

Debt Collectors (Field Agents &
Collection Agents) Bill 2013
Submission 002

caxton
legal centre inc

SUBMISSION TO LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE

**PROPOSED CHANGES TO THE
LAWS IN QUEENSLAND RELATING TO
MOTOR DEALERS AND PROPERTY AGENTS**

January 2014

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1. INTRODUCTION

1.1 Background to this submission and overview

Caxton Legal Centre Inc.(Caxton) has been involved in providing legal advice to clients about disputes involving motor dealers, real estate agents and collection agents, fair trading practices and related consumer rights for over 35 years. We are therefore uniquely placed to comment on this review.

We endorse the reduction of unnecessary 'red tape' and any consolidation of legislation that improves consumer protection and enables members of the community to more easily access, understand and invoke the protections of relevant laws.

Proper regulation of motor dealers and property agents is vital, especially when it comes to dealings involving vulnerable people. Unfortunately, we have seen many occasions where our clients have suffered at the hands of unscrupulous operators in this field. We therefore urge the government to preserve and strengthen the consumer protections, which currently exist under the *Property Agents and Motor Dealers Act 2000 (Qld)* [PAMDA] and the existing applicable Codes of Conduct, in any new legislative framework.

In particular, we believe that the broader existing statutory warranty regime, which provides for both A and B class used cars¹ should be preserved in any new legislative regime. (The new provisions provide only for A class motor vehicles to be covered by statutory warranties.²) We also favour the extension of the laws relating to cooling off periods to cover all car sales.

Furthermore, the "general rules of conduct" statements contained in the existing Codes of Conduct, which operate in tandem with PAMDA, affirm core principles that should govern fair trading practices in this field and we submit that these general rules of conduct need to be preserved in any new legislation. In the proposed draft Bills, only some aspects of various conduct related provisions have been retained. The Bills contain provisions stating that "a regulation may provide for conduct standards of ..."; however, there does not seem to be any specific provision for Codes of Conduct to be introduced as part of this reform process.

The existing Codes have been very important (and accessible) tools, which, when used by advocates on behalf of disadvantaged clients, have assisted in the speedy resolution of disputes. The draft Bills should be amended to include (or at least make provision for future inclusion of) these core conduct "Code" rules.

1.2 About Caxton Legal Centre Inc. and our client base.

Caxton is Queensland's oldest non-profit, community-based, legal service and is staffed by 24 staff members and approximately 200 volunteer lawyers and law students. Caxton operates free legal advice and information services, 3 specialist legal casework services (including a consumer law clinic and a specialist program for abused and exploited seniors – including those exploited through financial abuse), 3 clinical legal education programmes, general community

¹ See the definitions in Schedule 2 of PAMDA

² See section 3 of Schedule 1 of the Motor Dealers and Chattel Auctioneers Bill 2013.

legal education services and social work support services. Caxton also undertakes law reform activities in areas of law relevant to the community we serve.

Our goal is to promote 'access to justice' and we provide over 12,000 legal information and advice services each year to both individuals and other community organisations. We specialise in 'poverty law' and the majority of our clients are economically and/or socially disadvantaged in some way, with at least a third receiving Centrelink benefits. (Apart from giving referrals to private firms, we do not give assistance in commercial matters or cases involving major property disputes where clients can afford private legal representation.)

Caxton workers and volunteers have considerable experience dealing with clients who have literacy problems, cognitive/mental health problems (and other disabilities), and clients with a limited understanding of our legal system - especially some of our clients from non-English speaking backgrounds. These are often the clients who are most disadvantaged and exploited in consumer transactions.

We have extensive experience assisting other groups of vulnerable clients. Many of our clients are living in chaotic circumstances in temporary or insecure accommodation. Our clients who are on Centrelink benefits (including sole parents) and those only working part-time on low wages constantly struggle to make ends meet. These various groups of clients often get into difficulty when they are trying to buy a cheap second hand car, rent a flat, or deal with outstanding debts and debt collectors. It is worth noting that we have observed that many people who are looking for work seem to try to get a car in order to seek/secure employment, even though they may not actually be able to afford a vehicle unless they do then secure employment. The PAMDA regime affects many of these clients.

In the last 3 years, we have given advice and/or information on approximately 2100 occasions about consumer disputes – 653 times in relation to fair trading practices. We have also given advice in tenancy matters on 719 occasions. Unfortunately, it is not possible to use our data entry system to identify the exact number of cases that involved PAMDA; however, our free advice session coordinators have confirmed that we generally give legal advice relating to PAMDA matters every week. It is clear that the current laws in this field are still problematic and inadequate. Caxton is very concerned about any reduction in the protections currently available under PAMDA.

2. EXECUTIVE SUMMARY OF SUGGESTED REFORMS

We are suggesting a number of key reforms. A summary of all our recommendations follows.

- I. There should be no reduction in the protections currently offered to consumers under the PAMDA regime as a result of the proposed reforms.

- II. If PAMDA is to be broken down into the new proposed Acts, the existing consumer protections contained in PAMDA and the Codes, together with any further improvements identified as a result of this review, need to form part of any new legislative regime.

- III. The proposed draft Bills need to be amended to clearly state that regulations may provide for “Codes of Conduct” to be introduced to accompany each of the new Acts.
- IV. The existing Codes of Conduct, which operate in tandem with PAMDA, need to be mirrored in replica (but renamed) Codes introduced to accompany any new legislation.
- V. If the Codes are not going to be re-introduced, as a minimum, the “general rules of conduct” statements contained in the existing PAMDA Codes of Conduct, need to be preserved in the relevant Acts themselves.
- VI. The broader PAMDA existing statutory warranty regime should be preserved in any new legislative regime. Specifically, the broader PAMDA existing statutory warranty regime, which provides for both A and B class used cars³ should be preserved in any new legislative regime.
- VII. The Statutory Warranties should be contained in the body of the Motor Dealers and Chattel Auctioneers Bill/Act so that they are more easily accessible to anyone referring to the Act.
- VIII. The laws under the Motor Dealers and Chattel Auctioneers Bill/Act relating to cooling off periods should be extended to cover all sales – especially motor vehicles sold on consignment. If this is not to occur, more is required to ensure that buyers actually know and understand when a cooling off period does not apply.
- IX. When motor vehicles are being sold on “consignment”, dealers and auctioneers must take steps to ensure that a buyer understands exactly what the term consignment means.
- X. Further public debate should occur in relation to the process whereby a motor dealer/ chattel auctioneer may be monitored for criminal activity for the purposes of this legislation. Further public debate should also occur in relation to the process whereby a debt collector may be monitored for changes to their criminal history for the purposes of this legislation.
- XI. We oppose the introduction of the negative licencing regime for collection agents and believe that the current licencing regime should be retained.
- XII. We oppose waivers of the 5 day cooling-off period under the *Property Occupations Bill 2013 (POB)*.
- XIII. The protections currently offered under the Property Agents and Motor Dealers (Real Estate Agency Practice) Code of Conduct should be extended under the new legislative framework. In particular, protections are needed regarding the final inspection of property, prompt repair and maintenance work, the use of confidential recorded information, and dealings with people who cannot understand documents. The

³ See the definitions in Schedule 2 of PAMDA

prohibition on high pressure sales tactics, harassment and unconscionable conduct should continue to be included in a new Code or, at least should be included in the relevant Act/s.

- XIV. The government, in addressing these matters, should consider this law reform issue in a whole-of-government approach - specifically through education in our community generally.

3. CAXTON'S RESPONSE TO THE PROPOSED NEW LEGISLATIVE REGIME

3.1 The focus of this submission and introductory comments

The government is proposing to replace PAMDA with 4 new Acts. Our response is focused on the legislation dealing with motor dealers, debt collectors and real estate agents – that is, the *Property Occupations Bill 2013 (POB)*, the *Motor Dealers and Chattel Auctioneers Bill 2013 (MDCAB)* and the *Debt Collectors (Field Agents and Collection Agents) Bill 2013 (DCB)*. This is because we are commenting on the provisions most relevant for our client group.

PAMDA is a large Act of over 500 pages and, arguably, it is difficult for a self-represented litigant to access, understand and use this legislation and the various associated Regulations and Codes. We appreciate that the current framework including this large Act, together with the regulations (82 pages), and the 6 Codes (over 125 pages), can seem unwieldy.

We acknowledge there is some benefit in the creation of 4 much smaller and discrete, appropriately named Acts governing each separate area of law and commercial practice. This may make it easier for self-represented litigants to find the law that governs their situation. PAMDA, because of its size, was a difficult Act to use. However, we are very concerned about any proposal to eliminate the accompanying "Codes of Conduct" (or at least the core elements of the codes) governing people who work in the particular roles affected by this legislative regime. If PAMDA is to be broken down into the new proposed Acts, the protective elements from PAMDA and the Codes, together, need to form part of the new Acts.

3.2 PAMDA's strengths and weaknesses

PAMDA contains many very important protections from a consumer protection point of view. The 'suitability' restrictions placed upon who is allowed to obtain a relevant license under PAMDA are important and arguably have made it more difficult for inappropriate people to obtain licenses. The way in which the legislation includes specific named offences and penalty provisions is also very useful for our clients because it assists in the identification of breaches of the law. The inclusion of definitions/explanations of time limits and important terms, such as "written-off vehicle", "restorable vehicle", "statutory warranty", "warranty period", "cooling off periods" "defects" etc. and the clear provisions in PAMDA dealing with misleading and unconscionable conduct have been particularly useful. The title guarantee provisions also are incredibly important for consumers.

Some of PAMDA's most important consumer protection provisions relate to the rules about:

- statutory warranties and obligations to repair vehicles;

- licensing (and certificate holder) qualification requirements;
- mandatory written notice, information and warning statement provisions;
- written agency appointments;
- disclosure of interest and conflict of interest rules;
- the supervision of relevant offices;
- employee supervision;
- defined cooling off periods;
- referral for independent advice rules;
- restrictions on commissions (and reference to a calculation formula);
- rules for the keeping of trust accounts and other financial records;
- announcement and signage provisions;
- exclusive/sole agency arrangements and consequences;
- rules about terminating relevant contracts;
- the Claim Fund and the making of claims;
- disciplinary action and complaints;
- investigation powers;
- the Tribunal's jurisdiction and powers, and
- the Codes of Conduct,

These features all strengthened consumer protection in Queensland. Similarly, the inclusion of notes in the legislation giving examples of what particular provisions could mean is very useful for anyone referring to PAMDA.

However, while PAMDA clarified rules around cooling off periods, which was a great improvement, clients who purchased vehicles from motor dealers on consignment (and in certain other situations), unfortunately, missed out on the benefits of a cooling off period. We believe that cooling off periods are important in all transactions involving the purchase of any significant property, such as a motor vehicle. Currently, it is the case that customers are simply meant to be advised through signage that vehicles sold on consignment do not attract a cooling off period.⁴ We support the introduction of cooling-off periods for all relevant transactions.

3.3 The benefits contained in the Codes of Conduct

We believe that the government needs to preserve and strengthen the consumer protections, which currently exist under PAMDA and the existing applicable Codes of Conduct, in any new replacement Acts. At this stage, we are not aware that any particular Codes are proposed and it seems from the wording in the draft Bills, that specific Conduct Codes are not anticipated; instead conduct provisions simply may be contained in the general regulations, which have yet to be drafted. In principle, we support the use of Codes in this field.

There are currently 6 relevant Codes of Conduct, which mirror each other in general terms. One of the appealing things about the Codes is that each Code is of a relatively manageable size and can be read and understood fairly quickly. Each code clearly states that the Code is "mandatory". The 'General Rules of Conduct', in particular, provisions 5-18 contained in each

⁴ See Regulation 26 PAMD Regulations 2001 and Code provision 31 PAMD(Motor Dealing Code of Conduct) Regulation 2001

Code, are, in our experience, very important for consumers. Increased protection comes from the provisions stating that the dealer, the real estate/letting agent, the auctioneer, the property developer and the collection agent:

- are fiduciaries and have fiduciary obligations;
- must act honestly, fairly and professionally;
- must act in the client's best interests;
- must act in accordance with the client's instructions;
- must keep the client informed of developments;
- must have a reasonable knowledge of the Act and the Code;
- must ensure their employees comply with the Act and the Code and must ensure they don't falsely represent their role;
- must not engage in conduct that is fraudulent or misleading;
- must not use high pressure tactics, harassment or unconscionable conduct;
- must not falsely claim membership or endorsements;
- must not take appointments where there is a conflict of interest (unless a written disclosure is first made; and
- must not solicit clients or customers through advertisements or other communications that are known to be false or misleading.

The specific rules that are then set out in each Code reflect very real issues that tend to cause problems for Caxton clients. The Codes provide protections in many situations. So, for example, rule 21 of the *Property Agents and Motor Dealers (Motor Dealing Practice Code of Conduct) Regulation* sets out that a dealer must not knowingly make a false or misleading representation about warranties sold, the nature of documentation and terms, the availability of finance, or the condition, description or fitness for purposes of a car and accessories etc. Similarly, rule 30 specifies that "a motor dealer acting for a client must obtain the maximum sale price for the client's used motor vehicle". If the dealer is selling a car on consignment, the dealer must also give a customer a written notice confirming this and advising "that there is no statutory warranty or cooling-off period under the Act in relation to (that) motor vehicle".

Before the PAMDA regime came into operation, consumers had a lot of trouble trying to take remedial action if they had been on the receiving end of improper practice by a dealer.

Although this has been an issue for a long time, we have encountered quite a few cases over the last year whereby people who have no real capacity to pay for vehicles are, nevertheless, entering into contracts to buy cars from dealers. Similarly, we have seen some cases where clients assert that they have been pressured into buying investment units when they have no real prospect of paying the loans on these properties. We have seen other cases where older people have felt pressured into entering into an exclusive real estate listing, which has then caused difficulty. It is very important to have strong Codes of Conduct, which help to stop these sorts of situations. The Codes specifically state that the agent/dealer (et al) "...must not engage in high pressure tactics, harassment or unconscionable conduct in the conduct of ...practice".⁵

⁵ Section 15 Property Agents and Motor Dealing Practice Code of Conduct) Regulation 2001.

Occasionally, we have seen clients, especially retirees, who have had difficulties as a result of their dealings buying a residence for retirement from a property developer. (It should be noted that for many of our older clients, their only asset is their family home and many of our retirees live on Centrelink benefits.) Through our work with seniors in our *Seniors' Legal Advice and Support Service* (SLASS), we have observed that these types of disputes sometimes involve cases of elder abuse. This is particularly concerning, because these vulnerable, older clients already face significant systemic barriers when they try to access legal advice and/or use the legal system. Unfortunately, we have seen a number of cases where older people have been especially vulnerable in their dealings with real estate agents in relation to listings and property sales. It is for this reason that we support the maintenance of a strong Code of Conduct that governs real estate agents.

We have also seen a number of other clients from culturally and linguistically diverse (CALD) backgrounds who have had difficulties in their dealings with motor dealers and associated financiers. Dealing with written contracts and any written documentation, especially lengthy documentation using technical jargon, is very difficult for many of Caxton's clients. There often appears to be a real gap between the agreements that clients thought they were entering into on the basis of verbal conversations with dealers or their representatives and the documents that they have actually signed without fully understanding the terms – or in some cases having even read. Unfortunately, the outcome of disputes turns on 'who is believed'. Our clients are often very poor at articulating their stories and/or do not have the confidence to take matters to the Queensland Civil and Administration Tribunal (QCAT)/Courts. Legal Aid in civil matters is rarely given and CLCs have very limited capacity to undertake court casework.

We have observed that certain migrants from some African communities have been experiencing particular difficulties in relation to motor vehicle purchases. In order to highlight the problems faced by CALD clients, it is worth giving some examples of relevant scenarios that we have encountered. We recently advised in a situation where, as we understand things, a wife was present with a husband during part of the purchase and associated finance deal of a motor car. The wife spoke no English and could not read the documents that were written in English; however, she ended up as a joint borrower without understanding the true nature of the transaction.

The Codes of Conduct provide some protection to these vulnerable clients in their dealings with motor dealers.

Even if the Codes are, in practice, sometimes being breached, they are important from an aspirational point of view and we think that fair practice in the relevant business areas has improved since the PAMDA regime was introduced.

Each of the Bills provide for the introduction by regulation of prescribed conduct provisions⁶. As already stated, we would support the use/adoption of the relevant Conduct Code in its current form.

3.4 The new *Motor Dealers and Chattel Auctioneers Bill 2013 (MDCAB)*

⁶ Section 235 POB, Section 94 MDCAB, Section 39 DCB

The MDCAB, mirrors many sections of PAMDA and contains many of the same licensing, suitability, supervision, employee, appointment and practice rules. We endorse these types of restrictions.

3.4.1 Statutory Warranties

We oppose the reductions in the application of statutory warranties. Our clients regularly need to rely on warranties and they are an important tool in terms of consumer protection. We are regularly approached by clients who need legal advice about disputes involving motor vehicles that they have purchased from motor dealers. Many need advice about their entitlements under the statutory warranty regime and we certainly periodically given advice about cars that are over 10 years old or have travelled over 160,000 km – that is B class vehicles. (Our clients often can only afford older model vehicles).

Because our clients are often quite poor, they tend to be fully committed in terms of their debt levels. When suddenly faced with a major expense – for example, to repair a vehicle, this can cause our clients considerable hardship – especially if they need a car to get to work. (Many of our clients have no access to reliable public transport.) If a client has only just purchased the vehicle when it breaks down, they are better placed if they can rely on a warranty. (Unfortunately, it has been our experience that clients often have trouble getting the vehicle repaired quickly under warranty anyway. If a dispute ensues, the client may need to end up paying for a repair themselves and then chasing recovery of the cost via QCAT.)

It is unclear why the Statutory Warranties have been moved to become Schedule 1 in this Bill. In our view, containing them in the body of the Act makes them more accessible for self-represented litigants to identify.

3.4.2 Cooling off periods

We believe that the reforms could have extended cooling off periods. For disadvantaged clients who are more vulnerable to making poorly considered on-the-spot decisions, longer and more extensive cooling off periods would be of great value.

3.4.3 Criminal History Checks

We note that there seems to be an extension of the role of the Commissioner of Police giving information about a dealer's criminal history under the new draft Bill.

Interestingly, part 2 – division 5 – seems to expand the way in which a motor dealer or chattel auctioneer may be monitored for criminal activity links. Section 27 provides for the Commissioner of the Queensland Police Service, who "reasonably suspects" that a licence holder or person nominated to get a license (under this section of the Bill) has a change to their criminal history" to notify the chief executive of this criminal history change.

Currently sections 32-33 of PAMDA simply require a criminal check to be done when someone applies for a license or applies to renew a license. Caxton is always concerned about the

protection of individual civil liberties and any proposal for the monitoring of a person's criminal history, presumably by database between departments, is a matter of concern to us. The way in which this would occur is not detailed in the bill. We consider that this issue should be a matter for further public comment.

3.5 The new *Debt Collectors (Field Agents and Collection Agents) Bill 2013 (DCB)*

Like the MDCAB, the DCB, largely mirrors the relevant portion of PAMDA that deals with debt collectors. It sets out licensing, suitability, supervision, sub-agency and appointment provisions. It lists QCAT's powers and clearly sets out prohibited conduct. Sections 36 – 38 (unlawful entry, misrepresentation, and impersonating debt collectors) mirror the provisions of PAMDA and remain incredibly important provisions.

3.5.1 Negative licencing regime for collection agents

We are concerned about the introduction of the negative licencing regime for collection agents. Section 19 of DCB provides for automatic authorisation for persons to engage in debt collection activity that is not conducted face-to-face with the debtor.

The majority of clients who seek advice from Caxton in relation to debt collection activity do so because of they feel harassed by collection agents contacting them repeatedly by telephone. Clients also regularly complain that collection agents have spoken to them aggressively by telephone or have provided misleading information in relation to debts.

While we recognise that section 19 requires that a person engaged in collection activity must be suitable to perform a debt collection activity under part 6 of the DCB, we are concerned that unsuitable collection agents will become common place in the collection industry. This concern arises because it is likely that unsuitable collection agents would only come to the attention of Chief Executive following a complaint about their conduct or suitability. The negative licencing regime will negatively impact on consumers.

3.5.2 Code of Conduct

The current Code for collection agents sets out very specific rules about how and when agents can contact debtors. This includes, for example, a prohibition on agents speaking with a debtor's child – unless permission for this is given. These provisions of the Code need to be preserved.

3.5.3 Criminal history checks

Although practice in debt collection appears, in our experience, to have improved over the last decade or so, it does remain an area where debtors are vulnerable and it is important to continue to carefully regulate this field. Here too, part 7 – division 2 – seems to expand the way in which a debt collector may be monitored for criminal activity links. Section 108 provides for the Commissioner of the Queensland Police Service, who "suspects on reasonable grounds that a person is a field agent or subject(and) there is a change in a person's criminal history" to notify the chief executive of this criminal history change.

We refer to our earlier comments about civil liberties. We consider that this issue needs to be a matter for further public comment.

3.6 The new *Property Occupations Bill 2013 (POB)*

Again, the POB contains many mirrored provisions currently contained in the PAMDA. The provisions about conflict of interest, disclosure, written documentation, written appointments, the giving of notices, listings, sole agency arrangements, acting in a client's best interests, the use of trust accounts, deposits, termination of contracts, cooling off periods, offences and penalty provisions are all extremely important.

3.6.1 Cooling off periods

We note that the POB makes provision for the waiving or shortening of the 5 day cooling-off periods.⁷ We are concerned that vulnerable people may feel pressured into agreeing to waiving or shortening cooling-off periods. From our perspective, it is very important for clients to be able to rely on a cooling-off period if they have made hasty, ill-considered decisions about purchasing property they cannot actually afford. (This could be particularly important if a client is experiencing emotional trauma or has a mental health condition that heightens a tendency towards impulsive behaviours.)

3.6.2 Code of Conduct

Because we do not generally give legal advice in conveyancing matters, we have limited ability to comment on the 'sales' aspects of the Bill. Our clients' complaints about real estate agents most commonly relate to tenancy matters.

For example, we have advised many tenants who have been in dispute with the lessor/real estate agent about final cleaning costs and bond recovery. In the current Property Agents and Motor Dealers (Real Estate Agency Practice) Code of Conduct, there are very clear requirements about the "final inspection of rental property".⁸ This includes a requirement that the "agent must give the customer a reasonable opportunity to attend to the thing." In our experience, real estate agents sometimes act prematurely in relation to cleaning and property removal, and thus prevent a tenant/s from attending to matters at reduced cost. Accordingly, this provision is very important from a tenant's perspective. There is a real need in any new legislative regime for a Code of Conduct to be created along the same lines as this current Code.

Rule 33 provides very specific guidelines for the inspection of property for rent, which, arguably is an important protection for tenants and owners alike. Rule 34 then mandates that a real estate agent must "promptly respond to" and address maintenance and repair issues. Delays in relation to maintenance repairs constantly cause problems for our tenant clients, so this sort

⁷ Sections 166-167

⁸ Section 39

of Code obligation is vital, even though there are other relevant provisions under the relevant tenancy laws.

There have been many problems with the improper use of tenancy databases in the past and the Tenants Union of Queensland has campaigned extensively about this issue. Reforms have been made over time; however, it remains important to ensure that tenants are not treated unfairly through any improper use of recorded information. Rule 41 of the current Code requires a real estate agent to ensure that recorded information is accurate and to immediately amend it where evidence is provided that it is inaccurate. One of the most important provisions from a tenancy perspective is contained in rule 41(1)(b), which states that the real estate agent must ensure that the information "if adverse to the client or customer, relates to a matter that is not trivial or is not a minor breach of a tenancy agreement". Examples are then provided of what is "not trivial". The ability to refer to these types of Code obligations enables advocates to assist tenancy clients who have been on the receiving end of bullying/retaliatory tactics by real estate agents. Unfortunately, we are aware of instances where this has happened.

Rule 15 of the current Code of Conduct gives examples of high pressure tactics, harassment and unconscionable conduct that are prohibited by the Code. Example three includes: "If it is reasonably apparent that a client or customer cannot understand relevant documents, taking unfair advantage of the client's or customer's lack of understanding." Given our earlier comments about our work with illiterate and CALD clients, this provision needs to be continued.

We have observed through our family law work that clients going through property settlement proceedings can be commercially vulnerable whenever the matrimonial home (or other property) has to be sold urgently. It is particularly important for separating spouses to be able to rely on ethical dealing practices with real estate agents. The current rule 17, which prohibits conflict of interest dealings, rule 21, which, in effect requires an agent to give accurate opinions about market sale prices or rent, rule 29 which mandates that the "real estate agent must obtain the maximum sale price for a client's property" and rule 30, which requires a real estate agent to give a client a genuine opportunity to obtain relevant independent professional advice or representation before appointing the agent are essential consumer protections in this type of situation. These are further examples of the need for a relevant Code.

3.7 Elder abuse and real estate agents – a note

Through our SLASS Programme, which focuses on elder abuse, we have observed that older people, in particular, can be very vulnerable in their dealing with others – including with real estate agents.

Once people are in their 70s and beyond they often will be coping with declining health and the associated difficulties of old age. They will also have additional stressors if they are carrying out onerous carer duties, caring for an aged spouse or sibling. Stress generally aggravates underlying health problems, and older people may have memory lapses, ranging from minor and occasional to significant and constant. Many older people simply will not take steps to enforce their rights because the stress of any conflict and/or litigation can aggravate all these

aspects of an older person's state of health. We have observed that older clients often lose their confidence and are often discouraged from taking action to enforce their rights because they are not regarded as being reliable enough witnesses.

Unfortunately, with the dramatic increase in the value of property in recent years, many older people whose sole asset is their family home have become targets both of their own families and of other people trying to acquire their property for development reasons.

We have encountered a couple of cases in the last year involving older people who were pressured into exclusive listings with particular real estate agents to sell their houses. The clients later changed their minds about the arrangements but had considerable difficulty extracting themselves from the listing arrangements. In two of those cases, our SLASS team used the Code of Conduct to assist the client to resolve the matter.

It is in these types of cases where a discrete, manageable Code of Conduct can be a very important tool.

4. CONCLUSION

Because the law in this area, at least in our experience, is complex and is not generally understood by members of the public, any change to the law needs to retain the consumer protections that currently exist.

We support the reforms that strengthen the existing protections, but believe that the continuation of the protections set out in the existing PADMA Codes must be part of this overall reform package. Consumers are rarely in the dominant position when any commercial bargain is entered into. The availability of accessible, clear and practically useful Codes are one way for the government to equalize this gap. The consumer protections are particularly necessary as a way of protection vulnerable members of the community – the very clients who attend at Caxton Legal Centre Inc. who cannot afford to pay for private legal assistance or representation.

The government, in addressing these matters, should consider this law reform issue in a whole-of-government approach.- specifically through education in our community generally.

We are happy to discuss any aspect of this submission.

CAXTON LEGAL CENTRE INC.

24 January 2014