

REVIEW OF SMALL AMOUNT CREDIT CONTRACT LAWS

Interim report

December 2015

Legal Aid NSW response

to

Financial Systems and Services Division, The Treasury

January 2016

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Introduction

Legal Aid NSW welcomes the opportunity to provide further information in response to the Review of the Small Amount Credit Contracts Interim Report. We have responded to the Panel's requests for further information under the chapter headings in the Interim Report. In doing so we make reference to our Previous submission to the review in October 2015 (our submission).

Should you require any further information or wish to discuss this submission, please contact:

- Nicholas Ashby, Solicitor, Strategic Planning and Policy, Legal Aid NSW, at Nicholas.ashby@legalaid.nsw.gov.au or by telephone on (02) 4725 4608, or
- Rebekah Doran, Solicitor, Combined Civil Law Specialist Team at rebekah.doran@legalaid.nsw.gov.au or by telephone on (02) 92195790.

Chapter 1: Overview and background

Information on trends in the SACC and leasing industries including consumer characteristics.

Legal Aid NSW is unable to provide any further information on trends in the SACC and consumer leasing industries.

Chapter 2: Responsible lending obligations for SACCS

No further information has been requested by the Panel in this chapter.

Chapter 3: SACC provisions

Repeat Borrowing

Legal Aid NSW agrees with Observation 3 of the Panel and welcomes the policy options for consideration to reduce repeat borrowing and consumer harm. The three options proposed are:

1. Reduce the establishment fee for subsequent loans for a returning customer from 20 per cent to 10 per cent.
2. Replace the rebuttable presumption that a SACC is unsuitable if a consumer has had two or more SACCs in 90 days, with a bright line test banning the provision of SACCs to consumers who have had two or more SACCs in the past 90 days.
3. Extend the protected earnings amount for Centrelink recipients, where total SACC repayments cannot exceed 20 per cent of gross income, to all consumers and lower the protected earnings amount to no more than 10 per cent of net income.

Based on our casework experience Legal Aid NSW believes that each of these proposals would generate significant benefits for consumers without an adverse impact on competition and access to finance for consumers who can afford it.

Is policy option 2 or policy option 3 more effective at improving consumer outcomes? Please consider the cost and benefit of both options including the effect on competition, fairness, innovation, efficiency, access to finance, regulatory compliance costs and consumer protection.

Legal Aid NSW supports the introduction of both these options as they complement each other to limit the frequency of small amount credit contracts and the amount of their repayments as a portion of the consumer's income.

Both options are likely to have significant positive impacts on fairness and consumer protection. In relation to option 2, we refer to our comments at pages 16 to 18 of our submission supporting the introduction of a bright line prohibition. We also refer to pages 25 to 27 about the protected earnings amount for Centrelink customers and other low income earners.

Both options are unlikely to be onerous on industry to implement, as they are only slight modifications to existing regulations. For this reason, they are also unlikely to have an impact on competition. In the case of option 2, regulatory compliance is likely to be simpler and cheaper compared to the complexity of the current rebuttable presumptions. Option 3 also creates simplicity in the regulation because the same formula applies to all consumers.

Both options are likely to restrict access to finance for some consumers in some circumstances. However, this is appropriate given the broader product safety and consumer protection objectives of these measures.

Of the two options, option 3 is likely to have the greater overall consumer benefit as it:

- will reduce the impact of individual SACC loans on the consumer's budget
- applies across all consumers so it will be simple for industry to comply
- uses net (after tax) income which is a more accurate account of the consumers available funds, and
- could continue to operate alongside the existing rebuttable presumptions if only one of these two options could be implemented.

In relation to policy option 3, what percentage cap on repayments, relative to income amount, would be most appropriate to promote financial inclusion?

Given Centrelink incomes are already comparatively low in relation to average living expenses,¹ the lowest cap possible is required to promote financial inclusion. As outlined at page 26 of our submission, Legal Aid NSW is of the view that a cap of at least 10 per cent would be required. However it would be preferable for this to sit at 5 per cent to ensure consumers have sufficient funds available to pay for essential living expenses and provide opportunities to save for one off expenses and emergencies such as funerals.

Does the cap on repayments need to be broader than just SACC repayments? For example, should lease repayments and other fixed obligations also be included?

Yes. Legal Aid NSW supports the extension of the cap on repayments to include consumer leases, medium amount credit contracts (MACCs) and Centrelink debt repayment obligations. In our casework experience, most consumers on a Centrelink income who access SACC loans and consumer leases have already used a Centrelink advance and are repaying this by way of Centrelink income deductions. Acknowledging this, the consumer's total available income is important when attempting to minimise the impact of high cost loans on their available funds. Given the similarity of MACCs and consumer leases to SACCs, Legal Aid NSW is of the view that these should also be included.

The beneficial impact this policy change would have for vulnerable consumers is outlined in case study 3 of our submission. In case study 3, Albert paid 22 per cent of his income to SACC repayments, just over the allowable limit. However, when his MACC and Centrelink advance are taken into account he paid 48 per cent of his income to debt repayments before any other living expense was accounted for. At this point, Albert sought our assistance because he not could afford to pay for fuel and groceries for himself and his family. Albert would not have been in this position had a cap on repayments as a portion of his income included these additional obligations.

In relation to policy option 3, would a higher percentage of income, applied to the consumer's net income, subtracting lease repayments and other SACC or lease payments, be more appropriate? Are providers able to ascertain these figures?

This formula would need to be applied to a series of case examples to determine whether it would protect more of a consumer's income. Legal Aid NSW expects that it would be simpler to calculate the protected earnings amount based on the consumers net or after tax income, particularly under a combined cap. If policy option 3 is considered preferable further testing of the impact would be required.

¹ The ACOSS Poverty in Australia report, 2014 notes at p.38 that "Indexed to the CPI only, the Newstart Allowance has not increased in real terms (above the CPI) since 1994. This means that unemployed Australians have not shared in increases in living standards received by the rest of the community over the last 20 years; and poverty levels among people unemployed have risen year by year".

Default fees

Legal Aid NSW agrees with the Panel's observation 4 in relation to the operation of default fees. We also support the proposed options 4 and 5 designed to limit consumer harm and encourage lenders to take effective steps to have the default remedied. This is because the current use of default fees appears to only exacerbate the consumer's financial difficulty without providing an incentive to remedy a default.

What costs do lenders incur when a consumer defaults?

Legal Aid NSW is unable to comment on this question.

In relation to option 4, what are the typical payment cycles and what is the most appropriate default fee window?

In our casework experience the repayment period appears to be determined to coincide with the consumer's pay cycle so that repayments are deducted the day of or the day after the consumer's pay is deposited. Given that most of our clients are Centrelink recipients, we most commonly see fortnightly repayment cycles. The default window should fall in line with the repayment cycle, so the consumer has an opportunity to correct the default within the cycle before they are subject to default fees.

What is the appropriate level of the default caps under option 5 and 6? If you are a SACC provider, please also provide evidence of the actual costs that you incur as a result of a consumer's default.

It is a long standing common law principle that a party can only recover its loss as a result of the other party's breach of the contract. Any amount greater than the loss is a penalty and void. Although Legal Aid NSW often assists consumers who have been charged default fees that appear excessive, consumers find it difficult to challenge default fees given the complexity of the argument and lack of information available about the lenders' costs.

A supplementary cap to limit how quickly default fees can be charged would therefore be very beneficial for consumers and help to prevent the exponential increase in a loan balance as the result of default. In the SACC setting it would also ensure that default fees are proportionate to the amount in default and the overall loan balance. Legal Aid NSW supports the example suggested of \$10 per week as a means of reaching this policy objective.

Anomalies arising from the small amount credit contracts cap

Legal Aid NSW supports options 7 and 8 as measures to encourage consumers to repay their loans early.

Should lenders under a SACC be required to provide consumers with a benefit for early repayments of the balance and, if so, how should any such requirement operate? Should the same requirement apply to both the fee-splitting model and where the loan is repaid in full early?

Yes. Unlike loans where interest is calculated on a diminishing balance, consumers of SACCs receive no benefit for making additional repayments, other than to save on monthly fees if the loan is fully repaid early. This anomaly should be rectified regardless of how the repayments are structured. Legal Aid NSW has continued to support the use of interest rates for SACCs for this reason. Calculating the 4 per cent monthly fee on a diminishing balance, as opposed to the amount borrowed, would be a step in the right direction in this respect.

Are there circumstances in which SACC providers require consumers to make repayments for different amounts? If so, in what circumstances is this done and what is the difference in the size of repayments?

Yes. Legal Aid NSW has assisted clients in circumstances where they are required to pay a 12 month loan over two repayments, or where repayments are higher for the first half of the loan and then significantly reduced for the latter half. These appear to be measures introduced by the lender to maximise the number of monthly fees charged while ensuring an early return on their capital.

To what extent do SACC providers charge fees in respect of outstanding months when a consumer repays a SACC early?

Legal Aid NSW has not seen examples of consumers being charged for outstanding months when a loan is repaid early. We have one case example where the full 12 months of fees were charged to the account statement at the commencement of the loan. However, the outstanding monthly fees were credited to the account when the loan was repaid early. To ensure this practice continues, Legal Aid NSW supports the proposal to introduce regulation to ensure that monthly fees can only be charged on a monthly basis.

Chapter 4: Consumer leases

Cap on costs for consumer leases

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?

No. Legal Aid NSW is not aware of any reasons that justify the continued exemption of consumer leases from a cap on costs. As outlined at pages 36 to 39 of our submission, we strongly support bringing consumer leases in line with the regulation of other credit products.

Considerations for implementing a cap on costs for consumer leases

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?

No. For the reasons outlined below, Legal Aid NSW does not see that there is a sufficient distinction between consumer leases and other credit contracts so that the 48 per cent per annum interest rate cap should not apply. This would bring consumer leases in line with sale by instalment contracts and other credit contracts used to finance the acquisition of goods. It would not be appropriate to use the concessional SACC cap for consumer leases because:

- the consumer lease product is inherently less risky for the lessor than a SACC lender because the lessor can repossess the goods in the event of default and re-rent or sell these items, and
- by retaining the ownership of the goods during the lease period, consumer lease providers benefit from the ability to offset depreciation in the value of the goods on their account.

Consumer leases are more akin to sale of goods by instalment contracts, where the 48 per cent per annum interest rate cap applies and, as such, should be regulated by the same cap. The cap should be all-inclusive, including a payout figure for the consumer to take ownership of the goods at the conclusion of the contract.

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

Yes. Legal Aid NSW suggests that the maximum term of a consumer lease should be two or three years. We are not aware of any leases currently on the market whose initial term extends beyond this period. However, we often see circumstances arising in our casework where:

- the consumer has continued to make lease payments beyond the initial term
- the lease term is purported to be indefinite
- the lease term is unclear, such as where the lease is for an initial term but the client is not entitled to make a \$1 offer to purchase the goods unless the lease term is extended, and
- the contract ends and payments cease, but there is no resolution as to who retains ownership of the goods where the goods remain in the possession of the consumer.

It is likely that by the end of two to three years most goods would have depreciated significantly in value and the lessor would have made substantial profits on the contract. In these circumstances, a maximum lease term would be useful to protect consumers from continuing to pay high costs for a lease where the value of the goods is minimal. A fixed term also requires the parties in the contract to resolve the question of ownership of the goods.

However, if the Panel is of the view that the cap should only apply to consumer leases comparable to SACCs, then the maximum term should be limited accordingly to 12 months. Legal Aid NSW also suggests any maximum term would need to be higher for car leases to accommodate the higher cash price of these products and ensure that regular repayments are affordable over a longer term.

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

To prevent regulatory arbitrage, the cap should apply to all consumer leases. As demonstrated by the exemptions to the application of the National Credit Code to indefinite leases and leases less than four months, any exemptions only encourage attempts at avoidance.

However, if the Panel is only able to recommend that the cap apply to consumer leases comparable to SACCs, then Legal Aid NSW proposes that the simplest option would be to apply the cap to leases where the value of the goods is \$2,000 or less. As stated at page 33 of our submission, this definition would need to apply per item rather than per contract to ensure that the regulation is not avoided by leasing multiple items together. This would need to be accompanied by strong anti-avoidance legislation to ensure that the cap is not manipulated. We note that only applying a cap to leases under \$2,000 would lead to situation where consumer acquiring higher costs products (such as cars) would not receive the benefit of the costs protection.

As the credit legislation already only deals with goods that are for domestic, household or ordinary purposes, we do not see that it is necessary to specify the features of the product under the definition. Similarly, it would not necessarily be appropriate to define the product by characteristics of the consumer (for example, by income or whether the consumer is a Centrelink recipient) as this is inconsistent with how SACCs are characterised.

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

The existing provisions in the National Credit Code for determining the cash price of goods and services are a useful starting point. As goods are generally not available for purchase from a consumer lease provider (the supplier) it is likely that if this definition is adopted the applicable formula will usually be the “market value” of the goods. Legal Aid NSW supports this as the definition, however our casework experience suggests that further guidance and improved disclosure is required to ensure this is workable in a consumer lease setting. For example, Legal Aid NSW has experienced problems with:

- determining the cash price in circumstances where the goods are second hand, the goods are an older model which are no longer available in the market, and/or the goods are not readily available in the open market
- obtaining the lessor’s assessment of the cash price in circumstances where we have not been able to ascertain it independently, and
- obtaining an accurate description of the goods from the lessor so that the market value can be assessed.

It is our view these issues can be rectified by further legislative direction in relation to the definition of “cash price” and by minor additional disclosure obligations. Our proposal is that the cash price of any goods could be determined by the following steps:

- a) the lowest price the purchase might reasonably be expected to pay from the supplier; or where that is not available, the market value (that is, the definition in s204 NCC), and
- b) reduced by any depreciation in the value of the goods as assessed in accordance with ATO depreciation rates, and
- c) where the goods are second hand, reduced by a further 10 per cent of the amount determined after (a) and (b) are applied.

The above formula relies on the existing provisions and takes into account the reduction in market value of depreciated and second-hand or re-rent items. The ATO depreciation calculator could be used to assess depreciated value relatively easily and is unlikely to be an additional impost on industry as they would already be depreciating items for taxation purposes.

A further 10 per cent reduction for re-rent or second hand items has been used by Legal Aid NSW in disputes considered by External Dispute Resolution schemes in recognition that such items have reduced value as a result of being used by previous owners or renters.

In order to facilitate the above proposal, we are of the view that the following additional disclosure would be required:

- a) the cash price of the goods must be disclosed on the contract and in any quotes, and
- b) the goods need to be accurately described in sufficient detail, including the make and model.

A description of the goods is currently required, however in our casework experience this is often not in sufficient detail to identify the rented goods for the purpose of assessing their cash price. For example, we commonly see goods referred to as “lounge”, “bedroom suite” or “widescreen TV” without additional details that enable the consumer to identify the manufacturer or retailer for the purposes of ascertaining the cash price. Providing the cash price as determined by the lessor would avoid unnecessary disputes about this issue.

If a cap on the cost of leases was introduced, how should add on products be treated?

Legal Aid NSW is of the view that the cost of any “add-on” products should be subsumed within an all-inclusive 48 per cent interest rate cap, which should be calculated on the cash price of the goods. This would enable providers to charge for delivery but the overall cap would still be a maximum of 48 per cent of the cash price. This proposal would see “add on” products treated in the same way as any fees and charges in credit contracts. This would need to be accompanied by strong anti-avoidance mechanisms to stop referral to other related companies which could inflate the cost of delivery. This represents the simplest approach and would be easy for consumers to understand.

If it is determined that delivery should be charged in addition to the 48 per cent cap we are of the view that delivery must be regulated to avoid any potential exploitation of an additional charge. If this option is preferred, Legal Aid NSW considers that the amount of delivery would need to be capped and not included in the finance contract. The fee would be payable up front or by instalments in addition to the consumer lease repayments for the first several repayments.

Due to the lack of competition that exists in this market to restrain price, Legal Aid NSW is of the view that delivery should be capped, most simply by a specific figure such as \$300. Based on the submissions of industry that are available, this appears to be sufficient to cover the cost of delivery even in regional areas.

Given delivery is a variable cost depending on the nature and size of the item, the consumer's location, the availability of delivery services and other factors, it is possible industry will adopt a practice of charging this figure irrespective of the actual cost of delivery.

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)?

Legal Aid NSW is unable to comment in any detail about the cost of providing the “add on” products claimed to be offered. However, our casework experience is that consumers are not aware of any add on products and the products or services are not disclosed to the consumer (in the contract or otherwise), and we have not encountered scenarios where clients have been provided with add on products other than delivery or replacement goods in the case of defect. We have not come across arrangements where a consumer has experienced or has a contractual right to services such as installation, in home instruction or moving costs of rented goods as described by industry. Legal Aid NSW is of the view that the only true add on product that consumers receive is the benefit of delivery.

In the case of repairs and replacements goods, we have numerous clients where disputes have arisen when they have requested repairs or replacement of goods including that:

1. providers have charged for repairs and replacement goods even where the goods are faulty
2. replacement goods are not of equal value or nature, are second hand or are otherwise defective
3. consumers have been required to enter into new contracts in relation to replacement goods that do not take account previous payments made, and
4. sub-standard repairs are provided.

This experience suggests that add-on products or services are of little, if any, value to consumers.

CASE STUDY 1: Judith

Judith signed up for a washing machine as a result of door to door sales. At the time she signed up she was shown a brochure with pictures of new goods and contracted with the lessor to receive a top loading machine. Initially Judith received a front loader, however this was soon replaced with a top loader. During the contract a minor repair was required. The repair was not provided, rather second hand replacement goods were delivered. Judith was expected to continue making the payments under the lease for the original goods and for the original term. Judith requested the situation be rectified but this was refused.

CASE STUDY 2: Eric

Eric was leasing a laptop which he believed he owned. After approximately 6 months the laptop no longer operated and the lessor replaced it with a second hand desktop computer. Eric was expected to continue making the payments under the lease for the original goods and for the original term. He was unhappy with the desktop computer provided to him and informed the sales representative. No action was taken to rectify the problem. Eric paid approximately 440% of the retail value of the original laptop before contacting Legal Aid NSW and cancelling his payments. Legal Aid NSW is of the view that lessors should not be permitted to charge for services that may be available to consumers as a result of consumer guarantees contained in the Australian Consumer Law (ACL). These guarantees go beyond the standard manufacturer warranties that are provided upon purchase of new items and are often very limited.

We note that the *Competition and Consumer Act (CCA)*, including the ACL, is not clear about whether the ACL applies to goods under a consumer lease and whether a lessor is liable for any breaches. Notably, there is a carve out contained in section 131A of the CCA that appears to exclude consumer leases from application of the ACL. However, there are several references to acquiring and supplying goods by way of lease, hire or hire purchase in the ACL that suggest otherwise. In addition, the *ASIC Act* clearly envisages that goods provided in connection with credit should be fit for purpose and that a lessor should be liable for any failure to provide such goods. The *ASIC Act* also provides general consumer protections that mirror the ACL.

Whether or not the ACL applies (and it should) lessors should not be allowed to charge for services and products that are provided to every other Australian consumer when they acquire goods. In our view the ACL and/or the *ASIC Act* should be amended to resolve this question and to provide access to consumer guarantees.

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)?

Legal Aid NSW acknowledges that there is some risk that it will no longer be viable for some lessors to provide products and services in the current manner to some remote communities. However, it is likely that many companies will continue to provide services under a 48 per cent cap that includes delivery to remote communities given the significant demand for the product in these areas.

However, it is our view that, as seen in the SACC industry's innovation via online lending to accommodate the cap on costs, the consumer lease industry will innovate to continue benefiting from the lucrative market that exists from servicing vulnerable clients. For example, lessors may reduce the frequency of delivery services to remote communities to benefit from economy of scale in bulk delivery.

Consumer behaviour may also change so that they are still able to obtain goods but at a more reasonable cost. For example, consumers may choose to collect smaller goods that they would otherwise have had delivered. In some circumstances, any change will mean clients seek out alternative products such as No Interest Loans Scheme (NILS) contracts as clients currently benefit from free delivery in relation to a NILS contracts, irrespective of their location.

The overall benefit to consumers in providing clear, easy to understand and capped products will likely inspire market change that will ultimately promote financial inclusion.

Lease affordability

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?

In our casework experience, compliance with responsible lending requirements is inadequate across the consumer leasing market. We consistently assist consumers who cannot meet their basic living expenses as a result of their consumer lease repayments and whose financial situation was not properly assessed when entering the contract.

Our experience is that consumer lease providers generally make enquiries about the consumer's income and verify this by way of a payslip or Centrelink statement. However, we consistently find that little to no enquiries are made about a consumer's expenses and personal circumstances, such as housing costs, debt repayments, regular expenses like utilities, and the number of dependants they have. It is also uncommon to see a consumer lease provider obtain a consumer's bank account statements. This means the consumer lease provider does not have a full picture of the consumer's financial situation. In some instances, no enquiries have been made about the consumer's income or expenses.

Our experience is also that consumer lease providers fail to enquire about the consumer's requirements and objectives in obtaining the contract. Consumers are generally seeking to enter into a contract to own the acquired goods, although consumers regularly report that this enquiry is not made as part of the application process. It is arguable that providing a consumer lease in these circumstances is unsuitable and in breach of the responsible lending obligations.

Further regulatory guidance, such as the additional responsible lending obligations for SACCs and concentrated action by ASIC in this area would assist industry to better comply with their obligations and result in better outcomes for consumers.

Should a protected earnings amount be introduced for leases, similar to option 3 canvassed in relation to SACCs?

Yes. Please see our comments on page 2 in this respect.

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?

Yes. Please see our comments on pages 2 to 3 on this topic.

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?

In our experience, consumer lease and SACC payments are almost exclusively made by way of direct debit or Centrepay deduction. This means that the payments are easily identifiable if verification of the consumer's income is obtained. We also find that if consumers are specifically asked whether they have these obligations during the application process they are inclined to disclose them. It is less likely consumers will self-identify if asked general questions about their "expenses" or not asked the question at all. There may be some difficulty if consumers obtain multiple products on the same day or have multiple bank accounts, however in the majority of cases there should be no difficulty determining a combined cap covering both leases and SACCs.

Early termination fees

What levels of discount on the outstanding lease repayments do lessors provide in their termination clauses?

Our experience is that consumers are provided with limited or no discounts when a lease is terminated early. In some cases, the consumer is required to pay more than they would have had they retained the goods and continued with the contract, once additional costs are added to the balance.

For example, in case study 8 of our submission, Kim leased a smart phone worth \$745. Kim fell behind in her repayments when she lost her employment and the phone was repossessed after she had made \$1,035.52 in payments to the lessor. Kim was then pursued for a further \$2,345.72 comprised of the following:

\$608.82	arrears
\$933.40	early termination fee
\$745	equipment fee (despite the fact that the phone had been repossessed and this charge was not disclosed in the contract)
\$49.50	field call fees

This left Kim in a position where the lender claimed a total of \$3,378.24 for a phone worth \$745 that she no longer had in her possession.

An assessment of the termination clauses of a number of lease providers demonstrate that, in general, the consumer is required to continue to pay the remaining lease payments even if the goods are returned. Below are some examples of these termination clauses:

Lessor A: The Hirer may terminate the agreement at any time by returning the goods to the Owner and paying any monies owed under the agreement including total lease repayments, fees and charges.

Lessor B: If a Hirer wishes to end the agreement before the term they must return the goods and pay an early termination fee of three months rental or the balance of the rental payments to the expiry of the term whichever is less.

Lessor C: If the Hirer terminates within the first four months of the agreement the company will have the right to recover all arrears of any rental instalments payable to the date of termination plus a fee equal to four months' rent and the right to retain the cleaning deposit. After four months the company reserves the right to recover the rent payable to the date of the original term.

Lessor D: Renter can terminate the agreement at any time by returning the goods in good working order and by paying the recoverable amount. The recoverable amount is any rent arrears, remaining rent instalments, enforcement costs and bond (if any).

Lessor E: Customer may terminate agreement at any time provided they pay the early termination fee, return goods to company and pay all rental payments, fees and charges payable under the lease agreement. The early termination fee is the sum of:

- 3 year lease agreements - 95% of the outstanding balance of the Total Rental Amount as at the date of termination of the rental agreement or the value of 4 months rental, whichever is less, or
- 2 year lease agreements - 95% of the outstanding balance of the Total Rental Amount as at the date of termination of the rental agreement or the value of 3 months rental, whichever is less, or

- 18 month lease agreements - 95% of the outstanding balance of the Total Rental Amount as at the date of termination of the rental agreement or the value of 2 months rental, whichever is less, and
- The supplier's reasonable expenses in the recovery of the goods.

Lessor F:

- Where the lease is 18 months or less, the early termination fees is the lesser of 95% of the outstanding balance of the total rental amount (does not include DLR) or (if the goods are new or new condition) six months rental amount; or (for all other categories of goods) three months rental amount.
- Where the lease is 24 or 36 months early termination fee is the lesser of 95% of the outstanding balance of the total rental amount (does not include DLR) or twelve months rental.

Unlike credit contracts, when the contract is terminated the consumer no longer has the benefit of the principle (that is, the goods) and has, in most cases, paid for the benefit of leasing the goods to date. This makes the termination fees for consumer leases particularly onerous. Legal Aid NSW would welcome further regulation in this area and supports the proposals in options 12 and 13. In addition, we suggest introducing a provision for consumer leases that reflects section 107 of the NCC which prevents a credit provider from recovering enforcement expenses in excess of those reasonably incurred by the credit provider. The suggested reforms for default fees in relation to SACCs would also be suitable in this area.

Do lessors provide different discounts on the amount attributable to future leases and the charges for future services?

Legal Aid NSW is aware of some lease providers offering a period of free leasing (for example, one to three months), or services such as free delivery on future products. These offers are typically marketed towards the conclusion of a successful lease to encourage the client to lease further products.