

# MEDIA RELEASE

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## LANDMARK DECISION RELEASES BORROWER FROM UNJUST LOAN

**13 July 2004**

Late yesterday afternoon the Victorian Civil and Administrative Tribunal released a woman from liability under a contract with finance company Car and Home Finance Pty Ltd on the basis that it was unjust. The Tribunal's decision is believed to be the first of its kind in Victoria under the Consumer Credit Code.

The Tribunal found that Mrs Rosa Maisano, who spoke little English and could not read English, was signed up as a co borrower with her son for the amount of \$7500.00 with an interest rate of 29.18%. The Tribunal found that the loan was solely for the benefit of the son, a fact the lender did not dispute.

Mrs. Maisano claimed that the lender Car and Home Finance had not explained the contract to her and that if she had been told she would be liable for repayments under the loan or that her car was at risk she would never have signed.

Under the Consumer Credit Code, the Tribunal can re-open and make changes to a consumer credit contract - including releasing a borrower from an obligation to pay - if it is found to be unjust. The Tribunal set aside the contract and the mortgage held by Car and Home Finance against Ms Maisano.

The Tribunal made a number of recommendations to Car and Home Finance in relation to its practices, including amongst other things, allowing borrowers more time to read the documentation, providing adequate explanation of a borrowers liability under a loan contract, and allowing the opportunity to seek independent advice and make reasonable enquiries.

Lesley McKenzie, Principal Solicitor, Consumer Credit Legal Service, who ran the case for Ms. Maisano, thinks is this the first time a Victorian court or tribunal has ever re-opened an unjust credit contract under the Consumer Credit Code, which has been law for almost nine years. Said Ms McKenzie, 'This decision should make lenders stop and think about the practices used in relation to providing finance to disadvantaged consumers. The more often these cases are taken through the courts, the more the credit industry will realise that this sort of activity is just not on.'

However, these are not easy cases to argue and usually require legal representation thus creating barriers for consumers, who are often financially disadvantaged and therefore unable to fight these matters in court. Consumer Credit Legal Service Inc is one the few legal services in Australia that is funded to provide this form of assistance.

For further information contact Lesley McKenzie or Carolyn Bond from the Consumer Credit Legal Service (Vic) inc on 03 9670 5088 or 0412 032 987. For full details of the decision go to <http://www.austlii.edu.au/au/cases/vic/VCAT>.