relates to the training of the staff. I can accept that you need to work through a range of areas: age, jobs, residential arrangements, employment history — you name it. But the world of today changes rapidly. I am sure we all know young kids who move from place to place and job to job but in fact are doing well. Perhaps that is the nature of the 21st century. I wonder to what extent the staff are being trained to be able to pick up the subtleties and really draw as fair a conclusion and decision as possible.

Ms SHAND — My understanding is that the statistical information is more a computer program and the data is fed in and a result comes out, but that result would not be the final decision. It would go back to say “it has been rejected on this basis, but let us look at all the other factors and what is going on”. That would be part of the training of staff to look at that initially because a lot of this is just hard facts: numbers, names, addresses, dates of birth et cetera, but you have to add that X factor in, if you like, where you say that. That would be part of staff training, because lenders want to lend. They are in the business of lending money, so that is what they want to do. They try as best they can, but they also want to get their money back and be responsible lenders. That would be part of the overall training, whether it is front-line sales staff or the person to whom it is elevated, perhaps one level up, to say, ‘Are rejecting this or not?’, and to make credit available where they can.

The CHAIR — Catherine, thanks a lot. That was very informative, and thanks for giving up your time to come and speak to the committee.

Ms SHAND — Thank you.

Witness withdrew.