SACC Review Panel
c/- SACC Panel Secretariat
Financial Services Division
Markets Group, The Treasury
Langton Crescent
Parkes
ACT 2600

22 January 2016

Dear Ms Press, Ms Walter and Mr Kavanagh,

RE: Additional stakeholder consultation following the release of the Panel's Interim Report

Thank you for providing the opportunity for further consultation, and inviting further submissions, as part of the Treasury's review of small amount credit contracts and comparable consumer leases.

As outlined in our initial submission, Walker Stores Pty Ltd (**Walker Stores)** is a national credit provider, and is authorised to engage in credit activities under its Australian Credit Licence (ACL) number 393023.

We offer consumer leases for the use of consumer electronics, household appliances, I.T. equipment and furniture. We operate through two distribution channels, as follows:

- 40 retail locations operated by a related party, where consumer leases are offered alongside cash and interest free facilities. In these related party stores, Walker Stores also provides the interest free finance offer; and
- A further 700 unaffiliated retailers, where the consumer lease offer is financed by Walker Stores alongside cash and interest free options not offered by Walker Stores.

Our 50+ year history, in addition to our multi-channel operation, has allowed us to develop a deep understanding of the consumer lease market and, with approximately 100,000 new items leased each year, Walker Stores is a consumer lessor of scale.

Since making our initial submission in October 2015, Walker Stores has attended the stakeholder round table meeting in Sydney on 10 November 2015, provided a further submission (via the Australian Finance Conference [**AFC**], of which Walker Stores is a member) on 15 December 2015 and reviewed the Panel's Interim Report.

Walker Stores provide the enclosed, further, submission to address areas which we believe to be fundamental to the Panel's review, as well as to provide responses to several of the requests for information made by the Panel in its Interim Report.

Walker Stores again note its appreciation for being given the opportunity to provide further input to the consultation process, and would welcome the opportunity to meet with the Panel to discuss the contents of this submission further.

Adam Goldfain
General Manager
Walker Store Pty Ltd

OVERVIEW

Walker Stores remains very concerned about the small minority of "rogue lessors" who have been taking advantage of certain consumers, and Walker Stores wishes to assist the Panel in providing recommendations to prevent such predatory behaviour.

Walker Stores note that, in large part, consumer advocacy group and ASIC evidence in respect of consumers who have been targeted by rogue lessors is limited to regional locations of small population, with little competition in the local market. Further, the evidence obtained by ASIC as part of the "targeted review" component of their "Report 447: Cost of consumer leases for household goods" (**Report 447**) was based on lessors operating in regional locations, without a shopfront.

We consider there to be some very effective measures that could be taken to deal specifically with lessors matching the description of those highlighted in Report 447. For example, as proposed in the December 2015 AFC submission, we would support a ban on consumer lease providers utilising a door-to-door/uninvited contact business structure.

However, we accept the point made by the Panel at the 10 November stakeholder meeting that it could only be beneficial to consumers and the industry if new regulatory provisions removed the opportunity for such rogue lessors to operate in any location or business structure. Such provisions would protect all consumers who have until now been targeted by these operators, and would ensure that such practices are not possible.

Walker Stores also accepts that it is reasonable for a cap to be implemented on consumer leases, subject to there being consideration provided as to the class of lease the cap should apply to, and the value of the cap.

In this submission, and in response to specific comments and requests made in your Interim Report, Walker Stores provides views on:

1. The comparability of consumer leases with other types of credit, particularly SACCs;
2. The class of consumers to which a cap should apply;
3. The maximum amount that should be allowed to be charged under a cap; and
4. The regulation of early termination fees for consumer leases.

RESPONSE & RECOMMENDATIONS

1. The comparability of consumer leases with other type of credit, particularly SACCs

Walker Stores continues to hold the firm view that consumer leases are functionally entirely different from SACCs.

The arguments as to why the two types of finance are different have been made previously, however by way of broad summary:

Purpose of finance:

- SACCs are short term loans of no more than 12 months. They are designed to allow consumers who are in a short term cash deficit position to be able to meet their ongoing household expenses.

- Consumer leases are a long term credit arrangement, in nearly all cases unavailable for less than 12 months, and, in Walker Stores' case, 90% of leases are for 36 months or longer. They provide consumers with access to and the use of a very limited set of physical products, being consumer electronics, household appliances, I.T. equipment and furniture.

Features of finance, and infrastructure of the finance provider

- SACC providers are very reliant on a direct-to-consumer distribution channel, i.e. online and phone. The mechanics of a SACC are isolated to the repayment of the loan value (including interest), and the consumer does not benefit from any particular features outside of being provided access to the loan principal amount.

- The vast majority of consumer leases, including those offered by Walker Stores, Flexigroup and Thorn Group Australia, are made available from retail locations, typically in highly trafficked streets or shopping centres. In the case of Walker Stores and some other large-scale consumer lease providers, the option for consumers to take up a lease agreement is presented alongside the option for the consumer to purchase the goods for cash, or to finance the goods on interest free terms.

  Furthermore, consumer leases typically offer significant ancillary features and benefits that are not available under a SACC (or other forms of credit/cash purchase). These include delivery, service and a range of other entitlements.

  The provision of such features and benefits brings significant infrastructure costs that SACC providers, and other credit providers, do not have. Consumer lease providers such as Walker Stores employ hundreds of people, invest heavily in fixed asset purchase and maintenance, and either own or lease multiple tenancies.

  These costs are unique to consumer lease providers, and are carried on solely to support those features and benefits offered under a consumer lease that are not available under a SACC (or other types of credit).

  Furthermore, while Walker Stores acknowledges that in many cases consumers may acquire the goods from the lessor during or at the end of the lease period, there are also many cases where consumers exercise their right to return the goods at lease end. In Walker Stores' case, many consumers also upgrade their goods *during* the lease term, which itself is a unique feature available under Walker Stores' lease contract that is unavailable (and in fact not relevant) to consumers who take out a SACC. To cater for such cases, the lessor must have significant infrastructure in place to receive, refurbish and re-sell the goods (often at a loss on the goods' written down value) once received back.

The comparisons made above have been presented again as Walker Stores believes it is very important that the Panel clearly understand that SACCs and consumer leases are fundamentally different. It is therefore flawed to simply characterise the two types of finance as comparable <u>products.</u> However, this does not mean that there is not some market overlap between the two product types. This overlap is discussed further in section 2 on the following page.

Walker Stores' Recommendation 1: Consumer leases and SACCs are functionally different and should not be considered comparable products

2. The class of consumers to which a cap should apply

On page 21 of your Interim Report, you note that:
"*It is recognised that the customers using leases can be varied. However, the consumers of concern are those that are on low incomes"*
Page 22 of your Interim Report goes on to note that:
"It appears that a subset of the customer base for consumer leases is similar to that of SACCs, with substantial levels of use by low-income consumers."

Walker Stores agrees with these statements. By their very nature, SACCs are clearly designed to assist consumers with limited income availability, and Walker Stores therefore believes it is reasonable to consider all SACC customers as "financially vulnerable".

The consumer lease industry attracts customers from a far wider range of socio-demographic statuses, including consumers who are of a similar socio-demographic status to those who apply for SACCs. For consistency in terminology, Walker Stores would accept that the categorisation "financially vulnerable" would apply to consumer lease customers who are of a similar socio-demographic status to SACC customers.

In Walker Stores' view, the important distinction to make is that similarities between SACCs and consumer leases exist, to some extent, in the type of <u>customer,</u> not the type of <u>finance product.</u>

On page 31, your Interim Report begins to consider the class of consumer lease to which a cap should apply, and lists *cash value of goods* (e.g. $2,000), *features of goods* (i.e. household and electronic goods) and *characteristics of consumer* as possible ways to identify the class of consumer to which a cap should apply.

In order for the review to be true to its purpose of focussing on "*leases that could be considered comparable to SACCs in relation to their size, purpose or consumer characteristics"* (pg. 31), it seems clear that only "consumer characteristics" can be reliably utilised as a means for applying a cap.

The reasons for this are:

(i) As has been demonstrated, the only way in which SACCs are comparable to consumer leases are through comparison of customer characteristics, rather than comparison of product features and benefits

(ii) The cash value of the goods and the feature of the goods are not unique to any particular form of finance, including cash.
  - All consumers, not just those entering into a consumer lease or a SACC, require access to household and electronic goods; and
  - In Walker Stores' experience, the $2,000 value of goods is a normal amount (and if anything, at the high end on a single-product or transaction measure) to be spent by consumers, regardless of what finance, including cash, is utilised to acquire or gain access to the item/s.

Walker Stores therefore believe that consumer lease customers who are considered "financially vulnerable" consumers, i.e. those consumers who are similar to SACC consumers, are the class of customer to which a consumer lease cap should apply. This is consistent with the option proposed by the Panel on page 31 of your Interim Report that:
"Another approach could be to define the class of transaction to be subject to any cap by reference to the characteristics of the consumer"

Implementing a cap to protect "financially vulnerable" consumers would require this term to be properly defined in order to allow for easy and reliable measurement. Walker Stores agree with the Panel's comment on page 31 of the report that "*a definition operating by reference to the income of the consumer may be too complex and uncertain to be workable*". However, Walker Stores believe that an effective measure to define "financially vulnerable" consumers could be based on the proportion of a consumer's income that is paid by Government benefits. Walker Stores' suggestion is that a cap be applied to consumers who receive 50% or more of their income from Centrelink, as this is consistent with the basis of measurement for the "protected earnings" test utilised for SACCs.

This measure is very practical, as, in fulfilling their "reasonable inquiries" obligations under the responsible lending provisions of the National Consumer Credit Protection Act (**NCCPA)**, all consumer lessors should be very clear on the source and amount of income available to consumers applying for a consumer lease.

Walker Stores' Recommendation 2: A cap should apply to consumers who receive 50% or more of their income from Centrelink

3. **The maximum amount that should be allowed to be charged under a cap**

Walker Stores note that there are variations between the maximum amount that can be charged under SACCs, MACCs and other types of credit. This is discussed on page 4 of your Interim Report, e.g.:
"SACCs were granted a concession from the 48 per cent cap to reflect the high administration costs relative to the sizes of the loans and the short period of time that lenders have to recoup their costs…. The Panel has given consideration to the appropriateness of the concession from the 48 per cent cap in relation to SACCs and considers that a concession continues to be relevant"

The common-sense reasoning that recognises that SACCs, MACCs and other types of credit require different caps to reflect their different structures should also be applied to consumer leases.

Your Interim Report further notes on page 4 that:
"Leases are currently exempt from any cap. The case as to why consumer leases, that are in essence credit contracts, should be excluded from a cap is not clear"

Walker Stores believes that there have been two reasons why regulators have historically found it difficult to apply a cap for leased goods:

(i) Applying caps for consumer leases that are based on an interest rate – e.g. 48 per cent, for consistency with other credit of similar length – is a contrary concept to the legal structure of a lease. Regardless of whether a consumer eventually acquires goods from a lessor, under the NCCPA a lessor retains ownership of the goods, and hence the application of "interest" in a cap is confusing.

(ii) The significant value of ancillary benefits under a lease make it very difficult to determine a cost base/"cash price", because the specific benefits made available to consumers will vary greatly based on, among other things, the type of item being leased, the value of the item being leased, the term of the lease and the location of the consumer's home. Without having a cost base that can reliably be calculated, it is impossible to determine a maximum repayment amount.

However, Walker Stores acknowledge that the lack of a cap has led to, in very limited cases, the egregious charging listed in ASIC's Report 447, e.g. 300%p.a.+, 800%p.a.+ effective interest rates.

Walker Stores therefore support a cap being implemented, but note that this cap must be reasonable and have regard for the significant costs associated with lessors providing ancillary benefits to their customers, and the significant infrastructure costs required to operate a consumer lease business.

In the AFC submission made on 15 December 2015, the following caps were proposed:

TERM	MAXIMUM CAP
0 - 12 months	1.8 x “cash price” per annum
> 12 – 24 months	1.5 x “cash price” per annum
> 24 months	1.0 x “cash price” per annum

The 15 December 2015 submission also explained that in determining the cash price the lessor could utilise either the recommended retail price of the manufacturer or the third party supplier’s price.

Walker Stores continues to support these caps. They achieve the outcome of abolishing the practice of egregious pricing such as that listed in ASIC’s Report 447, while also providing lessors with the ability to maintain the significant infrastructure required to operate their businesses.

Any cap less than these will, at a minimum, result in a reduction in services to the consumer (e.g. delivery and ongoing product maintenance beyond that required under statutory warranties). Furthermore, any caps less than these will likely render consumer lessors unviable, thereby removing this financing option altogether for consumers and leading to loss of employment for staff.

Walker Stores also note that on page 31 of your Interim Report there is a request for information in respect of whether there should be a limit on the maximum term of a consumer lease. Walker Stores strongly believe that the availability of a 5 year lease for consumers is reasonable and should be retained. Credit contracts of this length are a commonly available, and provide consumers with the opportunity to balance length of term with their affordability needs.

Walker Stores’ Recommendation 3: The caps proposed in the AFC’s 15 December 2015 submission should apply to the class of consumers identified as “financially vulnerable” consumers in section 2. There should be no maximum term on a consumer lease.

4. The regulation of early termination fees for consumer leases

Walker Stores note that there are regulatory provisions contained in s25 (1)(c) of the Australian Consumer Law and in s12 BH (1)(c) of the ASIC Act that prescribe when early termination fees would be deemed an unfair contract term.

Walker Stores believe that these provisions, when applied to consumer leases, are reasonable, and that they balance the need for consumer protection with credit providers’ need to be able to protect their legitimate interests.

Walker Stores’ Recommendation 4: Existing unfair contract term provisions in the Australian Consumer Law and the ASIC Act provide consumer lease customers with sufficient protection in respect of early termination fees.