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

15 December 2015

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

Dear Ms Press, Ms Walter and Mr Cavanagh Email: consumercredit@treasury.gov.au

REVIEW OF THE SMALL AMOUNT CREDIT CONTRACT LAWS

The Australian Finance Conference (AFC) appreciates the opportunity to provide further industry operational input to assist inform the Panel's consideration of the consumer lease component of the Review of Small Amount Credit Contract Laws (SACC Review).

Following confirmation by the Secretariat, we understand that it remains the Panel's intention to release an Interim Report shortly taking into account feedback obtained from submissions, and through the various Roundtables in Melbourne and Sydney. And that the Interim Report is to include observations, and possible options where the Panel proposes to invite further input from stakeholders to assist shape final recommendations in the Final Report.

While we understand that the AFC, together with other stakeholders, will be invited to participate in that further consultation, our relevant Members (Thorn Group; FlexiGroup and Walker Stores) see value in providing the Panel with additional data at this time for the Panel's consideration and inclusion in the Interim Report.

Based on the submissions and the Roundtable Discussion, particularly the 10 November Consumer Lease Roundtable, our Members have identified three key areas of focus in relation to perceived areas of consumer risk and possible market failure particularly with financially vulnerable consumer (including Centrelink recipients) and possible measures to address those concerns; namely:

- Maximum pricing controls (eg caps);
- Enhanced disclosure (eg of the "cash price" of the leased goods in addition to the current requirement to disclose the total amount of rentals payable under the contract; of the features of the consumer lease product to enhance understanding of what the product the consumer is signing-up for); and
- Prohibitions to minimise harm to particularly vulnerable consumers (eg financially vulnerable consumers in remote communities (eg prohibition on uninvited door-to-door selling of consumer leases).

We assume these have also been the subject of consideration by the Panel.

While noting financially vulnerable consumers do not make up the greatest majority of the base (eg based on comments at the Roundtables appear to represent less than 1%) either for our Members, or the broader market, nevertheless our Members believe the concerns raised warrant action to mitigate risk of inappropriate behavior of any market participant to assist quarantine the potentially unwarranted yet damaging reputational contagion for our Members and the balance of the consumer leasing sector.

Our Members have worked collaboratively despite variation in business model and customer demographic to arrive at possible solutions for consideration by the Government designed to recognise that:

- a consumer lease is a valuable product to consumers. It provides consumers with a useful alternate to credit or cash to obtain household goods. And a payment structure that enables use of those goods delivered to their home and with an avenue to ensure that they remain fit for that purpose post-delivery (eg access to in-home installation and service; maintenance; relocation; collection; flexibility) for the duration of the agreement. For some with a bad credit history it may be the only option; and
- addresses those key issues while still ensuring a viable consumer lease market.

Recognising that our Members do not represent the views of the total market, they nevertheless believe their collective market presence, and alignment in the solutions proposed to address identified consumer risk or market failure, may be useful to the Panel's consideration. We also note that in framing this response that our Members have engaged with a significant portion of the balance of the sector including through their industry association, CHERPA, as well as directly with relevant larger participants to facilitate proposed solutions that appear to be workable across the relevant sector of the consumer lease market.

The outcome therefore may enable the Panel to narrow options for consideration through the next phase of consultation to the benefit of the overall process.

We would be happy to discuss the proposals in further detail or provide additional information. Please feel free to contact me by phone through the AFC Office 02 9231 5877 or via email helen@afc.asn.au.

Kind regards.

Yours truly

Helen Gordon
Deputy Executive Director

AFC FURTHER SUBMISSION TO SACC REVIEW PANEL

KEY ISSUES + PROPOSED OPTIONS TO ADDRESS

AFC provides the following additional information to highlight areas that our Members have undertaken extensive work on, following the Roundtables and a review of the submissions, to be in a position to propose solutions to assist shape the Interim Report and allow the Panel to be aware of areas of industry support for proposed reform and therefore focus future consultation on those that may remain contentious among stakeholders.

This feedback is provided in the context of the background provided in the AFC's original submission and summarised below:

Background
The consumer lease is a mature product that has been in existence in the market as a viable alternate to credit or cash for consumers to access and use household goods for several decades.

The consumer lease was not a product designed with the intention of avoiding regulation under the National Credit Code (or its UCCC predecessor) and suggestions that the product is a "sham" or a credit contract in disguise fails to appreciate key elements of differentiation.

If the lease gave the consumer the right or option to purchase the hired goods (eg a hire-purchase contract) or was effectively a sale of the goods by instalments, the legal effect under the NCC as it currently stands would be that the product would be deemed to be a credit contract and regulated as such. If a provider offered such a product without complying with the various key disclosure and other NCC obligations, in breach of the NCC, their action could be challenged including by ASIC using a vast array of enforcement tools designed to address wrong-doing to protect consumers.

For leases that do not have those features (ie are not a contract for the sale of goods by instalments or a hire with a right or option to purchase) the variations between the consumer lease and credit are significant enough to have warranted a regulatory framework that deals separately with the consumer lease in contrast to credit. Features include the package of benefits encompassed within the product (eg delivery, installation, maintenance) in addition to a charge for use; features that generally have no equivalence in the credit contract context. This is not just industry's view, but the view of Parliament, and has been, as policy design, tested a number of times over the years including as recently as the Enhancements Act. The outcome has seen the separation of the regulation between the products retained.

This separation of treatment between the lease and credit contracts is also relevant in other contexts, including the tax treatment of the products and who is able to claim depreciation or incurs a GST liability, for example, which is critical to pricing, profitability and consequently a viable and sustainable market.

However, our Members acknowledge the range of concerns identified by ASIC and other non-industry stakeholders including in submissions lodged with the Panel and in the discussion at the Consumer Lease Roundtables both in Melbourne on 9 November and in Sydney on 10 November. And, the AFC and its Members are aligned with the views expressed that consumers, especially those that are financially vulnerable, should be protected from egregious pricing and should have sufficient information disclosed in a form that enables them to readily comprehend the consumer lease product that they are agreeing to acquire.

And while also noting that best practice regulation would see the Government committed to targeting regulatory reforms to an identified area of consumer risk or market failure – in this case the financially vulnerable market – our Members would support a regulatory reform solution that would have application across the customer-base. And a solution that is underpinned by an assumption that ASIC will continue to be active in its enforcement function by ASIC in pursing its regulatory oversight of our industry. All consumers benefit; an outcome that can only lead to better outcomes for participants in the consumer lease market more generally, including AFC Members.

1.Maximum Pricing Controls (ie caps)

A.*General Pricing Control:*

Our Members, in principle, agree to support maximum pricing controls (i.e. caps) as a means of addressing potential consumer risk (eg through inappropriate pricing) of the consumer lease of household goods product in the financially vulnerable market segment. In providing the support, we acknowledge the likely need for the Government to apply the cap holistically across the NCC-regulated consumer lease of household goods portfolio.

Key principles:

- A cap based on an APR%, while appropriate for a SACC (or credit contracts more generally) is not appropriate for a consumer lease given the features of a consumer lease and what is encompassed in the rental payments (e.g. delivery, installation; in-home service, maintenance, relocation, collection, flexibility, etc).

- Caps should more appropriately be based on a formula built on a multiple of the concept of the "cash price" for "household goods" over nominated lease terms. This would necessitate a definition to be included in the NCC based on the following:
    - for new goods – "cash price" to be the Manufacturer's Recommended Retail Price (RRP) or third party supplier's price. (Supplier includes retailer);
    - for used goods (i.e. re-rent stock) – "cash price" would be the price as determined by the lessor but no higher than the original RRP or third party supplier's price
    - Household goods – we suggest an exclusionary definition would be appropriate proposed (e.g. household goods does not include vehicles or like goods. This concept has been recently defined in work being undertaken by ASIC. Attachment 1 AFC Draft household goods definition)

- Our Members propose caps based on the above calculated as follows:

TERM	MAXIMUM CAP
0 - 12 months	1.8 x "cash price" per annum
> 12 – 24 months	1.5 x "cash price" per annum
> 24 months	1 x "cash price" per annum

- The cap to be introduced would be for all consumer leases that satisfied the product type of "household goods". From a system and operations perspective, it is simpler not to have a distinction on whether a contract is a "cap or no cap contract" based on consumer type or lease contract term.

- Having a cap based on multiples of the "cash price" for nominated lease terms recognises the distinction between consumer leases and credit contracts (as has been outlined in detail in the AFC submission and those of our members) and allows the lessors in the market to compete on price, cover the costs of running a leasing business and provide a return to shareholders. The proposed caps will fundamentally prevent egregious charging by consumer lessors and therefore protect consumers in general.

- The introduction of pricing caps will automatically give ASIC power to prosecute lessors who enter into a consumer lease for an amount greater than the cap. AFC presume that similar to the SACC laws, the NCC would be amended to have prohibited monetary obligations, meaning a consumer lease for which a cap applies must not impose a prohibited monetary obligation on the lessee.

- By way of completeness, our Members recognise that in considering this solution it may be appropriate for the Panel to consider potential market developments and whether any additional regulation may be required. For example, in relation to early termination provisions including fees levied. For example, concerns that consumer lessors may seek to include an early termination fee provision set at a level that might inhibit a customer from terminating the agreement early effectively requiring them to continue to pay rentals to the end of the lease as contracted. We suggest that there is extensive existing legal inhibitors that currently operate to prevent an early termination fee proposed to be charged in these circumstances exceeding a reasonable level and potentially found by a Court to be a penalty, which is legally prohibited. Further, we would also advise the Panel that if our Members have an early termination provision, that in relation to situations where a consumer lease has been varied as a result of a NCC-hardship notice (e.g. agreement to allow the customer to return the goods and for the lease to be terminated) that their practice is to waive that requirement as part of the negotiated-termination of the lease.

B. Centrelink Recipients 50% income / rental no more than 20% gross income – Deemed Pricing Control:

AFC and our Members agree to support an equivalent provision to the SACC NCCPA s. 133CC + NCCP Reg 28S

Key principles:

- For a consumer that receives at least 50% of their gross income as payments under the Social Security Act 1991 – rentals under the consumer lease offered to that customer would not exceed 20% of the consumer's gross income for the payment cycle.

- Our Members recognise that this would be in addition to the broader NCCPA responsible lending requirements under which *inter alia* our Members are obliged to make reasonable inquires about, and verify, the customer's financial circumstances (including any other repayment / payment obligations under other credit products or consumer leases).

2.Enhanced disclosure

(1) Disclosure of Cash Price:

To support the proposed inclusion of a cap, our Members understand and support:

- disclosure of the RRP or Third Party Supplier's Price

This will be in addition to the current requirement to disclose the Total Amount of Rental Payable under the lease [eg NCC s. 174(f)].

(2) Other Proposed Disclosures to Assist Consumer Understanding

Our Members support **disclosure to assist enhance consumer understanding** that:

1. they are entering into a **lease contract**; and
2. the **key features** that distinguish this from a credit contract (e.g. will not own the goods at the end of the lease term; will pay more than the "cash price" of the goods because of the additional features that come with use of the goods under a consumer lease); and
3. highlights that,while they will not own the goods at the end of the lease term, they will nevertheless have a range of options available to them at that time that may see them retaining possession as the owner of those goods.

Key Principles:

- Adopting the form and content prescribed in NCCP Reg 74(4) and NCC Form 6/7 Disclosure about credit contracts revised to fit with the consumer lease product:

> **BEFORE YOU SIGN:**
>
> **IMPORTANT THINGS YOU MUST KNOW**
> You are entering into a consumer lease contract. A consumer lease contract is different to a credit contract. The key differences are set out below.
>
> · You will not own the goods at the end of the consumer lease.
> · The total amount of rental payable as shown in the consumer lease will be more than the cash price of the goods.
> · A consumer lease provides you with benefits such as having the goods delivered to you and if there is a fault with the goods, having the goods repaired or replaced during the term of the consumer lease. These benefits are provided at no additional cost.
>
> The goods must be returned to the lessor at the end of the consumer lease unless the lessor is prepared to negotiate the sale of the goods with you.
> [*OMIT the following if not applicable]*
>
> *The lessor is prepared to negotiate the sale of the goods to you at the end of the consumer lease.*
> *The lessor will provide you with an estimate of what the sale price of the goods will be at the end of the consumer lease and how to contact the lessor to negotiate the sale of the goods.*
> *If you do not want to negotiate to own the goods at the end of the consumer lease, then the goods must be returned to the lessor.*
>
> If the goods are not returned you will be required to continue paying the rental amount shown in the consumer lease.
>
> If this contract says so, you may also arrange with the lessor to continue renting the goods from the lessor at an agreed rental amount, or upgrade or downgrade the goods and enter into a new consumer lease.

- The above will be included on the same page and immediately above each area where the customer is to sign the consumer lease (akin to the prescribed disclosures for credit contracts e.g. NCCPA s. 17(16) + NCCP Reg 74(2) + Form 6 or Form 7) - and where made by electronic communication – be prominently displayed when, but not after, the customer (or each of the customers) signs.]

3.Controls to inhibit unsolicited door-to-door sales

To inhibit uninvited or unsolicited door-to-door sales of consumer leases, including in remote and regional areas in Australia, AFC and our Members support the form of wording that had been included in exposure draft legislation provided by Treasury in 2011 to amend the NCC to prohibit the uninvited door-to-door selling of consumer leases, in addition to credit contract [as incorporated Attachment 2 Treasury Draft 2011 Prohibition D2D Uninvited Sales of Consumer Leases].

Attachments:

1. AFC Draft definition of Household Goods
2. Treasury Draft 2011 Prohibition D2D Uninvited Sales of Consumer Leases

*** *** ***

ATTACHMENT 1

PROPOSED DEFINITION OF **HOUSEHOLD GOODS** to exclude **"VEHICLE OR LIKE GOODS":**

AFC suggests that it may be appropriate to include a definition of "household goods" to minimise unintended outcomes beyond that component of the consumer lease market that has been the subject of focus in the SACC Review (and ASIC work to date).

Rather than a definition that seeks to explain what is encompassed within the term "household goods" – we may wish to suggest an exclusionary approach which focuses more on what is not intended to be covered. For example,

Household goods does not include **vehicles or like goods**.

For the purpose of the above definition, **vehicles or like goods** means:

a) A motor vehicle that uses, or is designed to use, volatile spirit, gas, oil, electricity, or any other power (except human or animal power) as the principal means of propulsion, but does not include a vehicle used, or designed to be used, on a railway or tramway; or
b) A vessel that is used, or intended to be used, in navigation by water or for any other purpose; or
c) Machinery or equipment that is designed to be attached to, or towed by, a motor vehicle described in paragraph (a) or a vessel described in paragraph (b).

Examples of such goods: motor car, motor cycle, all-terrain vehicle, boat, jet-ski, boat engine, caravan, trailer, ride-on mower.

*** *** ***

[By way of background: This definition of vehicles or like goods been recently used by ASIC in relation to a draft proposed condition to be included in the licenses of ACL-holder auto financiers, but could be used for the purpose of ensuring that the proposed agreed positions are confined to the area the subject of the review – consumer lease of household goods].