



Response to the Interim Report for the review of the small amount credit contract laws

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Phone: 1300 353 027

Email: info@cherpa.com.au

Website: www.cherpa.com.au

Contacts: Steve King, President
David Sealey, Committee Member
Andrew Gresswell, CEO

Executive summary

Overview

- 1 CHERPA, the Consumer Household Equipment Rental Providers Association, represents 40 consumer lease providers who currently service 65,000 active consumer leases.
- 2 Our response is founded on five principles:
 - There is an economically valid business model that is beneficial for consumers and business owners alike;
 - Current Legislation inaccurately defines the substance of a real consumer lease;
 - Consumer leases are self-regulating for consumers and prevent debt spirals;
 - SACCs and consumer leases are not comparable;
 - Some forms of consumer leases are credit contracts in disguise and are causing confusion and harm;
- 3 Our submission demonstrates with clear evidence that:
 - the performance of CHERPA members and the industry more broadly is as good and even better than mainstream providers of other consumer finance products.
 - CHERPA's alternative regulatory model established in their Code of Conduct protects consumer from harm in the short and longer terms;
- 4 Our submission also demonstrates the very real need and opportunity to:
 - more clearly define the substance of a consumer lease and redefine some consumer leases as credit contracts;
 - properly establish consumer leases in formal regulations to improve consumer outcomes and protections now and for the future;
 - establish consumer leases as a core financial product that can help consumers move to financial inclusion by self-regulation;

Key Observations

- 5 Out of the approximately 65,000 active consumers CHERPA members had as customers last year, 3 lodged disputes with an EDR and none were substantiated. This rate is vastly better than any other consumer finance provider sector – including credit cards, consumer loans or home loan.
- 6 CHERPA has an Industry Code of Conduct that is a viable alternative for an enhanced regulatory model. It is successfully implemented by members and is providing outstanding results.
- 7 As an alternative, improved regulatory model, evidence shows that the Code of Conduct is achieving outstanding results:
 - a. Helping protect all consumers accessing consumer leases from harm; and
 - b. Protecting consumer incomes giving them an increased ability to manage their budgets effectively.

- 8 The Industry Code of Conduct helps create and protect the substance of leases as operating leases that are beneficial for consumers and substantially improve consumer outcomes.
- 9 The opportunity for an “at risk” consumer to create a debt spiral assisted by “overpriced” cost of credit under an operating style consumer lease is almost fully extinguished by the CHERPA Industry Code of Conduct.
- 10 Many consumers want and need a lessor to provide a full service *operating* style lease. Many lessors are assisting needy members of their community by delivering goods, installing goods, setting up and providing verbal use instructions for goods, providing telephone support in the use of the good, providing the surety that a good can be and will be quickly fixed/replaced upon breakdown, a good can/will be replaced with new good and the consumer can trust the lessor to do it ethically.
- 11 Should a 48% interest rate cap be applied to consumer leases the viability of the industry would be significantly, even catastrophically, impacted with a flow-on negative impact on the vulnerable consumers who are trying to access essential household goods.
- 12 There is much “noise” concerning apparent consumer harm created by consumer groups and non-industry stakeholders. This review process was an opportunity to present hard evidence of the apparent significant harm happening.
- 13 All the consumer groups submissions only provide a TOTAL of 25 case studies detailing harm. Three of them were not relevant or pre-dated the current legislation under review.
- 14 ASIC in their Report 447 noted they found “20 out of 39” that were high cost (and presumably causing harm?).
- 15 Legal Aid NSW recorded 150 apparently harmful leases over 18 months in Aboriginal communities but it is unclear if they predate current legislation and it is understood in the industry that these were provided by a lessor no longer operating in the industry.
- 16 That is a total of 192 potentially harmful leases actually recorded for the purpose of the review.
- 17 There are about 300,000 - 350,000 active consumer leases in Australia right now. Over the last year that means that the VERY worst anyone has been able to do is find a maximum of 142 leases that are potentially harmful. (142 assumes all case studies occurred in the same year. 12 months of 150 = 100 and occurred in the same year as case studies.)
- 18 This an extraordinarily low ratio and a fantastically good result as an industry. It is a clear indication to the Panel that there is no cause for action whatsoever, given that nothing is broken when the facts are properly established.
- 19 However, there are a very limited number of examples of unscrupulous lessors who have operated in the industry causing consumer harm. We do not agree with their actions and have outlined our recommendations to bring these “rogue” operators under control or prevent them in the future.
- 20 The median operational cost to supply a good was \$745 per year per item. That is, every item rented out required \$745 in operational costs each year to support the good in place with the consumer.
- 21 The median profitability of members was 7.18% of revenues.
- 22 In matters of statutory warranty and any other kind of support customers ALWAYS ring the lessor. They don’t ring manufacturers and in any case manufacturers WILL NOT

accept warranty claims without proof of purchase of goods which is held by the lessor. This contrasts as example with Flexirent where their customer would call the retailer or manufacturer and would NOT call Flexirent for warranty or support.

- 23 Many of our members are small “mum and dad” businesses operating in local communities. Some of the people they look after have no-one else to turn to if they need things fixed or repaired or even just moved in their accommodation. They genuinely need the support of their local business to help with their essential items and our members are the human beings living in local communities that help people out when they need support.
- 24 Independent researchers Ashton di Silva and Marcus Banks from RMIT agree that consumers on low incomes need to be able to access consumer leases and that independent research needs to be carried out to properly understand the consumer leasing market, in particular, why and how those on low incomes used them.
- 25 We captured good preliminary data showing that the “add-on” service provided by lessors are used extensively and must therefore be valued by consumers.
- 26 **IMPORTANT: Amongst CHERPA members AND the industry broadly the hard, factual evidence clearly shows that there are no broad or systemic problems with the way in which lessors comply with the responsible lending requirements in relation to low-income consumers and Centrelink recipients.**
- 27 Our members are constantly flabbergasted that anyone would think that they are promiscuous in handing out goods that they have paid hard money for to people who are a significant risk of not being able to pay for it. This notion entirely defies basic mathematical and business logic and there is no way a business could survive if it acted promiscuously in conducting its due diligence (effectively equates to RLO).
- 28 The “less than 10%” proposition, if implemented, would result in a significant number of consumers losing the only access they have to a number of essential household goods – on our estimate about 33%-50% or more of consumers on low incomes who currently access consumer leases would lose access to goods.
- 29 CHERPA members have already set and implemented protected earnings cap amounts as an enhancement to their RLO.
- 30 Evidence could not be clearer that CHERPA members, and the industry broadly, responsibly carry out RLO.
- 31 In establishing the 20% and 50% income cap protection rules CHERPA has done work using ABS statistics on household expenditures (from 2011) that helps validate these rules.
- 32 We found a high probability that when these income cap protection rules are applied it is unlikely that we could unknowingly push a consumer into hardship - effectively building in “squeeze room” for the consumer and providing them with a better ability to manage their budget.
- 33 The proof is in the pudding for this methodology - hard evidence demonstrated in our response clearly shows that consumers are protected from harm if RLO and the enhancements CHERPA members have implemented are properly used to assess consumers’ ability to make repayments.
- 34 No rational reason or any evidence whatsoever has been provided to support the contention that consumer leases should be second class to SACCs. That appears to be

manifestly unfair and prejudicial to the industry and consumers alike given the demonstrated good track record of the bulk of the industry. Given the good record exactly the opposite should be contemplated – SACCs should be ranked secondary to consumer leases.

- 35 The interim report contention that consumer leases are to be treated as secondary to SACCs and only able to access “less than 10%” of income is ridiculous and will cause vastly more consumer harm than any action conducted to date by even the worst of the rogues who’ve left the industry.

Recommendations

36 We make the following recommendations for the review to consider:

- A. That there are significant costs to setting up, installing, supporting, maintaining and finalising consumer leases over and above the immediate capital and cost of capital to purchase goods.
- B. That multiples less than recommended would see many small operators in difficulty providing consumer goods to markets asking for them.
- C. That multiples of the manufacturer’s recommended retail price be set as caps so that both lessors and consumers have certainty about the maximums that can be charged in any given period.
- D. That the caps suggested take into account all the costs of purchasing, installing, supporting and maintaining goods over the terms shown;
- E. That the suggested caps be:

Contract Term	Maximum Multiple that can be charged
12 months	2 times the manufacturers RRP
24 months	3 times the manufacturers RRP
36 months	3.5 times the manufacturers RRP
48 months or longer	4 times the manufacturers RRP

- F. That there are very simple and very important reasons why the 48 per cent interest rate cap should NOT apply to consumer leases;
- G. That a very clear description should be drafted into the regulations specifically identifying that a consumer lease may ONLY be a fully supported operating style lease when the lessor is providing the consumer with the “functions” that a good provides for the whole of the period that a consumer has the lease. That is the customer is wearing very little risk of ownership.
- H. That a fundamental tenet of consumer leasing “a consumer “gets all the benefits of ownership without the risks of ownership” be enshrined in legislation.
- I. That there should NOT be a maximum term limit for consumer leases. Instead we recommend that a Maximum Amount Chargeable, defined as a multiple, should be applied. It should be up to the lessor to determine the period over which they wish to charge that maximum multiple.

- J. That if a cap (as a multiple only) is to be applied to consumer leases it should be applied to all leases for household items.
- K. That the only type of consumer lease that is an acceptable form of consumer lease is the operating style lease that is fully supported by the lessor.
- L. That the cash price should be the Manufacturers Recommended Retail Price.
- M. That the Panel to adopt the CHERPA recommended multiples outlined above as caps, and that add-on costs are inclusive except for:
 - i. Delivery costs.
 - ii. Limited liability cover.
 - iii. Repairs and maintenance outside of statutory warranty and “fair wear and tear”.
- N. That a review cycle of the cost base for the caps be established, that it is annual and locked in with and related to CPI or other equivalent relevant data set and cycle.
- O. That the use of extended warranty cover arrangements be made illegal in the provision of consumer leases.
- P. That further research be conducted to determine the real value that consumers place on the “value added product” found in operating style leases.
- Q. That there should be a protected earnings amount introduced as follows (from our current Code of Conduct):
 - i. The total costs under the lease agreement does not exceed 20% of the lessee’s income after tax
OR
 - ii. The total costs under the lease agreement does not exceed 50% of the lessee’s net disposable income after tax and living expenses.
- R. That if a lessee wishes to terminate a lease agreement that termination payments be restricted to:
 - a. \$0 if the lease has been in operation in excess of 90 days and the lessee complied with the payment obligations under the lease;
 - b. 90 days’ rental payment if the lease agreement has not been in operation for 90 days or the lessee has not complied with the payment obligations under the lease;
 - c. \$0 if it’s due to genuine hardship, subject to the leased goods being returned to the Member in good working order, reasonable wear and tear excepted;
 - d. Reasonable cleaning costs at fair commercial prices if lessee returns the leased goods and the goods are not in good working conditions, reasonable wear and tear excepted.

Introduction

37 CHERPA, the Consumer Household Equipment Rental Providers Association, represents 40 consumer lease providers in Australia. Our members write approximately 20% of all consumer leases written in the market and currently service approximately 65,000 consumers with active consumer leases.

38 We are responding to Interim Report for the Review of SACC Laws to ensure that:

- Critical information about the consumer leasing market which has not been previously or has not been properly addressed is brought to the Panel's attention;
- Concerns are addressed relating to the potential harm that could be done to a very substantial segment of our members' customers (the very consumers the laws are intended to protect)
- Final recommendations are not prejudiced, and therefore both consumers and industry harmed, by the well-meaning but misplaced actions of a few stakeholders.

39 The foundation principles of our response are:

A. There is an economically valid business model that is beneficial for consumers and business owners alike:

The industry has been providing a useful and beneficial service to a population of consumers for 80+ years – in substance, true leases or at the very least operating leases. So clearly there is a group of consumers who want and/or need the service being offered and have enjoyed the benefits of receiving the service for a long time. The longevity of the business model across a diverse range of business sizes, a diverse range of geographic locations and in a diverse range of economic conditions is further evidence that a range of consumers want or need the service proffered.

B. Current Legislation inaccurately defines the substance of a real consumer lease:

The service described at item A above was deemed to be a consumer lease by the NCCP Act in 2009 but the legislation does not properly describe the substance of the preferred lessor/lessee transaction that is occurring in practice. The substance of the transaction for this particular type of consumer is that s/he wants or needs the benefits of ownership of a good without the full risk of ownership. The consumer wants the lessor to keep most of the risk. Some lessors are only providing financing arrangements in the guise of consumer leases. These operators have very low comparable overheads and are taking excessive rents from the industry and from consumers alike. One simple test for a finance lease versus a consumer lease is to establish if a consumer can call on the lessor for support relating to the good. If they can only call the manufacturer and cannot call the lessor for support, it's a finance lease (sale by instalment) NOT a consumer lease.

C. Consumer leases are (or should be) self-regulating for consumers, preventing debt spirals:

Consumers should be able to simply return goods at any time without penalty. Consumer leases are effectively self-regulating for consumers and inherently prevent consumer debt spirals – especially true where RLO and income protections caps are implemented, as they are for CHERPA members and the consumers who are their lessees.

D. SACCs and *operating* style consumer leases are NOT comparable:

SACCs are for amounts of cash and consumer leases are for physical products. Cash can be squandered unlike physical products provided through consumer leases. In terms of protecting against debt spirals, once cash is spent it cannot be returned whereas goods can simply be returned to a lessor. In terms of income generation, when cash is returned the cash is returned with fees and interest. However, a good is **always** returned depreciated. Goods require extensive support when provided under operating style

consumer leases. Cash requires no support whatsoever. Consumer leases are used to access goods over the short, medium and long term that are essential to the function of households and for maintaining social inclusion. SACCs are used for short term money shortages.

E. **Some consumer leases are credit contracts in disguise and are causing consumer confusion and harm:**

As a result of a poor definition of a consumer lease in the Legislation there are a number of lessor operators now in the market that appear to be providing financing arrangements for consumers in the guise of consumer leases. Using consumer leases as a guise for financing consumer goods has created confusion and resulted in harm for some consumers who were unaware that no support services are provided.

Background

The Consumer Household Equipment Rental Providers Association (CHERPA)

- 40 The rental of household goods to consumers has been taking place happily and without widespread problems in Australia for at least 80 years. Some CHERPA members have a very long history, 40+ years, of successfully renting essential household goods to happy consumers.
- 41 **Industry Code of Conduct** - In 2013 the industry formed a peak body, the Consumer Household Equipment Rental Providers Association, CHERPA, to address concerns that the long term industry operators held. CHERPA began engaging with stakeholders to understand their concerns and in 2014 an Industry Code of Conduct was accepted at CHERPA's Annual General Meeting.
- 42 CHERPA has continued engaging with stakeholders since that time culminating in the recent voluntary upgrade to its Industry Code of Conduct for members to include:
- Return of items at no cost under hardship
 - Estimated Retail price disclosure
 - Specific percentage caps on both the amount of net income and discretionary income that can be used as payment for a consumer lease provided by members.

CHERPA Members

- 43 On Average CHERPA members have been in the industry for more than ten years
- 44 There are more than 10 members who have been in the business for more than 20 years and
- 45 A couple of members have been in the business as employees or business owners for more than 40 years.
- 46 Last financial year there were 3 complaints reported to external dispute resolution bodies about CHERPA members of which none found the member liable. That is the EDR schemes found the members to have acted appropriately in all cases.
- 47 The estimated total number of goods rented out by CHERPA members is currently 108,000

48 Businesses range in size from:

>\$100,000 turnover with 200-300 units on lease and approx. 150 -200 customers to \$40,000,000 turnover with approximately 27,000 units on lease and approx. 24,000 customers.

49 CHERPA members as a cohort in the consumer leasing industry have been highly compliant with regulatory requirements, have excellent customer relations and have demonstrated ongoing industry best practice as evidenced by the very low number of complaints received by our members.

CHERPA Member performance compared to other providers of other forms of consumer finance

50 CHERPA members had an average 65,000 active leases in 2015.

51 Both CIO¹ and FOS² annually report the number of disputes lodged with them, identifying the name of the FSP and the finance type for which the dispute was recorded. Both only report numbers of disputes above a reporting threshold. The metric used is “chance of dispute per 100,000”.

52 Neither the CIO nor FOS identified any CHERPA members as having disputes lodged.

53 However, members notified CHERPA of 3 disputes lodged with either CIO or FOS in 2015. None (0) were substantiated. This is a chance per dispute of 4.6 per 100,000.

54 By comparison in 2015 the FOS reports that the chance of dispute rate:

- a. for consumer loans is 42.0 per 100,000 (median);
- b. for credit cards the rate is 21.3 per 100,000 (median); and
- c. for housing finance, the rate is 41.2 per 100,000 (median).

55 This is very clear and accurate evidence that:

- a. CHERPA members “behave” themselves, acting as responsible FSPs by:
 - i. Carrying out responsible lending to all consumers;
 - ii. Identifying then delivering up on consumer’s requirements and objectives;
 - iii. Treating ethically with those who fall into hardship and need to terminate or vary consumer leases
- b. the current regulations, if addressed and implemented in business, can and do work to protect consumer’s interests; and
- c. there is a model way for conducting a consumer leasing business that achieves reasonable business outcomes, good consumer outcomes and good community outcomes.

¹ <http://www.cio.org.au/cos/assets/File/CIO%202015%20Annual%20Report%20on%20Operations%281%29.pdf> – page 73

² <http://fos.org.au/comparativetables/2014-2015/index.html>

Feedback and comments

Chapter 4 — Consumer leases

Observation 6

The high cost of consumer leases appears to be causing consumers financial harm. While there are technical differences between credit contracts and consumer leases, these differences do not appear to justify consumer leases being excluded from the consumer protection regulations that apply to other forms of finance under the Credit Act.

Option 9

Introduce a cap on the maximum amount a lessor can charge. The cap would apply to a defined class of leases covering low-value goods.

Our Comments on Observation 6 & Option 9

- 56 Observation 6 contends that all consumer leases, all being high cost, all cause consumer harm. This a gross generalisation and according to the RMIT submission the “high cost” assertion and the “harm” assertions are actually fundamentally wrong. Consumers choose consumer leases because they take less of their periodic income than almost any other form of consumer financing.
- 57 The statement that consumer leases are “High cost” is at odds with other content in the interim report - on page 23 you note that “low-cost leases are available” and support the claim referencing Thorn’s submission and ASIC report 447.
- 58 Let’s have a look at the actual evidence before us:
- 59 You cite 2 and ONLY 2 cases where a high cost appears to have been charged. All the consumer groups submissions only provide a TOTAL of 25 case studies. Not all are for “high cost of lease”. ASIC in their report 447 noted they found “20 out of 39” that were high (Report 447 page 6) and in 1 case 884%. From Report 447 it is a little difficult to interpret exactly how many in total were excessively high but adding all of them up yields a maximum total of 42 (2+20+20) potentially “high cost consumer leases” actually recorded for the purpose of the review.
- 60 There are about 300,000-350,000 active consumer leases in Australia right now that means that the VERY worst anyone can do is find a maximum of 42 leases that are high cost. This an extraordinarily low ratio and a fantastically good result as an industry. It should be indicating loud and clear to the Panel that there is no action whatsoever to be taken given that nothing is broken when the facts are properly established.
- 61 Data from CIO and FOS annual reports (shown in this response) does NOT support the contention that they are “high cost and causing harm”. If they were, a relatively much larger number of disputes regarding consumer leasing would be recorded by CIO and FOS. It is the experience of our members that consumer advocates appear to be well motivated to drive disputes to the ombudsman services. We wold expect that if there were large numbers of disputes that these would be reflected in the ombudsmans’ reported numbers.
- 62 The hard facts actually indicate that when leases are provided by responsible FSPs there is very significantly fewer disputes compared to other forms of consumer financing.

- 63 You've cited the 884% figure from Report 447 as evidence of "high cost consumer leases". Frankly this is an appalling piece of cherry picking of the most ridiculous kind by ASIC. It is clearly an outlier and of course it makes dramatic reading. But surely the Panel and the Secretariat are better off finding real evidence rather than relying on what is clearly a statistical outlier. For the sake of good policy and government could we please leave the tabloid journalism to the tabloid press.
- 64 We also note that it is well known in the industry that there were problems with one or two particular lessors who have left the industry. It would be well worth the Panel's efforts to understand if that is the case. If these people have been "policed out" that is direct evidence that the current regulations are working.
- 65 Having made these points, we agree that some, but very few, examples exist of individual operators perpetrating "high cost" consumer lease and that these leases, because of their high cost, could cause consumer harm.
- 66 We've recommended the use of multiples as caps to create industry certainty, to establish bright lines for easier regulation and enforcement resulting in better abuse prevention in the future.
- 67 We note that consumer groups regularly cite case studies as proof that consumers are generally being harmed by "high cost" consumer leases. However, there is a sheer absence of data that can be used to indicate a systemic change is required. Legal Aid NSW is the only submission to provide actual numbers to the SACC review. NO other consumer group provides ANY numbers as evidence at all.
- 68 Having addressed our concerns with the "high cost of consumer leases" contention we make the following observations:
- a. There are a very limited number of examples of unscrupulous lessors who have operated in the industry charging excessively for leasing consumer goods.
 - b. We do not agree with their actions and have considered what action might be taken to bring these "rogue" operators under control or prevent them in the future.
 - c. One of the actions is to identify a set of maximum multiples (caps) that can be charged for a good in over period of time. We've outlined our recommendations below.

CHERPA RECOMMENDATION 1:

Further information on the following is requested:

- *All other products regulated by the Credit Act are subject to a cap on costs. Is there any reason why users of consumer leases for low-value household or electronic goods should not have the benefit of this protection?*

- 69 After consultation with members we found that there are significant costs to setting up, installing, supporting, maintaining and finalising consumer leases over and above the immediate capital and cost of capital to purchase goods. We alluded to this in our submission. We also note that small industry businesses cannot access goods or capital at the same low cost base of larger business. Mainstream banks will not finance consumer leasing businesses securitised on the consumer lease portfolio. Direct fungible assets are required – bricks and mortar, term deposits. Rates in the private finance market for consumer lease funding are currently 25-27%.

- 70 A survey conducted amongst members indicated that a few member lessors currently required lease multiples of up to 4 times retail price to sustain their business model.
- 71 Multiples less than recommended below would see some small operators in difficulty providing consumer goods to markets asking for them. We have provided multiples of the manufacturer’s recommended retail price as a set of caps to be applied that gives both businesses and consumers certainty about the maximums that can be charged over any given period. This is a sensible bright line alternative to the current standard which is “cash price that a customer could be reasonably expected to pay in the market place” – see also para 107.
- 72 The caps suggested below take into account all the costs of purchasing items and then installing, supporting and maintaining them over the terms shown without impacting the industry to its detriment.
- 73 The suggested caps:
- a. Where an operating lease has a fixed term of not more than 12 months, the total amount payable by the client over the term of the lease shall not exceed 2 times the manufacturer’s recommended retail price, inclusive of all costs and charges.
 - b. Where an operating lease has a fixed term greater than 12 months but not more than 24 months, the total amount payable by the client over the term of the lease shall not exceed the equivalent of 3 times the manufacturer’s recommended retail price inclusive of all costs and charges.
 - c. Where an operating lease has a fixed term greater than 24 months but not more than 36 months, the total amount payable by the client over the term of the lease shall not exceed the equivalent of 3.5 times the manufacturer’s recommended retail price inclusive of all costs and charges.
 - d. Where an operating lease has a fixed term greater than 36 months, the total amount payable by the client over the term of the lease shall not exceed the equivalent of 1 times the manufacturer’s recommended retail price for every year of the fixed term agreement, inclusive of all costs and charges.
- 74 To ensure clarity, the following chart indicates the term of an operating lease and the corresponding maximum multiple allowable;

Contract Term	Maximum Multiple that can be charged
12 months	2 times the manufacturers RRP
24 months	3 times the manufacturers RRP
36 months	3.5 times the manufacturers RRP
48 months or longer	4 times the manufacturers RRP

- 75 Maximum amount Chargeable:
- a. Whilst a member may enter into a fixed term lease with a consumer of a length that is more than 48 months, the member cannot collect more than 4 times the MRRP inclusive of all cost and charges. – refer to paragraphs 107 - 110 for details.
- 76 These multiples will be materially affected by the direct costs of wages, petrol and the like. Whilst they provide a bright line test as to maximum costs of lease over set time

periods it is possible that they could become unworkable (too low) through the variation of industry costs. Some type of review mechanism should be incorporated in their use, possibly a CPI related mechanism.

CHERPA RECOMMENDATION 2:

Further information on the following is requested:

- *If a cap on the cost of leases were to be introduced, is there a reason for lessors not to be subject to the 48 per cent cap that applies to credit contracts in general?*

- 77 **Yes, there are a very simple and very important reasons why the 48 per cent cap should NOT apply to consumer leases.** Here's why:
- 78 **CHERPA members providing consumer leases all provide *operating* style leases that are *fully supported* throughout the lease with the consumer.**
- 79 **A 48% cap simply will not provide adequate revenues to supply consumer leases in these circumstances.** Here's the detail of why:
- 80 On a good valued at \$500 a 48% cap would return \$177 in interest over 12 months. If current SACC fees are included, then total fees of \$273 would be added. Total interest and fees are \$450.
- 81 We asked CHERPA members to provide data to us on their operational costs for a year and the total number of they had items rented out in that same year. From these figures we were able to calculate the median operational cost to supply a good was \$745 per year across these members. That is, every item rented out required \$745 in operational costs each year to support the good in place with the consumer.
- 82 There is no profit or cost of the goods included in the figure. Standard small business profits need to be *at least* 20-40% of operational expenses.
- 83 **The Panel should very clearly note that for those members who submitted data their median profitability was 7.18% of revenues.** That is a LOW figure and clearly enumerates that excessive rents are NOT being taken out of the market.
- 84 From this evidence a cap of 48% is clearly insufficient to generate even the cost recovery required to support a consumer lease.
- 85 It also **clearly enumerates that it is costly to supply and support goods into this market.**

86 One member provided this example comparison of income, costs and profits for the same item supplied using the SACC Rules versus Consumer lease:

	Using SACC Rules	Consumer lease
Revenue-income received from customer	\$ 1,386.00	\$ 2,028.00
COGS	\$ 825.00	\$ 750.00
Staff admin	\$ 264.00	\$ 264.00
GST	\$ -	\$ 184.00
Marketing	\$ 183.00	\$ 183.00
Arrears Management	\$ 122.00	\$ 122.00
Bad Debts	\$ 122.00	\$ 122.00
Repairs & maintenance	\$ 81.00	\$ 81.00
Funding	\$ 81.00	\$ 81.00
Occupancy costs	\$ 61.00	\$ 61.00
Compliance Costs	\$ 41.00	\$ 41.00
Profit	\$ -392.00	\$ 140.00

87 A detailed comparison of costs items included in consumer leasing versus cost of supplying SACCs or sale by instalment credit contracts is included in the table below:

	SACC	Consumer Lease – Full Service	3 rd party sale by instalment. Eg Flexirent and ors
Capital	✓	✓	✓
Source Item	✗	✓	✗
Warehouse Item	✗	✓	✗
Application receipt and assessment	✓	✓	✓
Prep Item for Delivery	✗	✓	✗
Deliver Item – wages and vehicle costs	✗	✓	✗
Install Item	✗	✓	✗
Instruct on use	✗	✓	✗
Support item (phone, face to face)	✗	✓	✗
Maintain, repair, replace if required incl. organise warranty	✗	✓	✗
Pick-up items	✗	✓	✗
Restore & repair for re-renting	✗	✓	✗
Account keeping	✓	✓	✓
Delinquent account admin	✓	✓	✓

88 This table shows the extra effort required to provide consumer leases and is a good indication of why a new entrant to the consumer market might choose sales by instalment (or consumer leases in the guise of) business models as opposed to genuine consumer leases.

- 89 Whilst the panel noted on page 27 of the interim report that “Mixed evidence has been received about the consumer’s rights to access these additional services and their utility” all CHERPA members providing consumer leases tell us that they provide this full service AND the service is extensively used by their customers for support. (Customers ALWAYS ring the lessor. They don’t ring manufacturers and in any case manufacturers WILL NOT perform warranty without proof of purchase which is held by the lessor.)
- 90 Later in the interim report in relation to these extra services you further note that “the goods are ordinarily covered by a manufacturer’s warranty which gives the lessor recourse against a third party for defects.” Whilst that is true given the time required to pursue warranty claims it may well be cheaper to effect repairs internally. Irrespective there is ALWAYS cost for time incurred, even if the warranty claim is successful.
- 91 Note that not all repairs are warrantable items and pick-up, cleaning and return are often not chargeable to the consumer and must be absorbed.
- 92 Also note that lessors cannot go back to manufacturers/suppliers after extended period of time and make warranty claims.
- 93 Even if a few consumers do not or cannot access these “additional services” it is undeniable that the cost to supply and provide the bare minimum statutory warranty to support goods is ALWAYS going to be more expensive to supply and support as opposed to a digital cash transfer.
- 94 Furthermore, in practice, after 12 months, warranty claims become more difficult to impossible irrespective of legal reasoning and so any repairs will still need to be effected by the lessor.
- 95 Another important reason for including the cost of providing the “additional” service is that items may require return to base or the good could be out of action for days. ie customer could end up without their fridge, washing machine, computer, etc. CHERPA members provide replacement items at least temporarily if this happens. This is well understood by most consumers to be a core part of the “purchase” they make when they sign up for their consumer lease and there is no doubt that the first person they ring is the lessor when things go wrong.
- 96 The Panel should also be very clear that a 48% cap **does NOT work for an item returned early by a consumer**. Early returned goods, particularly in the first year, suffer more severe depreciation because they are no longer “new in the box” and lose their “showroom” appeal. Put simply early returned goods will not be able to be rented out at the same rate as the initial rental – a direct and unrecoverable loss of value to a business if there is an interest type cap. Goods returned early also need to be tested, cleaned, repaired and re-delivered. Sometimes the goods are a total write-off.
- 97 PLEASE NOTE: Two members have been able to provide their “keep rates” for consumer leases. In one instance 39.3% of consumers did not finish their leases, returning the goods. In one other instance 36%.
- 98 **IMPORTANT NOTE:**
- a. We strongly believe that a very clear description should be drafted into the regulations specifically identifying that a consumer lease may ONLY be a fully supported *operating* style lease where the lessor is providing the consumer with the “functions” that a good provides for the whole of the period that a consumer has the lease.

- b. The lessor **MUST** be functionally providing both statutory warranties and further support functions in order for a transaction to qualify as a consumer lease.
- c. **The outcome for the consumer of the statutory and further support provided by the lessor is that a consumer “gets all the benefits of ownership without the risks of ownership”. This must be established as a fundamental tenet of consumer leasing and it must be enshrined in the legislation.**
- d. You point out on page 26 of your report that “In Australia, finance leases, [are] where the risks and benefits incidental to the ownership of the good are passed to the consumer.” A finance lease is a sale by instalment;
- e. CHERPA only supports a definition of a consumer lease where the benefits incidental to the ownership of the good are passed to the consumer but **NOT** all the risks of ownership;
- f. Examples of the real risks of ownership that are avoided by consumers under operating style consumer leases for goods are:
 - i. Lack of ability transport goods;
 - ii. Be sure an item will be delivered to your premises and brought inside to where the good needs to be installed (often doesn't happen when purchasing from larger retailers) – particularly important for elderly, people with physical impairment;
 - iii. Being able to properly install an item – especially in a timely, possibly safe way;
 - iv. Being able to understand how to operate the item properly without inadvertently damaging it;
 - v. Being able to understand how to operate the item without resorting to third parties for assistance;
 - vi. Maintaining an item properly;
 - vii. Repairing an item if it breaks down;
 - viii. Spending the time to facilitate a warranty repair or an out of warranty repair;
 - ix. Running the risk of needing a repair that is a ‘non-warranty’ repair at the consumer’s cost - with low income earners having no capacity to manage the ‘bill shock’. (CHERPA lessors repairs these goods interest and fee free)
 - x. Running the risk of needing a repair that is, upon the repair being completed, found to be ‘non-warranty’ repair at the consumer’s cost with low income earners having no capacity to manage the ‘bill shock’. (CHERPA lessors repairs these goods ‘at cost’, interest and fee free.);
 - xi. Running the risk of losing the use of their good for an extended period of time whilst warranty repairs are effected (CHERPA members provide temporary replacement items in these circumstances – which consumers can’t normally get under warranty)
 - xii. Inadvertently damaging goods (non-warranty repair) and not having the cash to repair goods - a ‘bill shock’ issue again.

- xiii. Consumers often do not have suitable facility to dispose of large packaging.
 - g. Current so called “consumer leases” that are supported only by statutory warranties are finance contracts and an avoidance of the credit contract provisions. In the future they should be regulated as sales by instalment.
- 99 If full support is not provided as part of the consumer lease terms and conditions, it is NOT a true consumer lease and is simply an avoidance of the sale by instalment legislation.

CHERPA RECOMMENDATION 3:

Further information on the following is requested:

- *Should there be a limit on the maximum term of a consumer lease?*

100 **No there should NOT be a maximum term limit.**

101 As already noted we recommend that a Maximum Amount Chargeable, defined as a multiple, should be applied. It should be up to the lessor to determine the period over which they wish to charge that maximum multiple.

102 Please note that longer terms allow lower periodic payments which some consumers specifically ask for based on an affordability decision.

103 For example – our sample wording for inclusion in our code of conduct:

- a. Whilst a member may enter into a fixed term lease with a consumer of a length that is more than 48 months, the member cannot collect more than 4 times the MRRP inclusive of cost and charges.

104 **IMPORTANT NOTE: Please take careful note and be aware that** many of our members are small “mum and dad” businesses operating in local communities. The fact is that some of the people they look after have no-one else to help them. These people have no-one else to turn to if they need things fixed or repaired or even just moved in their accommodation - they genuinely need the support of their local business to help with their essential items and our members are actually human beings that live in local communities and help people out when they need support.

CHERPA RECOMMENDATION 4:

Further information on the following is requested:

- *If a cap on the cost of leases were introduced, which types of leases should the cap apply to?*

105 If a cap (as a multiple only) is to be applied to consumer leases it should be applied to all leases for household items.

106 **IMPORTANT:** We reiterate our belief that the only type of consumer lease that is an acceptable form of consumer lease is the operating style lease that is fully supported by the lessor. We have not seen any evidence to rebut the logic that all other kinds of lease are deliberately avoiding the increased restrictions and obligations found under in the sale by instalment provisions of the NCCPA.

107 We are aware that some lessors provide cars under consumer leases. We do not have any member providing that service so cannot make a comment as to that market.

CHERPA RECOMMENDATION 5:

Further information on the following is requested:

- *How should the cash price for determining a cap on leases be determined?*

- 108 The cash price should be the Manufacturers Recommended Retail Price. The ‘market’ cash price of goods is too subjective and simply too hard to police.
- 109 The MRRP remains the same wherever an item is sold and has the advantage that the MRRP is a single, published figure available to everyone.
- 110 This is a sensible bright line alternative to the current standard which is “cash price that a customer could be reasonably expected to pay in the market place”.
- 111 That standard is vague with cash prices highly variable over time and by location which together compound the difficulty and cost of both enforcement action and compliance.

Observation 7

During consultation, stakeholders noted that a large proportion of the cost of consumer leases can be attributed to add on products. There is little transparency regarding the nature or cost of these services and the value that they provide to consumers. It may not be clear to consumers that these features are available when they enter into a lease or that they extend beyond the statutory guarantee under the Australian Consumer Law.

Option 10

Include the cost of add on features and products under the cap.

CHERPA RECOMMENDATION 6:

Further information on the following is requested:

- *If a cap on the cost of leases was introduced, how should add on products be treated?*
- *What are the consequences of including add on services within the cap? Does this pose a particular risk for certain add on features or parts of the market (such as remote areas)?*

- 112 If the Panel were to adopt the CHERPA recommended multiples outlined above as caps, then add-on costs are already inclusive except for:
- a. **Delivery costs** which are not able to be fixed across the industry. For example, some lessors travel long distances to service their customers. We note that delivery fees are very transparent and it would be difficult for a lessor to justify excessive delivery fees if they used them to avoid cap amounts.
 - b. **Limited liability cover** that limits the customer’s losses under catastrophic damage, theft, etc. Not all lessors offer this service nor do all consumers take it up.
 - c. **Repairs and maintenance outside of statutory warranty and “fair wear and tear”** is not included in the cap.
- 113 If insufficient caps are introduced some or all add-on services will be withdrawn or avoided.

- 114 All caps need to be adopted with a pre-determined and locked in review cycle because some direct cost will be outside the control of any parties – petrol, wages, cost of vehicles, cost of imported consumer goods are good examples.
- 115 That a review cycle of the expense cost base for the caps be established, that it is annual and locked in with and related to CPI or other equivalent relevant data set and cycle.
- 116 PLEASE NOTE: We do not agree with the use of 3rd party extended warranty cover arrangements as our members already provide support, repairs and maintenance for fair wear and tear inside consumer lease payments.

CHERPA RECOMMENDATION 7:

- *Are there ways of measuring the value of add on products to the consumer (for example, data on the extent to which consumers utilise those products or make claims under them)?*

- 117 Without being “picky” this questions displays a significant lack of understanding about how real *operating* style consumer leases work in practice.
- 118 Some key points to consider:
- a. Goods supplied by our members under consumer leases are owned by the lessor and
 - b. No work can be carried out on leased goods unless written authority has been provided by the lessor and therefore
 - c. No warranty claims will be accepted by manufacturers unless a receipt for the purchase of the good in questions is provided.
 - d. Consumers with consumer leases from our members **do not hold the purchase receipt for goods** and
 - e. Therefore, they cannot make a claim on the manufacturer and
 - f. Therefore, they **MUST** ring the lessor for any warranty claim;
 - g. Any consumer with support issues including requiring use assistance, repairs or maintenance will **HAVE** to ring the lessor – no one else will be prepared to speak to them.
 - h. Therefore, any and **ALL** support calls **ALWAYS** come to the lessor
- 119 Significant further research is required to determine the value that consumers place on the “value added product” found in operating style leases. Time constraints placed on this Review do not allow for that research to be conducted.
- 120 We note that the independent researchers used by ASIC, Ashton di Silva and Marcus Banks from RMIT, agree entirely that there is a significant and serious paucity of data about how and why consumers choose consumer leases. The paucity of data extends to the question being answered here.
- 121 However, what we have been able to do is enumerate the degree of engagement of consumers with our members when they supply consumer leases with full support. The extent of engagement is significant and is the best indicator we have to show that consumers do **USE** the “full service, add on products”
- 122 A survey of members found that:

- a. Approximately 20%-30% of all phone calls received by members were for consumer goods related support issues – often of a minor nature. For example:
 - i. “My Facebook has stopped working”
 - ii. My washing machine’s stopped spinning (accidently set to drip dry)
 - iii. “My computer won’t come on.”
 - iv. “My Computer has hung.”
 - v. My mobile has Chinese characters
 - vi. “I have a virus on my laptop.”
 - vii. “I can’t get channels on my TV”.
- b. Approximately 40%-50% of all field calls are for support – that is for matters other than delivery or pick-up. The ratio of field calls to active consumer leases over a one-year period is approximately 2 field calls for every 3 items leased in a one-year period.
 - i. One member reported conducting approximately 2000 field calls solely for support in 2015.
 - ii. Another member noted that for their 700 active leases they had approximately 50 calls a day of which 20-30% alone were for support matters including both inbound (from consumers) and outbound (to suppliers on consumer matters).

123 This data shows that the service is used and must therefore be in some part valued. What it doesn’t show is the monetary value of the service.

124 However earlier in our response we enumerated the costs of doing business along with the profitability across member businesses. Given that there is no indication of excess rents being taken from the market and given the level of engagement by consumers in utilising the lessors support offering it is reasonable to conclude that consumers want and use the add-on services and lessors are prepared to provide the service, even in a competitive market.

125 Presumably if lessors thought that this extra service was unnecessary or they thought they could get away without supplying it they wouldn’t supply it. (Flexirent for example doesn’t do it but then many people who are users of our member’s consumer leases do not want or would not get a Flexirent lease.)

126 To avoid repetition please also refer to paragraphs 87-95 above in relation to this request for additional information.

127 **IMPORTANT:** We note that the independent researchers Ashton di Silva and Marcus Banks from RMIT agree entirely that consumers on low incomes need to be able to access consumer leases and independent research needs to be carried out to properly understand the consumer leasing market, in particular, why and how those on low incomes used them.

Observation 8

If a cap were to be introduced on a restricted category of consumer lease, it should be designed in a way that limits the risk of avoidance.

Although extending a cap to all leases and broadening the scope of the Credit Act to include indefinite term leases are matters outside the terms of reference of the review, government may wish to consider the implications for those leases outside the scope of this review.

CHERPA RECOMMENDATION 8:

Further information on the following is requested:

- *Are stakeholders able to provide information on whether there are broad or systemic problems with the way in which lessors comply with the responsible lending requirements in relation to low-income consumers and Centrelink recipients?*

128 To avoid repetition please refer to **critical information provided in paragraphs 46 - 68** above.

In summary:

129 Amongst CHERPA members **the hard, factual evidence is entirely to the contrary** that “there are broad or systemic problems with the way in which lessors comply with the responsible lending requirements in relation to low-income consumers and Centrelink recipients”.

130 To wit:

- Members held 65,000 active leases in 2015;
- There were 3 formal complaint lodged with EDRs CIO or FOS.
- No complaints were substantiated.
- The chance of dispute metric is **an order of magnitude LESS than mainstream providers** of consumer loans, credit cards, home loans – refer to paragraphs 43-55 above;
- Further a survey with members indicated that all licensed members were robustly committed to and performing RLO. The statistics prove this up.

131 In the industry we would also note that **the hard, factual evidence presented to date is entirely to the contrary** that “there are broad or systemic problems with the way in which lessors comply with the responsible lending requirements in relation to low-income consumers and Centrelink recipients”.

132 To wit:

- There were approximately 350,000 active leases in 2015;
- There were 250 consumer retail finance provider disputes lodged with EDRs CIO³ or FOS.
- Excluding Edufin, Flexirent, Billabong, Rentsmart (not in the low income market or not for household goods) there were 56 disputes lodged.

³ <http://www.cio.org.au/cosl/assets/File/CIO%202015%20Annual%20Report%20on%20Operations%281%29.pdf> – page 73, consumer retail finance providers table

- d. Combined with known disputes lodged by against CHERPA members the total is 59.
- e. That is for 350,000 active consumer leases the chance of dispute being lodged was 16.9 per 100,000.
- f. The industry's chance of dispute metric is **well less than half that of other mainstream providers of consumer finance** products - consumer loans, credit cards, home loans – refer to paragraphs 43-55 above;

133 **IMPORTANT: Unless there is other hard evidence forthcoming there is a distinct raft of evidence against the contention that “there are broad or systemic problems with the way in which lessors comply with the responsible lending requirements in relation to low-income consumers and Centrelink recipients”.**

134 Could we also point out that our members are constantly flabbergasted that anyone would think that they are promiscuous in handing out goods that they have paid hard money for to people who are a significant risk of not being able to pay for it. This notion entirely defies basic mathematical and business logic and there is no way a business could survive if it acted promiscuously in conducting its due diligence (effectively RLO).

135 There are no circumstances where chasing goods or people or entirely losing goods or having people return goods is a first choice for efficient business practice. Again, the notion entirely defies logic.

136 We would also reiterate that there have been instances where new players have entered the market and tried to extract excessive rents. This has occurred as individual franchisees and as independent businesses. Some of the examples that ASIC use (the 884% for example) arise because of these people. Frankly they don't last.

137 Anyone who has remained in business for a number of years is clearly conducting some reasonably good form of RLO.

138 As far as CHERPA members are concerned we believe (having held extensive discussions over time on the matter) that members are all conducting robust RLO activities.

Option 11

Cap the amount of net income that can be used to service all lease repayments.

CHERPA RECOMMENDATION 9:

Further information on the following is requested:

- *Should a protected earnings amount be introduced for leases, similar to option 3 canvassed in relation to SACCs?*
- *If a cap restricting the amount of income that can be used to make lease repayments were introduced, what level would be affordable for consumers and lead to financial inclusion?*
- *Should a combined cap be introduced that covers both SACCs and consumer leases?*
- *Would there be any difficulties in determining a combined cap covering both leases and SACCs?*

139 Yes, there should be a protected earnings amount introduced but it should definitely not be similar in quantum to your option 3 - the “less than 10%” is a fundamentally flawed proposition.

- 140 The “less than 10%” proposition, if implemented, would result in a significant number of consumers losing the only access they have to a number of essential household goods – on our estimate about 33%-50% or more of consumers on low incomes who currently access consumer leases would lose access to goods.
- 141 CHERPA members have already set and implemented protected earnings amounts as an enhancement to their RLO. As shown earlier in this response the evidence could not be clearer that CHERPA members, and the industry broadly, responsibly carry out RLO.
- 142 Protected earnings amounts from our current Code of Conduct:
- a. Members must not approve or enter into a lease agreement with a lessee unless one of the following tests applies:
 - i. The total costs under the lease agreement does not exceed 20% of the lessee’s income after tax
OR
 - ii. The total costs under the lease agreement does not exceed 50% of the lessee’s net disposable income after tax and living expenses.
- 143 That means that irrespective of the total amount earned a consumer may not and cannot take out a lease unless they can demonstrate with evidence that they can afford it.
- 144 As a safeguard CHERPA members have enhanced the RLO by committing to and implementing the 20%/50% protected income assessment. What this helps avoid is the “forgetful customer”.
- 145 In establishing the 20% and 50% rule CHERPA has done work using ABS statistics on household expenditures (from 2011) that helps validate these rules as protecting both consumers and lessors alike from “forgetfulness” that, if not avoided, may result in a consumer falling into hardship.
- 146 We found a high probability that when these rules are applied (as maximums) it is unlikely that we could unknowingly push a consumer into hardship. We know that we also reduce the likelihood of a consumer falling in to hardship in the future by using these protected earnings amounts - effectively building in “squeeze room” for the consumer.
- 147 This conservative approach and “squeeze room” provides consumers with a better ability to manage their budget.
- 148 The proof is in the pudding for this methodology - hard evidence already demonstrated in our response clearly shows that consumers are protected from harm if RLO and the enhancements CHERPA members have implemented are used to assess consumers’ ability to make repayments.
- 149 **IMPORTANT: Further proof of CHERPA members conducting RLO effectively - a survey of CHERPA members found that members have hardship application rates of just 0.3% - 0.5% of their active consumers in 1-year period.**
- 150 A final point to make here is that CHERPA has added further safeguards for consumers in relation to termination payments - from our Code of Conduct:
- a. If the lessee wishes to terminate a lease agreement, Members must not charge a break or termination fee if the lease has been in operation in excess of 90 days and the lessee complied with the payment obligations under the lease;
 - b. If the lessee wishes to terminate a lease agreement and the lease agreement has not been in operation for 90 days or the lessee has not complied with the payment

obligations under the lease, Members may only charge a break or termination fee equal to 90 days' rental payment;

- c. If the lessee wishes to terminate a lease before the expiry of its fixed term and it is determined that the lessee wishes to terminate the lease due to genuine hardship, Members will not charge the lessee minimum rental payments or terminate fee subject to the leased goods being returned to the Member in good working order, reasonable wear and tear excepted;
- d. If lessee returns the leased goods to the Member and the goods are not in good working conditions, reasonable wear and tear excepted, the Member can charge the lessee reasonable repair and cleaning cost at fair commercial prices to restore the good to rentable condition.

Note: some goods a returned unrepairable – one member in 2015 had 24% of stock purchased returned and requiring to be written-off

151 All of these measure when added together clearly answer and rebut the contentions in your report, namely:

That consumer lease payments should only limited to “less than 10% of net income” because:

(pages 13-14)

- a. “Repeat borrowing appears to lead to a situation where SACC repayments consume an increasingly larger portion of a borrower’s income over time.”
- b. “Capping SACC repayments as a proportion of income would limit the possibility of a debt spiral occurring. Capping SACC repayments as a proportion of income would also have a greater impact on the more vulnerable as the cap is less likely to be binding on persons with higher incomes.”
- c. “SACC repayments that consume more than 10 per cent of income have the potential to be unaffordable for low income earners and exacerbate financial exclusion.”
- d. “If a similar income cap was introduced on consumer lease repayments to promote financial inclusion, the cap would likely need to cover both SACC and lease repayments.”

(pages 36-37)

- e. “Given that leases generally run for a longer term than a SACC, there is an argument that the maximum percentage of income that could be attributed to lease repayments should be lower than the 10 per cent figure discussed in option 3.”
- f. “The analysis in Table 1 provides an indication of how a range of current levels of lease repayments impacts on the consumer’s income and suggests that a lower percentage is more likely to be affordable for low income consumers and foster financial inclusion (through, for example, a better ability to budget).”
- g. “Consistent with option 3, it is considered that the cap should apply to all consumers not only those in receipt of income from Centrelink and that it should apply to a consumer’s net income.”

152 Further response to points 150a and 150b above:

- a. Just three case studies have been presented in the interim report as evidence that consumer leases can “consume an increasingly larger portion of a borrower’s income over time” and “capping SACC repayments as a proportion of income would limit the possibility of a debt spiral occurring.” This is in juxtaposition to the 65,000 consumer leases that our members currently have with consumers that apparently fulfil a real purpose and don’t cause any problems at all – see para 148 above on the very limited number of hardship claims made.
- b. Our recommendations made in this report would have clearly prevented two of the referenced case studies occurring and would have robustly tested (and probably failed) the other example as well (the one-third of income case from Legal Aid NSW).

153 Further response to point 150c and 150e above:

- a. “SACC repayments that consume more than 10 per cent of income have the potential to be unaffordable for low income earners and exacerbate financial exclusion”; and
- b. “Given that leases generally run for a longer term than a SACC, there is an argument that the maximum percentage of income that could be attributed to lease repayments should be lower than the 10 per cent figure discussed in option 3.”:
 - i. Part b. is a non sequitur – there is no logical connection between the elements of this argument. The argument is false.

Further:

- ii. You have not provided any evidence that shows 10 per cent of income is an affordability break point.
- iii. Nor have you demonstrated with hard evidence that consuming more than 10 per cent of income necessarily exacerbates financial exclusion.
- iv. Nor have you demonstrated why this form of paternalism should over-ride the right of the vast majority of consumers who prefer to, and do, organise their affairs to achieve their personal goals including social inclusion.
- v. We note that one consumer group submission suggested the 10% cap but they based their notion on the voluntary code between banks and DHS for overdrawn banks accounts. That’s an entirely different transaction to the longer term needs for provision of essential goods to homes.
- vi. Our evidence from the ABS shows that 20% of net income (conservatively) should not be exceeded and that the upper limit should be approached with caution that the full 20% is genuinely available in the circumstances presented.
- vii. We’ve already noted and demonstrated that our caps are conservative and provide “squeeze room” for consumers – allowing the beginnings of financial inclusion.
- viii. Our evidence from the consumers our members look after clearly demonstrates that, over extended periods of time, they are happy to access goods through consumer leases and they do achieve their outcomes and objectives in doing so.

154 Further response to point 150d and 150g:

- a. “If a similar income cap was introduced on consumer lease repayments to promote financial inclusion, the cap would likely need to cover both SACC and lease repayments.”
- b. “Consistent with option 3, it is considered that the cap should apply to all consumers not only those in receipt of income from Centrelink and that it should apply to a consumer’s net income.”
 - i. RLO and our recommended protected earnings caps already do this.
 - ii. It’s in operation and clearly working based on the good results we demonstrate in this response.

155 Further response to point 150f:

- a. “The analysis in Table 1 provides an indication of how a range of current levels of lease repayments impacts on the consumer’s income and suggests that a lower percentage is more likely to be affordable for low income consumers and foster financial inclusion (through, for example, a better ability to budget).”
 - i. There are two significant errors in the scenarios from table 1:
 - 1. In scenario 1 you have shown a consumer lease with a total cost multiple of three times RRP for a 1-year period. We doubt such a lease exists. If it does it’s excessive. It would not comply with our recommendation of a maximum cost multiple of 2. As such it is not a valid example to use to contend that leases cost too much.
 - 2. In scenario 2 you say that Thorn has a multiple of 2.6 over a three-year lease. They don’t. The 2.6 multiple is their average multiple across ALL their leases over all time periods.
 - ii. However, we agree in principle that lower multiples are more affordable for consumers and will foster financial inclusion;
 - iii. The caps we have recommended in this response will likely, on average across all time frames go close to achieving that same average.

156 Finally, consumers are choosing leases based on their affordability on a fortnightly (income affordability) basis NOT on what appears to be your preferred philosophically founded methodology of ‘total cost’ over the longer term.

157 This is a real choice that these people are making using real and conscious logic to suit their current personal situation.

158 Undeniably, many consumers are choosing leases on an affordability basis to achieve forms of social inclusion – their child needs a computer, they need a TV, fridge, washing machine, etc.⁴

159 There is no rational reason given for making consumer leases second class to SACCs. That appears to be manifestly unfair and prejudicial to the industry and consumers alike given the demonstrated good track record of the bulk of the industry.

160 The contention that consumer leases are to be treated as secondary to SACCs and to be able only access to “less than 10%” of income is ridiculous and will cause vastly more consumer harm than any action conducted to date by even the worst of the rogues who’ve left the industry.

⁴ <http://www.theage.com.au/victoria/digital-divide-deepens-between-rich-and-poor---internet--a-familys-lifeline-20160121-gmb35h.html>

Option 12

Prescribe the maximum amount that can be charged on early termination of the contract.

Option 13

Provide a remedy for consumers similar to that in section 78 of the National Credit Code allowing action to be taken for an unconscionable termination charge.

CHERPA RECOMMENDATION 10:

Further information on the following is requested:

- *What levels of discount on the outstanding lease repayments do lessors provide in their termination clauses?*
- *Do lessors provide different discounts on the amount attributable to future leases and the charges for future services?*

161 Refer to paragraph 149 above for details.