



Australian Finance Conference ABN 13 000 493 907 Level 8, 39 Martin Place, Sydney, 2000
Telephone: (02) 9231-5877 Facsimile: (02) 9232-5647 e-mail: afc@afc.asn.au www.afc.asn.au

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SACC Review Panel
c/- SACC Secretariat
Financial System and Services Division
Markets Group
The Treasury
Langton Crescent
PARKES ACT 2600

Email: consumercredit@treasury.gov.au

Dear Ms Press, Ms Walter and Mr Cavanagh

Review of the Small Amount Credit Contract Laws

The Australian Finance Conference (AFC) appreciates the opportunity to provide industry policy input into the Review of Small Amount Credit Contract (SACC) Laws.

The AFC membership includes significant providers of consumer leases including of household goods. We are aware those members intend to individually make detailed submissions direct to the Review Panel about their business, their customers, the market and the lease product and services. The purpose of this submission is to provide an overarching policy response demonstrating and maintaining the availability and viability of the consumer lease product to meet consumer needs. Accordingly, this submission focusses on Questions 14-16 of the Review's consultation paper addressing consumer lease issues. Please refer to Attachment A.

By way of context to our feedback, we were surprised to see when details of the statutorily supported review of SACC laws (NCCPA s. 335A) were announced by the (then) Minister, on 7 August, that its parameters included consumer leases. Also that specific detail around what was to be the focus was not released until 17 September. The lack of forewarning, coupled with the tight deadline for input into the Review has consequently not allowed AFC to consult as broadly and in as much detail with members to canvas the full implications of the proposals as we would if there had been earlier knowledge of the proposed extended nature of the Review.

We further note that AFC members do not generally operate in the SACC-regulated small amount credit market with the exception of one, which we also understand is making a detailed submission. As a general policy position in support of the operational detail provided in their submission, we note a clear differentiation between their product offering and other products that also fall within the umbrella of a SACC. We suggest that nomenclature to group these products and have them treated as the same gives an inaccurate and inappropriate market perception and consumer-expectation that they are the same. Clearly a product with a term of 4 to 12 months is in contrast with one of four to six weeks.

We understand, however, that only a small proportion of SACCs are issued over these longer terms. We further understand that there are complex economic and operational challenges to providing loans with durations of more than 3 months in the SACC segment. Our member is only able to address these challenges and bring competition to the market with a differentiated product with the support of its stakeholders. The recent use of the term 'payday loan' to indiscriminately group all SACCs now jeopardises this support.

As a consequence our member may vacate this market segment which we suggest is at odds with the Government's policy intention of facilitating more sustainable finance options in particular for this otherwise financially excluded consumer segment. To minimise this and to retain competition in this market segment we suggest that some form of further differentiation based around term may be appropriate.

We do not otherwise offer any response to the Review's questions about regulation of that market, except for Question 10 rejecting the notion of a national database of SACCs.

We would welcome the opportunity to meet with you and have been in contact with your Secretariat in this regard and look forward to confirmation of arrangements. Please feel free to contact either myself, or Helen Gordon, through 02 9231 5877 or via email (ron@afc.asn.au) or (helen@afc.asn.au) to discuss our comments or should you require additional feedback or clarification.

Kind regards.

Yours truly

A handwritten signature in black ink, appearing to read 'Ron Hardaker', written in a cursive style.

RON HARDAKER
Executive Director

SMALL AMOUNT CREDIT CONTRACTS – QUESTION 10

The AFC sees no merit in creating a national database of small amount credit contracts ('SACCs'). The purpose and rationale for, and benefit, of the database is vague, especially when the Commonwealth Government is keen to minimise red tape and costs to business.

Australia already has a broad-based and well-regulated credit reporting regime.

The proposal amounts to establishment of a discrete credit reporting body selectively and discriminately only to record those consumers who enter into SACCs. Issues of access and use arise, as well as segregating and isolating a part of the consumer market. It also risks denying availability of credit consumer information to main-stream credit reporting bodies, to the detriment of responsible lending more broadly and credit risk assessment.

AFC RECOMMENDATION:

- A national database for SACCs is redundant and discriminatory. The proposal should be rejected.

CONSUMER LEASES – QUESTIONS 14 TO 16

Introduction

The consumer lease market has been regulated in Australia for several decades, starting in South Australia in 1972. 1996 saw that regulation extend across all states and territories and, in 2010, became part of national regulation under the National Consumer Credit Protection Act. March 2013 saw significant changes to the regulation of consumer leases. There has been no consideration given to the impact of those changes, yet additional change is now under consideration, without any substantive rationale to underpin proposed changes.

The AFC has been involved with the policy development for the consumer leases regulatory regime over this extended period recent features of which include the following:

- The NCCP Act clearly drew a distinction between consumer leases and all other forms of credit, including SACC's, by providing separate provisions for consumer leases in the Act itself and in the National Credit Code; and
- This distinction was more recently reinforced further by the 2012 Enhancements Act

It is therefore very contradictory to consider that SACC provisions could or should apply to consumer leases when all prior legislation and policy has – including as recently as 3 years ago – consistently created a distinction between these types of options for consumers.

When Commonwealth Treasury explored policy options for consumer leases in 2010 and 2011, its view was that the competing product for a consumer lease was an interest-free credit card, not small amount loans.

To date, the nature and role of consumer leases and their distinction from credit contracts has not been in contention.

However, considerations by the Review Panel seem to suggest a policy outcome under which leases and SACCs, (i.e. small loans), are viewed as substitutable and are, in substance, the same. This risks potentially leading to the abolition of consumer leases as a consumer choice, much as occurred with hire-purchase under s 9 of the National Credit Code and its predecessors under state law.

This approach appears to be based on an assumption consumer leases are only available, and marketed, to the same consumers who would apply for a SACC. This is wrong. Consumer leases are available to, and taken up by, the broader consumer market, consistent with responsible lending obligations.

Differences between Consumer Leases and Credit

In responding to the Review Panel, AFC believes it is crucial to appreciate a consumer lease is different to consumer credit, including SACCs. The difference is evident in the following ways:

Conceptually

- Rental payments are for the exclusive right to possess and use
- The legal form of a lease is a valid distinction from a credit contract
- This is recognised under the general law, regulatory statute (e.g. NCCP Act, ASIC Act) and taxation law

In consumer requirements and objectives

- Consumer choice
- Consumers seeking use of goods at reasonable rates, which is not available with a credit contract, which can cover a significant range of support services, e.g. servicing, delivery, installation, insurance, debt waiver, upgrading, repair, replacement, technological redundancy, etc
- Consumers wanting a discrete service for goods, rather than taking out a credit card or, assuming it is available, a SACC
- Consumers wanting a service with no mandatory fees and charges that typically apply to credit contracts, e.g. no establishment fee, no account-keeping fees, no accruing interest etc
- The focus of lessee consumers is the amount of rental payments and what they cover. Member experience indicates consumer lessees tend either not to want, or be able, to buy through obtaining credit
- SACC lenders (and lenders generally) have no on-going obligation to the consumer once the funds are direct deposited into the consumers account. Conversely lessors have on-going contractual and statutory obligations to the customer (eg, delivery, installation, service, repair, equipment changeover).

From government imposts, support and regulation/supervision

- Goods and services tax applies to rentals but not to credit. This is a tax on consumer lessees
- Income tax regime is relevant to rentals paid for leased goods
- To facilitate some in the community having access to household goods they would otherwise not be able to finance, the Department of Human Services pays, through its Centrepay service, rentals on behalf of those lessees direct to the lessor, who must hold an Australian Credit Licence
 - Centrepay charges lessors for these payments
 - Centrepay sets standards and supervises lessors to whom it makes payments
- ASIC licences and regulates consumer lessors

ASIC Report 447 – Assessment

The Consultation Paper is taking into account ASIC's Report 447, 'Cost of Consumer Leases for Household Goods'. There are aspects of the way in which that Report was developed which indicate it is flawed and inappropriate to apply in determining policy. Those flaws include the following:

- AFC members, covering the majority of consumer lease transactions by volume, inform us the limited number and type of lessors ASIC surveyed amounts to no more than 1% of the consumer lease market. This results in the conclusions drawn not to be reflective of the market and inappropriate to use as evidence of market failure necessitating additional regulation. We also contrast this to the sample and market spread of participants the subject of ASIC's review and findings contained in Report 426.
- The Report did not take into consideration one of the more prevalent contexts for consumer leases, (i.e. goods selected by a consumer at a retailer where the consumer chooses a consumer lease rather than other types of contracts available at point of sale, all of which are regulated by the National Credit Code, or cash purchases)
- ASIC overlooks the fact that today consumers, even those who may be described as vulnerable, are not ignorant of the cost of household goods, especially with ready access information via technology, in retail premises or promotions via mass media or flyers/brochures

- Failure to take into account consumer choice and requirements for taking out consumer leases. Licensed consumer lessors are required under responsible lending obligations to take into account consumer requirements and objectives as part of determining whether a proposed contract is not unsuitable. ASIC should have explored more the reasons for consumer choice and selection
- Cost comparisons do not take into account the differences between leases and credit, as outlined above. For example rentals must include a 10% tax, are likely to include services beyond mere rental for use of goods and, if the consumer is in receipt of payments from Centrelink, lessors are charged a fee for payments Centrelink makes to them
- ASIC appears to have approached the consumer lease market as a discrete homogenous one. The consumer lease market engages with consumers in a variety of ways, such as online, in retail stores, etc, meeting a variety of needs, requirements and expectations. ASIC also relies on the definition of 'cash price' set out in s 204 (1) of the National Credit Code. That definition applies in the context of credit contracts, not consumer leases. While s 170(1)(b) of the Code refers to 'cash price' to identify when a consumer lease will be regulated, that term is not defined for that situation. There is no consideration of whether 'cash price' would make any difference to consumer choices if they want to lease
- We also note the apparent omission of data from consumers (eg via consumer surveys) to support the assertions made in relation to consumer behaviour or reasons for product selection that favoured leasing.

These are our high level observations about the ASIC Report. We are aware AFC members are providing more detailed analysis to the Review Panel, drawing on their business and customer experiences. The credibility of the Report is undermined because ASIC did not include any AFC member when undertaking its survey of the consumer lease industry. Yet, ASIC drew broad brush conclusions based on its selective and narrow survey.

For these reasons we believe the Review Panel should temper its consideration of, and any reliance on, the ASIC Report with broad market and business information provided by other respondents, especially AFC lessor members.

In addition, we are mindful of monitoring and enforcement activities being undertaken by ASIC, with particular recent focus on SACCs and consumer leases. Where there are miscreants, it is appropriate for ASIC to exercise its enforcement powers and options in that direction. Individual circumstances do not provide a basis for broad regulatory reform.

Review Questions – Consumer Leases

Our policy responses to Questions 14 to 16 follow.

Question 14

The Credit Act applies different obligations to transactions according to whether or not the product is structured as a credit contract or a consumer lease.

Consumer leases should not be considered comparable with SACCs. Our reasoning is explained above. They remain different contract forms for different services, purposes and preferences, according to consumer requirements and objectives.

We do not consider SACCs as being alternative products to, or competing with, consumer leases. Four years ago, the alternative products in the retail market were viewed by Treasury and industry as consumer leases and interest-free credit cards. We are not aware of any development in the market or in product design which would have altered that situation.

AFC RECOMMENDATION

- SACCs and consumer leases should be not be considered as comparable products
- Regulatory obligations should continue to recognise the difference between SACCs and consumer leases, which is demonstrated by consumer choice

Question 15

As SACC and comparable consumer lease providers market to a similar consumer base, should the same provisions apply?

This question assumes a SACC and a consumer lease are both readily available in the marketplace and are substitutable. Lessor members tell us this is not the case and those members who currently offer consumer leases are be unlikely to offer SACCs. In addition, it also assumes the consumer lease market is directed at low income earners. It is not. Our members indicate consumer leases appeal to a broad range of consumers.

As observed earlier in this submission, the consume lease market is not homogenous, with its customer base being drawn from across the community with varying needs, requirements and expectation. For example, some may be customers in receipt of Centrelink payments, others could looking to satisfy personal needs to furnish households, which others may be wanting to acquire technological equipment, such as tablets and computers, with upgrading options and/or to provide to their children for study purposes or use for home office and/or employment. In this context, lessor members report high repeat demand by their customer base for their products and services as a matter of choice.

The benefits a lessee receives from a consumer lease as opposed to a borrower under a loan are different. The lessee receives extensive benefit and value from leasing, covering one or more goods, especially household items. By comparison, all a borrower receives is money credited to their bank account to be spent and applied as they wish, whether or not consistent with their expressed requirements.

Also, lessees in receipt of some Centrelink payments can obtain budgeting assistance by lease payments made on their behalf for household items. Treating consumer leases and SACCs as equivalents and regulating them the same risks undermining an important assistance initiative.

Refer also to our responses above to Question 14.

AFC RECOMMENDATION

- SACCs and consumer leases should be not be considered as comparable products, as consumer leases are utilised by a broad range of consumer, not simply low income earners

Question 16

If a cap on consumer leases that are comparable to SACCs was introduced, how should the cap apply?

There is no basis for introducing a cap on consumer leases. The Consultation Paper does not establish a policy basis for a cap. We take a cap to be the application of price control, something which the AFC has long been fundamentally opposed to.

There are a number of factors to consider, from the perspective of SACCs and consumer leases:

SACCs

- Interest is prohibited from being charged on SACCs – so no ‘cost of credit’ cap applies
- The financial return to a SACC credit provider is earned by the imposition of fees and charges, which are restricted and capped by statute
- These capping of these fees and charges are referable to the amount financed and repayments.

Consumer Leases

- There is no explicit amount financed, nor is it readily possible to specify an implicit amount
- This is because rental payments often include a variety of services and benefits, not simply a payment for use of goods, and as a result it is impossible to determine an accurate cost base, or ‘cash price’, from which a cap could be established
- The disclosed rental payments are what the consumer pays, as there are no mandatory fees or charges imposed by lessors, such as establishment fees or account-keeping fees and the like
- Rentals include the government impost of the goods and services tax
- Where a lessee is a Centrelink recipient and payments are made by Centrepay for leasing of household goods, the lessor is charged a fee for that which cannot be passed on the lessee
- The attribution of an explicit interest component, capped or otherwise, to a consumer lease risks undermining the very nature of the product, with considerable legal and taxation issue for consumer lessors and future availability of the product as a consumer choice
- Current law already requires clear disclosure of rental payments and the total rent payable. Through this consumer lessees are well aware of the cost to them of renting and, with many means readily available to them, the price of goods should they have wish to finance the purchase of them.

AFC RECOMMENDATION

- No cap on consumer leases is warranted, nor can one be calculated given the significant differences between leases and SACCs.

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