

One worrying takeaway from the first week of the Financial Services Royal Commission is how many elderly people are being adversely affected by irresponsible lending.

Such lending is often the result of an agreement with a family member, for example an adult child, to help that person financially by entering into a joint loan. These loans are secured against the older person's home, which is a huge risk if the loan defaults and the older person cannot service the debt.

To ensure that older people contemplating joint loans are aware of the downside of transactions, there needs to be greater access to legal and financial advice prior to the transaction and better training for bank employees and loan officers about responsible lending obligations and the potential "unsuitability" of such loans.

Consideration should also be given to larger penalties for banks that provide unsuitable loans to older people.

Other examples we have seen this week include an elderly woman who has been [paying off the same A\\$1,000 since the 1990s](#), and a 72-year-old nurse who was [permitted to borrow](#) more than A\$3 million to buy 11 investment properties.

Read more: [**What the Royal Commission can do if the banks don't play ball on evidence**](#)

On the face of it, there are laws that should safeguard elderly consumers from "getting in over their head".

When a consumer applies for credit, the [National Consumer Credit Protection Act](#) obliges a credit provider to make reasonable inquiries about the consumer's financial situation and their requirements and objectives.

In so doing, the credit provider must take reasonable steps to verify the consumer's financial situation. This means that payments [must be able to be made without substantial hardship to the consumer](#).

However, the Consumer Action Law Centre [says](#) that "it is common that these steps are not adequately followed by lenders".

Even if these steps are followed, the legislation does not define "substantial hardship". There is a presumption that if a consumer must sell their principal residence to pay back a loan, this demonstrates substantial hardship.

Emotional lending

Of particular concern is when an older person is persuaded to enter into a joint loan with a third party, such as their son or daughter. These loans are invariably secured by the older person's property, with the younger person agreeing to pay off the debt.

If the adult child does not pay off the debt, the older person – who is often asset-rich but income-poor – may be unable to service the loan. The older person's property will be repossessed by the lender, forcing them to relocate, enter the rental market, or even become homeless.

The loans may arise simply because the older person wants to help their adult child through a difficult financial period. It is understandable that a parent would want to help if a business is failing or a child is at risk of losing their house.

But such loans often arise within an atmosphere of crisis (real or exaggerated), in which the adult child pressures the older person into entering into the loan.

In extreme cases, older people [have been told](#) that they will be unable to see their grandchildren if they do not enter into loans.

Read more: [*Explainer: what is elder abuse and why do we need a national inquiry into it?*](#)

It is not always that the older person is vulnerable per se, but that they are “situationally vulnerable” because of concern for the well-being of a child, or the desire to maintain relationships.

The reality is that it is often difficult for the older person to refuse.

Karen Cox of the Financial Rights Legal Centre [noted](#) at the Royal Commission that these loans are:

outright exploitative ... elderly persons [are] left in dire circumstances as a result of a loan for which they've seen absolutely no benefit.

Similar comments apply to other financial transactions made for the benefit of a third party such as entering into a “[reverse mortgage](#)”. This is where the older person takes out a loan against the equity built up in a home (or other asset), with the money given to a child to buy a house or prop up their business.

What could be done?

Advocates are rightly concerned about the financial consequences for older people who enter into such loans. However, the property does belong to the older person and they are entitled to

make whatever decisions they want, including risky ones.

Elderly people should be fully informed of their obligations and the potential consequences, should a transaction goes wrong. Banks could lead the way with this.

One initiative would be for the banks to contribute to legal and financial advice for older people, or subsidise the provision of such advice at community legal centres.

Loan assessors and brokers must also be made aware of the risks of such transactions.

The Australian Bankers Association [is introducing](#) enhanced measures to address elder financial abuse and the risks associated with such loans should be emphasised.

Finally, the government should consider tougher penalties against credit providers who disregard responsible lending obligations. Presently, if a bank is found to have lent irresponsibly they will simply compensate the consumer for the loss. Meaningful penalties that deter reckless lending should be considered.

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The Financial Services Royal Commission highlights the vulnerability of many older Australians

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