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COMPLIANCE

Submission to The Treasury: Review of the Small Amount Credit Contract Laws

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Introduction

This submission seeks to address the questions raised in the Treasury Interim Report: *Review of Small Amount Credit Contract Laws* of December 2015 (**"Interim Report"**).

The submission addresses the Interim Report generally, including some observations regarding the examples and figures included in the Interim Report. It then addresses questions from the Interim Report which Rent The Roo believes are pertinent to their business as a provider of consumer leases and franchisor of fifty-five (55) business who also provide consumer leases.

Summary of Submission

Consumer leases provide essential household items to a variety of consumers throughout Australia, including low income earners. In this way, consumer leases operate to alleviate hardship faced by these consumers and promote financial inclusion.

The Interim Report provides examples and commentary which inform the view of the committee. Rent The Roo considers that the examples and commentary regarding the industry do not reflect the industry as a whole and do not show the median or average price of lease available in the marketplace.

Rent The Roo does not consider Small Amount Credit Contracts (**"SACCs"**) and consumer leases to be comparable as the two products are different in their structure and nature under the National Consumer Credit Protection (**"NCCP"**) Act and Regulations and in their practical operation. Rent The Roo believes any additional regulation needs to accurately reflect the differences between these two products and also the differences between various lease providers within the industry.

Interim Report: Observations

The Interim Report focuses on the concept of financial inclusion as one of the primary goals of the review of SACC laws and notes on page 4 that "a key outcome of regulation is to facilitate financial inclusion." On this point Rent The Roo notes there are other providers in the finance industry, regulated by the NCCP Act and Regulations, which operate to exclude certain customer types. One example is the major banks. The development of the SACC and consumer lease industry has arisen from the fact that customers with lower incomes are excluded from accessing traditional forms of finance from the major banks, such as credit cards and personal loans. Major banks only offer credit to individuals with regular income obtained from employment, evidenced through employer payslips.

In seeking to promote financial inclusion as a key outcome of the review and regulation more generally, the Interim Report does not appear to recognise that SACCs and consumer leases currently allow certain customer types to access finance and household products where they would otherwise have been unable. This means that where they would previously not have been able to afford basic home furniture and appliances without months of saving (which many struggle to achieve), they now can.

Further, the examples and figures of so-called unaffordable consumer leases in the Interim Report appear to be outliers and do not accurately reflect the majority of the industry. The Interim Report does not provide average or median figures, but quotes one-off examples. For example, the Australian Securities and Investments Commission (**"ASIC"**) media releases referred to on page 35 of the Interim Report relate to two consumer lease providers and do not necessarily reflect the practices of the industry as a whole. We consider the conclusions drawn in the Interim Report based on these examples to be simplistic and inaccurate. A wider analysis of industry participants and the consumer leases provided is likely to show that the majority of leases are affordable and offer customers the ability to access essential household products, thereby promoting financial inclusion for those customers who cannot access traditional forms of finance. As noted below, many customers who utilise consumer leases are unable to access traditional forms of finance or mainstream outlets for purchasing household products, for instance, through retail outlets.

The Interim Report notes on page 22 that "the industry also appears to generate revenue from the sale of home appliances at the end of the rental agreement period." This is not the case for all consumer lease providers in the industry with many providers gifting the appliance to a third party (related to the customer) at the end of the lease term. To draw conclusions from the assumption that all consumer lease providers generate revenue in this way does not provide a holistic or accurate view the industry.

On page 22 the Interim Report states that "many consumer leases appear to be designed in a way that effectively gives the consumer a right or obligation to own the good, or equivalent good, at the end of the lease without meeting the legal definition of a credit contract." Rent The Roo notes that their consumer leases do not operate this way and do not provide the customer the right or obligation to purchase the good at the end of the term of the lease. Under Rent The Roo's Give-A-Way offer, the goods are gifted to a third party which enables the consumer to access the goods at the end of the term of the lease if they choose. This is a fundamental difference in the business model of Rent The Roo and provides the consumer with the benefit of long term use of the goods without incurring additional fees. Given there are different business models throughout the industry, any new legislation or regulation should reflect these differences and should not unfairly exclude or disadvantage certain business models.

In addressing this issue, Rent The Roo notes that the use of the term "repayments" when referring to consumer leases is incorrect. Customers who enter a consumer lease with Rent The Roo make payments towards the goods under the lease agreement but these payments do not confer any right or obligation of ownership at the end of the lease agreement.

In addition, terms such as financial inclusion, financial exclusion and consumer and financial harm have not been defined by the committee for the purposes of the Interim Report. It is unclear how the committee have characterised these terms and the meaning attributed to them throughout the Interim Report.

The Interim Report quotes a March 2013 Report of the Independent Review of Centrepay. Rent The Roo considers the data in this report to be outdated given the significant growth in the industry over the past three (3) years. Rent The Roo further notes that the substantial levels of use by low income earners of consumer leases is likely to be as a result of their exclusion from traditional forms of finance, such as credit cards or personal loans from banking institutions. Whilst the Interim Report appears to use the March 2013 report on Centrepay to highlight the characteristics of the consumers utilising consumer leases and their need for protection from harm, the Interim Report does not offer further evidence of harm actually incurred.

The concept of financial harm is referred to throughout the Interim Report, however the report offers no statistics from the industry in general to note the number of consumers incurring financial harm or the types of leases or SACCs which may be causing this harm. It is unclear from the examples offered whether this harm occurs to the majority of consumers who utilise consumer leases and SACC's or whether these examples are outliers and one-off incidents. Conversely, consideration has not been given to the harm that would be caused by restricting access to consumer leases, for example, increased black market purveyors of credit, theft, exacerbated poverty or ill health. One of the alternatives suggested by ASIC in their A*SIC Report 447: Cost of consumer leases for household goods*[1] is the No Interest Loan Scheme (**"NILS"**) run by Good Shepherd Microfinance as a suitable alternative to consumer leases. NILS loans are funded by government - the NILS website currently states that the Victorian, New South Wales and Queensland state governments have contributed millions to the NILS program.[2]

As we have described, the current consumer lease industry provides consumers with a range of benefits, including fast access to essential household items. Whilst NILS, may be a viable alternative for some consumers, the limit of the majority of NILS loans is $1200 and they take from three (3) days to a number of weeks to process.[3] The timeframe for providing goods under consumer leases is much faster, with Rent The Roo providing many leased goods the day after the consumer enters into the rental contract. To restrict access to consumer leases will mean many low income earners are restricted to choosing a NILS loan to obtain household goods. Given there were approximately 118,700 consumer leases for household goods in March 2013,[4] utilising the NILS program would place a significant burden on the government to fund this program, if access to consumer leases was restricted. In addition to the cost of administering the NILS program, it seems unlikely governments have the capacity to fund the NILS program in order that it becomes a replacement for consumer leases as a means to

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1 http://download.asic.gov.au/media/3350956/rep-447-published-11-september-2015.pdf
2 http://goodshepherdmicrofinance.org.au/our-partners
3 Banks, M, de Silva, A, Russell, R, 2015 "Trends In the Australian Small Loan Market" RMIT University, School of Economics, Finance and Marketing, 29.
4 Report to the Secretary of the Department of Human Services, Australian Government, June 2013, available at www.humanservices.gov.au/corporate/publications-and-resources/centrepay-review/.

obtain access to household items. Further, utilising the NILS program as a replacement for consumer leases would require significant co-operation from the Department of Human Services (Centrelink), contributing to additional strain on Centrelink resources.

For instance, the example included on page 23 of the Interim Report relates to one example from many thousands of consumer leases originated in the past year. The example is not reflective of the consumer leases offered by the industry as a whole. Such examples only serve to show that there are industry outliers due to rogue operators, as exist in all industries. We note that ASIC has been taking action against such people, reflected in their regular media releases publishing those persons who have been removed from operating in the credit industry.

As noted above, the average or median cost of leases would be a more accurate example by which to measure the overall cost of consumer leases within the industry. This is a problem also exists in ASIC's *Report 447: Cost of consumer leases for household goods*[5], which includes a number of statistics and examples without disclosing how many consumer lease providers these statistics reflected and their proportion of the consumer lease industry.

Rent The Roo considers the application of Responsible Lending guidelines to all consumers offers additional protection from the examples of financial harm noted in the Interim Report. ASIC has the ability to actively enforce these guidelines to those in the industry who offer unaffordable loans to customers. The Responsible Lending guidelines already in place could be more effectively enforced to ensure those providers in the industry who cause actual financial harm to customers are investigated.

Further, the lease provider is placing the leased good in the home of the consumer on the basis that the consumer will make the rental payments. In the event the lease provider determined the customer could not afford the rental payments, it would not make commercial sense to allow the customer to enter into a rental agreement. The likelihood of the consumer defaulting on their rental payments would be increased and this ultimately results in a loss of income for the lease provider and potentially the loss of the leased good.

On page 24, the Interim Report suggests that an increase in prices since 2011 is "consistent with pricing that is unconstrained by competition." This view is overly simplistic and does not take into account the varying factors involved in operating a consumer lease business which may have led to price increases. To suggest that pricing is unconstrained by competition is not reflective of the industry or commercial businesses in general. As the Interim Report notes on page 22 in the period 2015-2016 there are 485 businesses offering home appliance rental services. This is not a number of competitors which would cause alarm to competition regulators such as the Australian Competition and Consumer Commission (**"ACCC"**), or indicates that there is a reasonable presumption of a cartel (for example the supermarket industry which previously consisted of only Coles & Woolworths). The ACCC enforce the *Competition and Consumer Act 2010* which prohibits anti-competitive conduct including:

- agreements, arrangements or understandings which are likely to lessen

[5] http://download.asic.gov.au/media/3350956/rep-447-published-11-september-2015.pdf

competition in the market;[6]

- cartel conduct including price fixing, sharing markets, rigging bids and controlling the output or limiting the amount of goods and services available to buyers;[7]
- collective bargaining or collective boycotts;[8]
- exclusive dealing;[9]
- imposing minimum resale prices or withholding products;[10]
- misuse of market power;[11]
- predatory pricing;[12]
- price signalling;
- refusal to supply products or services; and
- unconscionable conduct.[13]

We note the Interim Report does not refer to the Competition and Consumer Act or any of the anti-competitive conduct listed above. Rather the Interim Report refers to competition generally, without providing a definition or reference to the legislation and common law which regulates competition. We consider that further investigation and input from the ACCC is required in order to substantiate the comments throughout the Interim Report regarding the lack of competition in the consumer lease industry.

Rent The Roo allocates a large portion of its expenses to marketing its products and services, in order to cover the cost involved to promote their business and attract customers. The consumer lease market is competitive and consumers many options available to them. Rent The Roo considers large marketing budgets are an indicator of competition, not of a rigged or uncompetitive market. Rent the Roo's marketing budget further indicates they have to work for their customers, based on the price of their rental agreements, the brands available and the length of the rental agreements offered.

There are many participants in the consumer lease industry, offering a variety of products at a range of prices. Despite the high rate of franchise brands within the industry, there are still a range of participants in the industry sufficient to create a substantial level of competition. Like any commercial industry, market forces play a large part in determining the level of pricing. Customers, including Rent The Roo's own customers, compare prices and select the lease provider who best meets their needs and price expectations.

Further, given the concern regarding the lack of competition to restrain pricing, it follows that any changes to legislation or regulation should aim to keep smaller consumer lease providers in the industry in order to promote competition. The introduction of any new regulation which causes smaller providers to exit the industry, due to increased costs of compliance or lack of profitability, will exacerbate the problem of pricing that is unconstrained by competition. Given the concerns highlighted in the Interim Report regarding competition, Rent The Roo would have expected to see input from the ACCC as they specialise in this area. We consider that the lack of input from the ACCC

[6] Competition and Consumer Act 2010 Cth section 45.
[7] Competition and Consumer Act 2010 Cth sections 44ZZZRA, 44ZZRF, 44ZZRG, 44ZZRJ, 44ZZRK.
[8] Competition and Consumer Act 2010 Cth section 93AB.
[9] Competition and Consumer Act 2010 Cth section 47.
[10] Competition and Consumer Act 2010 Cth sections 48, 96, 96A, 98.
[11] Competition and Consumer Act 2010 Cth section 46.
[12] Competition and Consumer Act 2010 Cth section 46(1).
[13] Competition and Consumer Act 2010 Cth sections 20, 21.

suggests the concerns raised in the Interim Report are unfounded and should be the subject of further investigation and reporting from the ACCC.

Chapter 1: Information on trends in the SACC and leasing industries including consumer characteristics.

As noted in our first submission, Rent The Roo services a wide cross section of Australian society. We reiterate the comments made in the first submission regarding the characteristics of Rent The Roo's client base. Many clients are located in remote regional areas and many are low income earners or single parent families. Those on low incomes may not be able to afford credit from a mainstream lender or be able to obtain a credit card from a bank due to poor credit history or lack of suitable employment verification. Consumer leases are a valuable product; Rent The Roo offers consumer leases which address the needs of these consumers by providing essential household items. The provision of these services and goods go a long way towards addressing the inequities faced by low income earners and promoting financial inclusion for these customers.

Rent The Roo also deals with many customers who are located in remote locations, some over 200kms from the local franchisee office. The servicing of these customers promotes financial inclusion, as many of these remote customers are unable to access traditional forms of finance or purchase household items from a retail store. As discussed below, the remote location of the customer adds to the cost to Rent The Roo to provide the consumer lease.

Rent The Roo considers they have the opportunity to alleviate financial hardship for their low income customers by providing essential household items where they may otherwise be unavailable to the customer. In addition, under Rent The Roo's Give-A-Way offer, the goods are gifted to a third party which enables the consumer to access the goods at the end of the term of the lease if they choose. This provides the customer with the use of the leased good during the term of the lease and on a long term basis after the lease has ended, for no additional fee.

Chapter 4: 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?

We refer to the data from the ABS and IBISWorld included in the Interim Report regarding the age of consumers who obtain consumer leases. Please see table below which shows the age of customers who utilise Rent The Roo consumer leases. We note this data is different to the data collected by the ABS and IBISWorld.

Table 1:

Age of Rent The Roo Customers as at 31 December 2015	Percentage of Customer Base
Under 24	15.0%
24-34	39.2%

35-44	20.1%
44-64	23.1%
65 and over	2.6%

We reiterate the comments in our first submission regarding the differences between SACCs and consumer leases. The introduction of a cap of 48 per cent on consumer leases would have a significantly detrimental impact on the industry. Given the increasing cost of compliance, particularly when new regulations are introduced, many smaller participants in the industry would forced out of the industry as a result of lack of profitability. We refer to the Table 2 below, which was included in our first submission. The example below shows the effect the cap would have on the profitability of consumer lease businesses. SACCs make up for this loss by charging interest and fees on top of the repayment of the principal of the loan. Given consumer lease providers do not charge these types of fees, it would create a significant disadvantage to participants in the industry if the 48 per cent cap were to be implemented in relation consumer leases. SACCs are often for a smaller amount than consumer leases and for a shorter period of time. In addition, SACCs provide funds only, the do not involve the provider sourcing the leased good, delivery, installation, ongoing maintenance and servicing or insurance of the leased good. Therefore, the cost to the provider of the SACC to give the loan is less.

Table 2:

	Percentage	**Consumer Lease**	**Where cap applies**
Revenue	100%	$2,486.80	$1,641.00
Cost of Goods Sold: purchase, finance, delivery, installation, warranty, insurance	46%	$1,143.93	$1,143.93
Marketing: Website, personnel, Advertising, referrals	15%	$373.02	$373.02
Operating costs: Staffing, administration, legal, compliance	35%	$870.38	$870.38
Profit Margin	14%	$348.15	-$746.33

Rent The Roo reiterates their position as described in the first submission that SACCs and consumer leases are structurally different and are therefore not comparable. To enforce a cap of 48 per cent on the consumer lease industry does not take into consideration the differences between SACCs and leases. These two products are fundamentally different in their structure and nature under the NCCP Act and Regulations. As discussed in our first submission, SACCs provide cash to a consumer which they may use for a variety of purposes. A consumer lease provides a household item, including essential furniture and appliances which can only be used for the purpose for which they were designed. Whilst the type of customer who utilises SACCs and consumer leases may be similar in that they are low income earners and may receive Centrelink benefits, this is not a sufficient reason to treat these two products as comparable.

Consumer lease providers such as Rent The Roo do not charge the fees in relation to their leases which are commonly associated with SACCs. These fees include establishment and maintenance fees, service costs and interest. In addition, consumer leases provide customers with valuable add on services, including delivery, regular maintenance and servicing of the leased goods.

To introduce a 48 per cent cap on consumer leases would be arbitrary and does not take into consideration the differences in the nature and structure of the two products. As Table 2 above highlights, it would also create a significant disadvantage for providers of consumer leases as compared to SACCs.

Chapter 4: Should there be a limit on the maximum term of a consumer lease?

Rent The Roo does not consider there are any issues with enforcing a limit on the maximum term of a consumer lease. Rent The Roo considers an appropriate cap on the term of a consumer lease is three (3) years. Many leased goods are subject to manufacturer's warranties and these usually expire after three years. In addition, Rent The Roo customers are often looking to lease a new product after three years, rather than continuing to pay for an older item under a lease term of more than three years.

Chapter 4: How should the cash price for determining a cap on leases be determined?

As noted in our previous submission, Rent The Roo considers that the RRP of the leased goods in addition to the associated costs for leasing the goods is the most appropriate method to determine a cap on consumer leases. The RRP is the price at which consumers can access the goods, through retail outlets or online stores. Whilst some consumers may be able to access prices lower than the RRP, for instance during retail sales or through an online wholesaler, these prices will not necessarily be available to all consumers at all times. The use of the RRP and associated leasing costs to determine the cap on costs would provide an accurate and fair method which allows consumer lease providers to continue to operate their business and ensures the industry remains viable.

For those consumer lease providers who offer second hand goods for lease, Rent The Roo considers the formula for determining the cap should be different and adjusted based on the length of time the product has already been leased. Rent The Roo considers the most appropriate method would be to determine the cap by calculating a percentage of the RRP based on the time the product has been available for lease. For example, a washing machine which has an RRP of $1,000 in 2015, but is being leased second hand and is 12 months old could have a cash value of 10-20% of its original value. These types of household items are often advertised on sites such as Ebay and

Gumtree for 10-20% of their original value.

Chapter 4: If a cap on the cost of leases was introduced, how should add on products be treated?

As noted previously, Rent The Roo consider that the associated costs for leasing the goods, or add on products, should be included in the calculation of any cap. Given the value of add on products and the different associated costs incurred by each consumer lease provider, Rent The Roo considers further investigation needs to be conducted to determine the average or median value of such add on products and costs involved to ensure that the calculation of the cap does not disadvantage some lease providers. Any investigation should take into consideration the evidence of as many participants in the industry as possible. The investigation should not be limited to one or two large lease providers.

Chapter 4: 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)?

Rent The Roo franchisees service a wide variety of consumers in Australia, many of whom are located in remote regions. The introduction of a cap which includes add on services has the ability to impact detrimentally on Rent The Roo's profitability for those customers who hold leases and are located significant distances from a franchisee office. As noted in our first submission, the costs for delivery, maintenance and servicing of leased goods for customers who are over 10km from the local franchisee office is very high. Where Rent The Roo employees are required to deliver goods to consumers who are many hours drive from their Rent The Roo franchisee office, they will usually have little opportunity to achieve economies of scale by delivering to multiple clients in the same trip.

Given not all lease providers will service remote areas of Australia, nor are all leases provided located in a similar region of Australia, it is difficult to assess how these add on services could be fairly and accurately included in the cap. As noted above, Rent The Roo considers further investigation is required to accurately ascertain the value of add on services for all consumer lease providers, not simply a small selection of participants in the industry.

If the add on services are included as part of the cap in a way which does not accurately reflect all participants in the industry, smaller providers will be forced out of the industry and many other providers may determine that servicing customers in remote locations is no longer viable. As described previously, many customers who utilise consumer leases are low income earners located in remote areas of Australia and are not able to access other forms of finance or visit a retail store to obtain the household products. These customers will suffer financial hardship and harm if consumer lease providers are unable to service these remote locations.

Chapter 4: 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 earners and Centrelink recipients?

Rent The Roo does not consider there are systemic issues in relation to the collection of information from low income earners and Centrelink recipients across their franchise network or the industry as a whole. Rent The Roo's procedures have been reviewed by ASIC and their methods of data collection to determine affordability of consumer leases and has previously been accepted by ASIC as compliant. As noted above, the ASIC investigations into this issue have been focused on two consumer lease providers in the industry. Rent The Roo does not consider this to be a widespread or systemic issue.

Chapter 4: Should a protected earnings amount be introduced for leases, similar to option 3 canvassed in relation to SACCs?

Rent The Roo does not agree that a protected earnings amount should be introduced in relation to consumer leases. As discussed above, there is existing legislation and regulation to protect consumers, namely the Responsible Lending guidelines and it is Rent The Roo's view that it is the responsibility of ASIC to investigate potential breaches of these guidelines and take enforcement action.

Chapter 4: 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?

As noted above, Rent The Roo does not agree that a protected earnings amount should be introduced in relation to consumer leases.

Chapter 4: Should a combined cap be introduced that covers both SACCs and consumer leases?

As described previously in this submission and also in our first submission, SACCs and consumer leases are fundamentally different and Rent The Roo does not consider a cap should be introduced that covers both products. It is important the differences between these two products are recognised in the development of any cap to ensure the viability of the consumer lease industry and the continued servicing of customers, particularly those located in remote regions of Australia.

Chapter 4: Would there be any difficulties in determining a combined cap covering both leases and SACCS?

Yes, as described above and in our first submission, SACCs and consumer leases provide different products and include different fees and add on services. Given the vast differences between the products, notably the add on services included in most consumer leases, Rent The Roo considers that the determination of a combined cap would not be appropriate.

Chapter 4: What levels of discount on the outstanding lease repayments do lessors provide in their termination clauses?

Rent The Roo offers customers a discount of 24% of the remaining total rent amount which is specified in the Rental Agreement.

Chapter 4: Do lessors provide different discounts on the amount attributable to future leases and the charges for future services?

Rent The Roo does offer customers a flat rate discount on subsequent or future leases.

Conclusion

It is Rent The Roo's view that the current legislation and regulation is sufficient to deal with any financial harm which is being inflicted on low income customers. Rent The Roo considers ASIC has the responsibility and ability to more actively monitor compliance with these regulations and take enforcement action where necessary. In addition, we recommend that the differences between SACCs and consumer leases be properly taken into consideration and any additional regulation or imposition of a cap on leases should accurately reflect the cost to provide the lease, including any additional services provided. Finally, we recommend that a thorough investigation into the consumer lease industry be conducted, to ensure the statistics and reports which form the basis of any changes to legislation reflect the industry as a whole, rather than one or two selected providers that are not reflective of the entire industry.

If you have any questions or would like to discuss this matter further, we would be pleased to hear from you.

Yours Sincerely

Philip Hague, Alan Carroll, Roger McKenna, Sophie Gerber and Alicia Pevely