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Hon Kelly O'Dwyer MP
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c/- Consumer Credit
The Treasury
PARKES ACT 2600

27 May 2016

By email: consumercredit@treasury.gov.au
cc: tania.coltman@treasury.gov.au

Dear Minister

REVIEW OF SMALL AMOUNT CREDIT CONTRACTS: FINAL REPORT

The Australian Finance Conference (AFC) appreciates the opportunity to provide industry policy input into the Government's consideration of recommendations relating to the regulation of consumer leases contained in the Independent Panel's Final Report culminating its Review of Small Amount Credit Contract (SACC) Laws.

Our Members regard the SACC Review to the extent it relates to regulation of consumer leases as critical to their operations. Consequently they have endeavoured to maximise the opportunity to assist the Panel's review by providing feedback during the process, both through the AFC and individually, to give an industry-context to reform considerations.

We acknowledge and thank the Panel and your Government for that engagement and recognise the efforts to reflect in the recommendations a balance between consumer protection and broader market and public interest concerns.

In providing this response, our feedback is focussed on recommendations where, in our view, the consumer protection measure proposed goes beyond a targeted response to address evidence-based consumer risk. We believe that these particular recommendations have the potential to increase compliance costs for our members, stifle innovation and competition and remove consumer access to a legitimate and sought after form of finance; outcomes we understand would be at odds with the objectives underlying the Review, your Government's policies and its election platform. In this we note that the Terms of Reference for the Review highlighted "access to finance" and "regulatory compliance costs" as being key factors to be considered in the making of any recommendations.

Background

The AFC membership includes significant providers of consumer leases. Three members operate in the consumer lease of household goods market: Thorn Group, Flexigroup and Walker Stores. Together they represent conservatively 80-85% of the total volume of the consumer lease of household goods market in Australia. Their business models (including customer base) vary. For example, some have a "bricks and mortar" presence where household goods may be acquired for cash as an alternate to leasing. Cash sales and other finance alternatives (eg interest free credit) are also clearly available to those consumers with access to our members' consumer lease products, as consumer leases are either offered by our members in third-party mainstream retailers or otherwise in large-scale shopping destinations where mainstream retailers also operate.

While their models may differ, fundamentally the consumer lease product that our members offer is sufficiently similar for the purposes of this response for AFC to be in a position to speak from an aligned basis when providing feedback. We are aware our members may individually make submissions direct to the Government about their specific business, customers and product and potential impacts of recommendations contained in the Final Report. The purpose of this submission is to provide an over-arching policy response demonstrating and maintaining the availability and viability of the consumer lease product to meet consumer needs.

While on a volume of business basis our 3 members represent the major proportion of the market, in terms of number of participants of the total market of 485 (eg IBIS World Industry Report OD5467) – they represent less than 1% of the market.

As further noted (in the IBISWorld 2012 Report), *“the household-goods leasing industry comprises many small scale geographically dispersed firms which operate in narrow regional or niche product markets. The industry includes many non-employing establishments, typically one or two person businesses in which the proprietor may function on a full or part-time basis”*.

This is in stark contrast with our members; two of which are publicly listed companies, and the third that utilises a governance model that operates as if it is publicly listed. In consequence, the way our members operate is designed to meet requirements that may have more significant outcomes for them if they fall short than Government regulator intervention (eg from ASIC), including loss of, or more costly access to, funding and shareholder backlash.

All three are well-established and mature businesses each employing significant numbers of people, each with a national presence operating mainly in metropolitan areas, though also servicing large regional centres. All hold Australian Credit Licenses and have put in place appropriate systems (including responsible lending and dispute settlement systems) to adequately ensure their dealings with their customers meet compliance obligations and foster positive relationships.

Given their focus on sustainability, customer relationship management and regulatory risk minimisation, all have a commitment to repeat and ongoing business, and therefore in order to preserve their reputations, have high standards of conduct and endeavour to meet their NCCPA and other obligations.

On this basis, our members, together with the AFC have endeavoured to engage collaboratively with the Independent Panel through the course of the Review with the objective of determining whether more prescriptive regulation (eg in relation to caps on costs, additional responsible lending compliance and disclosure obligations) is warranted in the regulation of consumer leases for household goods, particularly for those consumers on low incomes and / or those consumers who are mainly or wholly reliant on Centrelink benefits for their income.

Where there is evidence of market failure or risk to consumers, AFC and our members have proposed solutions targeted to address such shortcomings to ensure that the regulatory framework strikes the right balance between providing adequate consumer protection while allowing ongoing access to finance for consumers who elect to utilise consumer leases.

With this background, we provide the following industry-context to the recommendations proposed by the Panel.

Key Issues + Summary of AFC Responses

Reflecting the business focus of our Members, our feedback has been confined to recommendations relating to proposed additional regulation of consumer leases. Detailed comments are contained in a table (attached). A summary follows:

1. **Caps / Pricing Controls:** In principle the AFC agrees to support maximum pricing controls (i.e. caps) as a means of addressing potential consumer risk (eg through inappropriate pricing) of the consumer lease of household goods product in the financially vulnerable market segment. A cap based on a multiple of the RRP ("base price") of the leased asset that appropriately takes into account the term of the contract and the costs of services and benefits incurred by the lessor in providing the product through the life of the contract is appropriate. The features of a consumer lease are sufficiently different from a credit contract to warrant a regulatory design outcome to reflect these differences. . AFC were encouraged to find that the Review Panel recognised these differences and consequently did not recommend a flat 48%APR cap. However we reiterate that the service and infrastructure associated with consumer leasing are substantial and do not believe that these have been adequately reflected in the Review Panel's proposed caps. AFC therefore again recommends the caps proposed in our prior submissions (and summarised in column 5 of Table 9 of the Panel's Report, on page 51) are adopted by Government.

2. **Affordability / Protected Earnings Amount:** Our members recognise that any protected earnings prohibition would be in addition to the broader NCCPA responsible lending requirements under which *inter alia* our members are obliged to make reasonable inquiries about, and verify, the customer's financial circumstances (including any other repayment / payment obligations under other credit products or consumer leases). The risks of getting this wrong are potentially significant (as evidenced by The Cash Store Case and the \$19M penalty that was awarded by the Court). In our view this risk is sufficient to ensure appropriate responsible lending decisions by our members.

Nonetheless, as outlined in earlier submissions, in principle the AFC supports regulatory design to protect financially vulnerable consumers and promote financial inclusion while enabling continued access to use household goods through consumer lease products. To that end, AFC support some form of protected earnings amount. However, AFC have very serious concerns in respect of the appropriateness of the proposed 10% of net income cap.

These concerns are outlined in detail in the attached table, however a critical flaw of the recommendation is that it will often simply lead to consumers choosing to pay more overall for a consumer lease. Our members advise that they have many examples of consumers who have demonstrated (as a result of the lessor undertaking responsible lending obligations) sufficient capacity to lease goods over a particular term, but that under the proposed protected earnings test will be forced to lease these goods over a longer period. For example, a consumer may demonstrate (as a result of the lessor undertaking reasonable inquiry and verification procedures of the consumer's financial situation) the financial capacity to utilise 12% of their net income in order to lease goods over a 36 month period. In such a case, it is unlikely that the consumer will choose not to proceed with the lease or will choose different (lower price) goods, given they have already demonstrated capacity for the goods that they have previously identified as wishing to lease. Instead, under the proposed protected earnings test, such a consumer would quite likely simply choose to lease the goods over a 48 month period in order to fall below the 10% threshold. As a result, while paying less on a monthly basis, the consumer would pay more overall due to the protected earnings threshold being set at such a restrictive level.

This is clearly not a desirable outcome for the consumer. AFC's proposed protected earnings amount of 20% of net income would largely eliminate such scenarios.

AFC further notes that the protected earnings test has been recommended to apply to all lease payments made by a consumer, not just the payments made to an individual lessor. AFC opposes this requirement as there will clearly be operational challenges in complying and potentially significant risk in the event of breach. AFC's proposal to tie this protection to the 20% threshold assessment based on an aggregation of rental payments for consumer leases between the consumer and a lease provider (which would also include factoring in rentals from a potential additional lease that the consumer may have applied for with that lessor) provides the appropriate balance between consumer protection for the financially vulnerable and compliance risk and cost.

In Recommendation 11, the Panel has proposed that lessors offering leases in excess of 48 months should be unable to charge more than the maximum amount chargeable under a 48 month lease. AFC notes, and further discusses in the attached table, that finance terms in excess of 48 months are common in the Australian market place (including a 60 month term in consumer leasing) and that such terms offer flexibility and choice to the consumer. Given that lessors are required to provide service and support throughout the full term of lease contracts, AFC believes that any regulated pricing caps should include provisions for lease terms of 60 months, with the total amount chargeable for this term to exceed that of a 48 month term, and to be calculated using the same methodology as applied to shorter terms.

AFC questions the basis for imposing a further prescriptive obligation to obtain and consider 90 days of bank statements for all consumers, considering that lessors are already obliged to inquire and take reasonable steps to verify a consumer's financial situation. Furthermore, our members have experience that suggests that bank statements can often provide a misleading view of a consumer's financial situation. Examples of such issues are provided in the attached table. AFC therefore opposes the Panel's recommendation to require bank statements be obtained and considered by lessors.

On a more general level, in the AFC's view, we note that the real policy issue with financial vulnerability is one of social and income inequality. This is because some consumers are forced to borrow to meet pressing basic needs, not because the poorest consumers pay more for credit or face the prospect of over-commitment through the use of credit as often alleged. Consumers with limited income and resources have no choice other than to borrow to meet basic needs. No amount of regulatory responses to credit or other finance product provision will change this situation.

3. Transparency + enhanced consumer understanding: in principle the AFC supports enhanced consumer understanding. Disclosure is an important component of this. For this reason, AFC has supported additional disclosure to ensure consumers understand key features of the consumer lease product (eg the disclosure of base price and of the difference between base price and total rental payable). These features differentiate consumer leases from other forms of equipment finance. AFC does not support disclosures that operate to create confusion between the consumer lease and other finance products (eg credit contracts or loans). The proposed obligation to "create" and disclose an APR% for a consumer lease product is an example of this. It is an artifice, and arguably puts at risk legal outcomes, including the tax treatment of the lease product.

We also question what value the recommended additional disclosures may have in the absence of a Government strategy to facilitate enhanced financial literacy, particularly for the financially vulnerable market segment. Enhanced financial literacy would ensure that a consumer has the necessary skills to make use of information that has been disclosed to make good financial decisions.

Conclusion

We acknowledge the challenges involved for Government to establish a framework that appropriately regulates the behavior of several hundred consumer leasing industry participants, particularly given the diversities in business-model and governance structures.

However, we suggest that in attempting to control inappropriate behavior of a few market participants that Government needs to ensure an approach that appropriately reflects the broader market (which arguably is the greatest proportion both in terms of volumes and customer numbers). We also note relevant commentary in this regard in the Government's *Review of Centrepay Report*:

"Anecdotally, it appeared that remote and very remote communities were serviced by the very small household rental goods providers. The conundrum is how to encourage the larger service providers to enter the market in these more remote locations that are currently only being served by the small players, who are often willing to exploit the lack of choice or alternatives faced by residents. The Department could consider offering a range of incentives, either through contract terms or alternative fee structures, for the larger and more reputable service providers to increase their coverage to remote locations. In conjunction with suggested reforms to introduce an industry specific Code of Conduct, this would ensure that remote communities are still receiving access to required goods and services, at the same time as reducing the risk that they will be paying severely inflated costs for access to those products".

In conclusion, the AFC and our members welcome the opportunity to work with the Government to ensure inappropriate behaviour is identified and regulation designed to target and address the evidence-based harm is enacted. This achieves the underlying objectives to balance consumer protection in a manner that minimises compliance costs and facilitates innovation, fairness, competition and access to finance for consumers. Where we believe a recommendation has added compliance cost without an appropriate justification, and / or which we believe could have the unintended consequence of limiting access to finance to consumers, we have highlighted this in our feedback. Where possible, we have suggested alternate regulatory design solutions to recalibrate the balance.

We would welcome the opportunity to discuss our feedback in person and in more detail. Please feel free to contact me by telephone through the AFC Office 02 9231 5877 or via email helen@afc.asn.au.

Kind regards



Helen Gordon
Deputy Executive Director

Attachments:

1. SACC Review: Final Report CL Recommendations – AFC Feedback
2. AFC Additional Submission (15 December 2015) to Review Panel + Attachments

SACC REVIEW: FINAL REPORT – CONSUMER LEASE RECOMMENDATIONS + AFC FEEDBACK

The AFC feedback in the table that follows is shaped from the following context:

The consumer lease is a mature product that has been in existence in the market as a viable alternate to credit or cash for consumers to access and use household goods for several decades. . In addition to being an alternative form of finance, consumer leases have also traditionally provided consumers with significant services and benefits which are not available to consumers who acquire goods via cash or credit (e.g. interest free). The provision of such benefits and services comes with real and significant operating and infrastructure costs on the part of the lessor.

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

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

For leases that do not have those features (ie are not a contract for the sale of goods by instalments or a hire with a right or option to purchase) the variations between the consumer lease and credit are significant enough to have warranted a regulatory framework that deals separately with the consumer lease in contrast to credit. Features include the package of benefits encompassed within the product (eg delivery, installation, maintenance) in addition to a charge for use. Such features generally have no equivalence in the credit contract context and the services and benefits traditionally provided to consumers under consumer leases come with very real and significant operating and infrastructure costs to be borne by the lessor. The unique nature of consumer leases and product features that differentiate it from other forms of credit, is not just industry’s view, but the view of Parliament, and has been, as policy design, tested a number of times over the years including as recently as the Enhancements Act. The outcome has seen the separation of the regulation between the products retained. In completing its Report, and providing its recommendations, the Panel do not seem to have fully appreciated either the scale of services and benefits made available by lessors to their customers, or the operating and infrastructure costs to lessors associated with the provision of such services and benefits.

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

Our Members acknowledge the range of concerns identified by ASIC and other non-industry stakeholders including in feedback provided to the Panel. The AFC and its members are aligned with the views expressed that consumers, especially those that are financially vulnerable, should be protected from egregious pricing and should have sufficient information disclosed in a form that enables them to readily comprehend the consumer lease product that they are agreeing to.

AFC also notes that while best practice regulation would see the Government committed to targeting regulatory reforms to an identified area of consumer risk or market failure – in this case the financially vulnerable market – our Members would support a regulatory reform solution that would have application across the customer-base.

RECOMMENDATION	AFC FEEDBACK								
1. PRICING CONTROLS - CAPS									
<p>Recommendation 11: Cap on Cost to Consumers</p>	<p>Our Members, in principle, agree to support maximum pricing controls (i.e. caps) as a means of addressing potential consumer risk (eg through inappropriate pricing) of the consumer lease of household goods.</p> <p>As noted in earlier submissions</p> <ul style="list-style-type: none"> • A cap based on an APR%, while appropriate for credit contracts generally is not appropriate for a consumer lease given the features of a consumer lease and what is encompassed in the rental payments (e.g. delivery, installation; in-home service, maintenance, relocation, collection, flexibility, etc). • Caps should more appropriately be based on a formula built on a multiple of the concept of the “cash price” for “household goods” over nominated lease terms. • Caps for consumer leases should be set to reflect features which differentiate the product from a credit contract; including additional costs for product-design services and customer relationship management over the life of the transaction. A cap specific to the product, similar to the regulatory design approach for SACCs in contrast to credit contracts more generally, is therefore appropriate. <p>In our 15 December 2015 additional submission (attached), AFC and our members proposed price caps for consumer leases as follows:</p> <table border="1" data-bbox="533 1093 1369 1211"> <thead> <tr> <th>TERM</th> <th>MAXIMUM CAP</th> </tr> </thead> <tbody> <tr> <td>0 - 12 months</td> <td>1.8 x “cash price”* per annum</td> </tr> <tr> <td>> 12 – 24 months</td> <td>1.5 x “cash price” per annum</td> </tr> <tr> <td>> 24 months</td> <td>1.0 x “cash price” per annum</td> </tr> </tbody> </table> <p>* Reference to “cash price” in earlier submissions is effectively a reference to the term “base price” as used in the Panel’s report.</p> <p>The cap proposed by AFC members was designed to:</p> <ol style="list-style-type: none"> 1. along with other measures (e.g. abolition of unsolicited sales conduct), totally eliminate the egregious charging practices of the small minority of rogue lessors who were engaging in predatory behaviour; 2. provide an appropriate “bright line” below which the very large majority of the industry, who do not engage in predatory practices or egregious charging, could continue to operate; 3. ensure that the very significant operational and infrastructure costs borne by lessors are recognised and, in turn, ensure that the significant, unique ancillary services and benefits available under consumer leases could continue to be offered. <p>We reiterate our previous commentary that the AFC’s proposed cap is not intended to be the price at which the product is written by all market participants. Rather, it is a clear indication of a price that, if exceeded, would be regarded as egregious pricing by the Government and the community generally. As is currently the case, market competition and the specific ancillary benefits and services provided by individual lessors would dictate lessor pricing.</p> <p>AFC Position: The cap recommended by the Panel is different from that proposed by the AFC in its additional submission of 15 December 2015. AFC continues to support the caps previously proposed by AFC, as published above and in column 5 of Table 9 in the Report (at page 51).</p>	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
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RECOMMENDATION	AFC FEEDBACK
	<p><u>Term Longer than 48 Months:</u> We note the Panel’s recommendation would operate to put strictures in a cap that may effectively operate to undermine the ability of a lessor to offer a lease for a term longer than 48 months, due to the lessor being unable and recoup its costs in doing so; in short, this would otherwise inhibit consumers access to a product that might be suitable for them. The basis to support this has not in our view been adequately substantiated in the Report.</p> <p>Based on earlier feedback provided to the Panel by AFC it is not uncommon for our Members to offer consumer leases for terms of up to 60 months. Leases of this length have been popular for consumers in Australia. The ability to offer products with a term of this length facilitates consumer access to the product. This is similar to home loans where product terms vary to facilitate access for a consumer taking into account their particular financial circumstances and requirements / objectives.</p> <p>But lessors need to be able to recoup the costs to service or manage the leased asset over the entire lease contract term (eg between 48 to 60 months). In fact, the older the product, the more likely these services will be required and the greater the cost to the lessor. Given the customer benefit both in terms of access to the product and the services and management of the asset that the consumer lease entails, we submit that an additional component to any cap is required for a consumer lease of a term of up to 60 months. This will ensure ongoing consumer access and that the lessor’s costs are able to be recovered. In the absence of revision, the outcome would appear to be detrimental to consumers, which we submit is at odds with the Government’s objectives.</p>
<p>Recommendation 12: Base Price of Goods</p>	<p><u>New Goods</u> We acknowledge and support a cap built on the RRP of the leased good (base price).</p> <p>We also support a base price that enables an alternate to RRP, for example, the price on the invoice provided by an arms’ length third-party retailer of the goods when selling the goods to the lessor. We acknowledge that this retailer price will normally be below the RRP.</p> <p>However, as currently proposed the recommended concept of “base price” in relation to the alternate potentially creates operational difficulty for our Members. Firstly, because it utilises a concept of an “in-store” price which appears at odds with consumer trends to an on-line environment and Government efforts to facilitate this and remove inhibitors in legislation that might deter it. Consequently any regulatory design that includes a particular distribution channel or operates other than in a “technologically neutral” manner should be avoided. Further, our Members should be able to rely on the price invoiced by an arms-length third party retailer without having to test against RRP; a data-measure that may not be currently utilised or available in their operations and arguably one that is irrelevant, if there is no relationship between our Member and the third party retailer that might see the price of the goods influenced by our Member.</p> <p><u>AFC Position – New Goods – Base Price:</u> For reasons given, we recommend the concept of base price should be revised as follows: <i>The base price for new goods should be the RRP or the price paid to an arms-length retailer.</i></p> <p><u>Second-Hand Goods</u> <u>AFC Position – Second Hand Goods – Base Price:</u> We acknowledge the Government’s intention to consult further on this. As a starting point, AFC recommends that for consumer leases of second-hand or used goods (i.e. re-rent stock) the “base price” should be:</p>

RECOMMENDATION	AFC FEEDBACK
	<p>. the price as determined by the lessor but no higher than the original RRP or price paid to an arms-length retailer.</p>
<p>Recommendation 13: Add-on services & features</p>	<p>Cap - All-inclusive of Services / Features costs (net of delivery charges) AFC is concerned that lessors' very significant operating and infrastructure costs have not adequately been recognised in the Panel's report.</p> <p>On page 56 of its report, the Panel provides conflicting examples in respect of consumers' usage of add-on services and features, i.e. "<i>some submissions suggested that servicing and repairs are benefits heavily utilised by consumers. However, other stakeholders noted that they almost never see consumers utilising add-on services and features</i>". This seems to implicitly suggest that a lack of stakeholder consensus in respect of the usage of ancillary benefits and services means the provision of such add-ons are neither commonly used nor highly valued by consumers. This is not a view shared by industry members.</p> <p>AFC notes that the Panel's reference to consumers not utilising such services was one put forward by a consumer advocacy group, who elaborated in their submission that "<i>we have not surveyed the market in any systemic sense</i>".</p> <p>While AFC acknowledges the possibility that clients of consumer advocacy groups may have entered into leases with lessors (including rogue lessors) that provide little in the way of add-on services and ancillary benefits, we submit that this is not representative of the majority of the industry.</p> <p>In AFC's experience, most consumer lease providers offer a range of ancillary benefits and services to their consumers. These may include free delivery and basic installation, free removal and disposal of old products, on-site and off-site technical service for the life of the consumer lease, over the phone troubleshooting for the life of the lease, changeover to new products during the lease term, free transportation of products from a current residence to a new residence during the lease term, etc.</p> <p>Some providers also offer certain benefits and services separate from but related to the lease transaction (eg the damage liability reduction offered by Thorn Group Australia and referred to on page 57 of the Panel's report which indemnifies customers in the event of the theft of the goods, for example, and which can be terminated by the consumer at any time for no cost).</p> <p>The costs to consumer lessors of providing these ancillary benefits and services is not limited to the specific, operational service being provided. There are substantial infrastructure costs that are required to properly support consumer lease products. For example:</p> <ul style="list-style-type: none"> • Many consumer lease providers operate shopfronts, and as a result either lease or own multiple tenancies and have significant associated fixed overheads and/or capital expenditure. These providers must also acquire products to display in showrooms, maintain warehouses with boxed goods for delivery to customer, and employ significant numbers of personnel throughout their retail and logistics operations. • The provision of technical service for product repair requires a significant investment in capital and infrastructure (eg workshops, trucks, tools, spare parts, etc). • Many consumers exercise their contractual right under consumer leases to return goods at the end of the lease term. Consumer lease providers therefore need infrastructure and facilities to collect goods at the end of a lease term, refurbish or repair the goods and either dispose of the goods or make them available for re-sale. <p>Capital, operational and personnel costs such as these are simply not borne by SACC, MACC or other credit providers, and typically represent a significant investment in human resources, fixed assets and computer systems on the part of lessors.</p>

RECOMMENDATION	AFC FEEDBACK
	<p>The extent of these costs do not appear to have been properly understood by the Panel when providing their recommendation for pricing caps. As part of the ongoing consultation process, AFC and its members would welcome the opportunity to further discuss with Government the unique operational and infrastructure costs associated with consumer leasing.</p> <p><u>AFC Position:</u> While the Panel has acknowledged the dynamic nature of the lease product that sees the potential for servicing and maintenance obligations having to be met by a lessor throughout the lease term, not merely at the outset of the arrangement, in AFC's view this acknowledgement is not adequately reflected in the Panel's proposed price caps.</p> <p>AFC note there are challenges for industry to disaggregate and price on a lease-by-lease basis the various operational and infrastructure costs associated with servicing each particular consumer lease. It is for this reason that AFC previously proposed an all-inclusive cap at a level at which it was believed the industry overall would remain viable, while removing the opportunity for rogue lessors to operate (as noted above and in our 15 December 2015 additional submission). Therefore, as outlined in its response to Recommendation 11, AFC continues to support the maximum price levels previously proposed by AFC, as published above and in column 5 of Table 9 in the Report (at page 51), noting that these caps would include add-ons such as delivery, service, etc.</p> <p>In relation to delivery fees, AFC note that the Panel's recommendation is unclear on how a "separate, one off delivery fee" (Recommendation 13; AFC presumes this means that delivery is not to be financed) can be considered under this Review. If taken up by the Government, this would effectively see the Government entering into the realm of pricing control on the supply of services or goods outside of finance. Furthermore, the proposal for delivery fees to account for multiple deliveries to the same area would be complicated for lessors to implement and difficult for regulators to monitor.</p> <p>AFC's proposed pricing caps on page 51 of the Panel's report and page 7 of this document have been designed to accommodate inclusion of delivery charges, if incurred, in the rental pricing and would avoid the issues noted above.</p> <p>Should AFC's proposed price caps not be adopted, and the Panel's recommended price caps be adopted instead, AFC would propose that add-ons such as delivery and service are able to be offered to consumers as an add-on product, with prices capped based on 4% per month of the base cost for these services, plus the repayment of the principal base cost amount (i.e. pricing to reflect the same methodology as the price caps for the physical product being leased). AFC and its members see this approach as more challenging to regulate on an ongoing basis compared to the simple "bright line" approach that AFC has recommended in respect of price caps. However, it would nonetheless provide better recognition of both the direct cost of providing such services, as well as the significant operational and infrastructure costs required to be maintained by lessors.</p> <p>Finally, AFC are of the view that add-on products such as "Damage Liability Waiver" noted by the Panel on page 57 of their report should continue to be able to be offered to consumers, regardless of what price caps are legislated. Such products while offered contemporaneously with the goods hire are arguably quite separate from the actual hire and are taken out at the consumer's discretion to protect the consumer from risk (eg in the event of the theft of the goods and continuing obligation to make rental payments under the contract for hire) and consequently not strictly "add-ons". In our view they are better outside the concept of "add-ons" (like servicing, maintenance which are tied to the goods use) and are cancellable by consumers at any time (for no cost).</p>

<p>Recommendation 14: Consumer leases to which the cap applies</p>	<p>Household goods including electronic goods</p> <p>AFC Position: The AFC supports regulatory design that would see electronic goods encompassed within the broader concept of a “household good” and therefore a lease of these goods subject to the proposed reforms. We also note the proposed definition attached to our 15 December 2016 submission that might be used as a starting point by the Government to implement its policy. A copy of our earlier submission is attached for ease of reference.</p> <p>Consumer Leases of Motor Vehicles AFC Members include providers of motor vehicle finance. In the Issues Paper which framed the feedback for the Review and effectively set its parameters, it was clearly indicated that the Review was intended to be confined to consumer leases akin to SACCs and a consumer lease of a motor vehicle was not seen to fit within that.</p> <p><i>“Therefore, while some regulated consumer leases are likely to be comparable to SACCs others will not. For example:</i></p> <ul style="list-style-type: none"> • <i>A 12 month lease for a \$500 fridge is likely to be comparable to a SACC.</i> • <i>A 48 month lease for a \$60,000 car is not likely to be comparable to a SACC.</i> <p><i>The focus of this review is on consumer leases that can be considered comparable to SACCs in that, in general terms, they are leases of relatively low value goods (for example, less than \$2,000) and are predominately used by consumers who are excluded from mainstream forms of finance or payment for those goods (or who self-exclude)”</i></p> <p>(SACC Review Issues Paper September 2015 at pg. 35).</p> <p>It was on this basis that AFC has engaged with the Panel and provided input.</p> <p>At various points we have touched on this to note that while we have proposed solutions to address identified instances of regulatory failure or consumer detriment that these have been from the position of our Member-providers of consumer leases of household goods and not the broader consumer leasing market. Further, that any proposed reform to impose further regulation on assets beyond the leasing of household goods, in particular motor vehicles would require separate consideration and engagement. This would enable all relevant stakeholders to be engaged in the consultation and evidence of market failure or consumer risk in this particular part of the market to be clearly identified to assist determine whether additional regulation is warranted and what form it should take. In the absence of that evidence, we fail to understand how a Government committed to best-practice regulation making could consider regulatory reform, including whether the recommendations contained in the SACC Final Report are appropriate. That is not to say that they may not be appropriate; but more that a case to warrant consideration of further regulation has yet to be made.</p> <p>AFC Position: As reflected in the SACC Review - Issues Paper, the AFC recommends that the consumer lease of motor vehicles is sufficiently differentiated from the consumer lease of household goods product to warrant its own consultation and not merely as an ad hoc adjunct to the current SACC Review. We would be happy to engage with the Government in relation to such an inquiry and inform its consideration with data obtained from our Members that operate in this part of the market; a group different from those that have been involved with the SACC Review to date.</p>
<p>2. AFFORDABILITY</p>	
<p>Recommendation 15: Affordability</p>	<p>In principle the AFC and our members agreed during prior consultation to support the inclusion of a prohibition in the NCCPA that would operate similar to the current 50/20 protected earning component of the SACC enhancements. Through the Review process, we endeavoured to work with the Panel to explore whether our Members could also support this if the</p>

protection was not restricted to consumers:

- who received 50% of their income from Centrelink benefits to potentially but also included consumers on low incomes from non-Centrelink sources; and
- was based on their net income (ie net of tax).

The outcome was support given on both bases; namely application of the protected income component to **any** consumer (regardless of income source) and based on his or her **net** income. This was covered in an email (dated 12 February 2016) from AFC to the Panel following the 4 February 2016 Roundtable.

However a critical component of this support was the level at which the prohibition was to be set. In all discussions, the level proposed was **20%**. This was used as the basis for modelling and agreement.

AFC once again reiterates that consumer leases are fundamentally different from SACCs, and that simply extending existing (or in this case proposed) SACC regulatory provisions to consumer leasing is not in the best interests of consumers. SACCs, by nature, are short term loans that exist to assist consumers in remedying a short term cash deficit. Consumer leases exist to provide consumers with access over a medium to long term to a wide array of electronic goods and furniture that are integral to households. It is quite natural to therefore expect consumers to have a greater and more ongoing need (in a dollar sense) to items available under consumer leases than to credit under a SACC loan.

Therefore, the proposed shift to a level of 10% of net income of any consumer is not supported by the AFC. Our Members remain of the view that 20% is the appropriate level for the protected income cap to be set and any proposal to decrease this (e.g. to 10%) would potentially operate to financially exclude components of the customer base that may benefit most from the consumer lease product (e.g. a partner following a marriage breakdown looking to refurbish a new residence with a basic white-good / bedding / lounge furniture package).

The example provided by the Panel on page 65 of their Report – demonstrating that a single adult receiving a Government allowance could lease products valued at \$2,071 over a 36 month period – simply does not cover many real-life needs of consumers. The example does not include lounge, bedroom or dining furniture, or I.T. equipment or A/V products. Similarly, the example does not consider whether a consumer may wish to lease over a 24 month period (in which case monthly payments would be higher but total repayments would be lower).

Responsible lending provisions exist to ensure lessors do not overcommit consumers. An arbitrary application of a 10% protected earnings test simply because the same figure is recommended for SACCs fails to properly consider the innate differences between the two types of finance products. This failure would have the very real outcomes of limiting access of necessary goods for consumers and/or causing consumers to pay more in total repayments as a result of choosing to lease goods over a longer term.

The Panel's Recommendation 15 also suggests that the protected earnings test be based on all leases of which the consumer was the lessee, rather than the leases currently/proposed to be entered into with each lessor in its own right. This is in contrast to the approach proposed by the AFC. A critical component of the AFC proposed solution, was for the test to be based on information able to be collected and verified by our Members; particularly given the likely significant outcomes in the event of breach. In consequence a test that took into account the total rentals under each relevant (active) consumer lease contract for which the customer is the lessee and the provider is the lessor, including the proposed consumer lease contract was proposed by the AFC.

AFC believes that there would significant difficulties in identifying the amounts being paid by consumers to other lessors. In our view, the AFC solution which includes limiting the protected earnings test to amounts being paid to

	<p>individual lessors would reflect an appropriate balance between providing an appropriate level of consumer protection to the "at risk" financially vulnerable customer segment while minimising regulatory compliance burden, risk and cost to industry.</p> <p>It would enable the consumer lessor to seamlessly assess the "bright-line" protected income prohibition against customer information readily available to them thereby minimising potential risk of breach (which we assume like the SACC similar provision would bring with it potential civil and criminal offence outcomes) while retaining the obligation imposed on our Members currently to undertake reasonable inquiries and verification to include consideration of current liabilities with other credit providers and consumer lessors as part of the broader responsible lending assessment of financial circumstances or capacity requirements.</p> <p><u>AFC Position:</u> In summary, the AFC supports inclusion of a protected earnings prohibition for consumer leases but a prohibition:</p> <ul style="list-style-type: none"> • set at the level of 20% of net income; and • which obliges the consumer lessor to consider the aggregation of income to service rentals under each relevant (active) consumer lease contract for which the customer is the lessee and the provider is the lessor, including the proposed consumer lease contract.
<p>Recommendation 16: Centrepay implementation</p>	<p><u>AFC Position:</u> Subject to our comments above that the threshold be set at 20%, the AFC supports this recommendation.</p>
<p>Recommendation 17: Early Termination Fees</p>	<p>We question whether further regulation is warranted given that there is extensive existing legal inhibitors that currently operate to prevent an early termination fee being charged by a consumer lessor of household goods that would exceed a reasonable level and would potentially be found by a Court to be a penalty, which is legally prohibited.</p> <p>However, should the Government determine further regulation is appropriate, we suggest adopting a provision similar to that which applies to credit contracts (NCC s. 78(4)) could be supported by our members.</p> <p><u>AFC Position:</u> The AFC supports the inclusion of a provision similar to NCC s. 78(4) to reflect the common law and prohibit the charging of early termination fees that penalise a consumer rather than operate to recover what is owed to a consumer lessor. We suggest a provision worded as follows:</p> <p>(1) The court may, if satisfied on the application of a consumer lessee that:</p> <ul style="list-style-type: none"> • a fee or charge payable on early termination of a consumer lease is unconscionable, annul or reduce the change or fee or charge and may make ancillary or consequential orders. <p>(2) For the purposes of this section, a fee or charge payable on early termination of the contract is unconscionable if and only if it appears to the court that it exceeds a reasonable estimate of the consumer lessor's loss arising from the early termination, including the consumer lessor's average reasonable administrative costs in respect of such a termination.</p>
<p>Recommendation 18: Ban on unsolicited marketing</p>	<p>To inhibit uninvited or unsolicited door-to-door sales of consumer leases, including in remote and regional areas in Australia, AFC and our members support the form of wording that had been included in exposure draft legislation provided by Treasury in 2011 to amend the NCC to prohibit the uninvited door-to-door selling of consumer leases, in addition to credit contracts. A copy of what had been proposed by Treasury was incorporated in our 15 December 2015 submission (attached) [as Attachment 2 Draft Treasury 2011 Prohibition D2D Uninvited Sales of CL].</p>

	<p>AFC Position:</p> <p>In principle, AFC supports a prohibition on unsolicited door-to-door sales of consumer leases. We also support a more general prohibition that achieves this outcome beyond door-to-door selling. However, our support assumes a definition of unsolicited sales directed at the consumer harm or risk that has been identified. In short, our Members would not support a ban that may see their normal commercial operations inhibited where they do not create an environment of risk for consumers. For example, one that would inhibit them from in-store marketing, for example, to encourage a potential customer to explore a consumer lease product on offer through that retailer.</p> <p>AFC has interpreted the Panel’s Recommendation 18 to apply specifically to physical interactions between lessors and consumers, e.g. “... <i>where this includes making unsolicited approaches to consumers, including at their place of residence...</i>” (page 71 of the report). Such a ban would address the behaviour of a small minority of lessors who engage in predatory practices by seeking out consumers in remote, regional areas, where there is limited access to information and little to no competition.</p> <p>AFC would not support any broader interpretation, e.g. a ban on consumer lease providers marketing their services to former customers via post or electronic means (as has been proposed for SACCs by the Panel, under Recommendation 8). Any such prohibition would inherently fail to acknowledge the fundamental difference between consumers’ requirements for SACCs compared to consumer leases. The need for a SACC is brought about by consumers having to rectify an unexpected, short term cash deficit. Conversely, consumer leases are designed to provide consumers access to a very wide array of household products, over the medium to long term, often following the end of the useful life of their previous such household product.</p> <p>It is entirely reasonable to expect that a consumer who had previously leased, for example, a refrigerator, from a lessor may have a need for a different household product at some point in the future, and may wish to know the availability of such household products as a result.</p>
<p>Recommendation 19: Bank Statements</p>	<p>Our Members note that this requirement would be in addition to the broader NCCPA responsible lending requirements under which inter alia our Members are obliged to make reasonable inquiries about, and verify, the customer’s financial circumstances (including any other repayment / payment obligations under other credit products or consumer leases).</p> <p>As they currently stand, the risks of getting this wrong are potentially significant (as evidenced by The Cash Store Case and the \$19M penalty that was awarded by the Court).</p> <p>In our view this risk is sufficient to ensure appropriate responsible lending decisions by our Members. We therefore question the basis for imposing a further prescriptive obligation to obtain and consider 90 days of bank statements for all consumers.</p> <p>In AFC’s view there are numerous difficulties with relying on bank statements when assessing consumer capacity. Many consumers share bank accounts with their spouse/partner, which causes great difficulty in utilising bank statements to determine the expenditure of the individual applying for a consumer lease.</p> <p>Furthermore, bank statements only demonstrate historical spending of discretionary income and as a result do not illustrate remaining financial capacity at the end of the bank statement period. For example, a consumer’s bank statement may show a closing balance of only \$30. However, the consumer could well have significant non-essential spending in the period that could instead be diverted to a proposed consumer lease (i.e. a conscious decision on the part of the consumer to spend less on luxuries, entertainment etc. in order to be have the discretionary income to enter into a consumer lease).</p>

	<p>And also, we note the enhanced environment for fraud perpetration - an issue that some of our Members operating in different parts of the market are currently confronting from consumers to providing evidence of capacity that has been fraudulently produced (eg utilities or rates notices); an issue equally for bank statements.</p> <p>And as a separate but related issue we understand and note that ASIC has been looking at the issue of utilisation of processes that build on digital access to bank statements and the interface with other consumer protection measures (eg the ePayments Code). As outlined by the Panel on page 79 of the Report, concerns about the time and logistics involved with obtaining bank statements are, in the Panel's view, allayed by "<i>methods to obtain bank statements cheaply and quickly</i>". We understand that this would include electronic aggregation software. Therefore, in addition to the reasons already provided in respect of the limitations of relying on bank statements generally, the proposal presents further operational challenge for our members including to meet customer expectation and demand on a real-time basis if there is uncertainty about future availability of digital access to bank statements.</p> <p><u>AFC Position:</u> The AFC does not support an additional obligation being imposed on consumer lessors to obtain and consider 90 day bank statements on the basis that the current responsible lending obligations together with risk outcomes for breach are adequate and a further more prescriptive obligation would add cost without any off-set enhancement in consumer protection.</p>
<p>Recommendation 20: Documenting Suitability Assessments</p>	<p>We note that the responsible lending obligation imposed on consumer lease providers and others that operate in the NCC-regulated space is not to ensure a customer is offered a product that is suitable, but rather is to ensure that the customer enters into a contract for a product that is not unsuitable. We therefore understand the Panel's recommendation to mean that lessors should be required to document the basis on which they have assessed a lease to not be unsuitable for a consumer (as a result of reasonable inquiries and verification procedures, as required under the NCCPA).</p> <p><u>AFC Position:</u> We submit any proposed obligation to document consistently reflects the NCCPA requirement.</p>
<p>3.ADDITIONAL DISCLOSURES</p>	
<p>Recommendation 21: Warning Statements</p>	<p>Warning Statements</p> <p>The AFC notes the shortcomings identified by the Financial System Inquiry with regulatory design that mandates disclosure.</p> <p>We also note that customers of consumer leases currently receive a range of material that a consumer lessor is obliged to provide. These were added to from March 2013 to include information in periodic statements (issued at least annually) and end of lease statements. Time and again a customer is advised both prior to entering into the consumer lease product (eg through being provided the Information Statement Form 17) and during the course of the contract that they are hiring the goods and that they will not own the goods. The AFC and our members have however acknowledged there may be value in a summary of key features that differentiate the consumer lease from credit contracts and the costs being disclosed to a customer pre-contract and a sample was developed and included in the AFC 15 December 2015 additional submission (attached). Disclosure of this key information at a point in time contemporaneous prior to the consumer entering into the consumer lease was seen to be of value because it sought to reinforce and confirm to consumers the type of finance they are entering into, their obligations under the lease, and the lessor's obligations under the lease (e.g. to provide certain ancillary benefits/services).</p> <p>As we have previously explained, the vast majority of consumer lease applications are conducted either in third party retailers who also offer goods for cash and on other forms of credit (e.g. interest free terms), or are</p>

conducted in large scale shopping centres where mainstream retailers operate. This ensures that it is abundantly clear to consumers what finance options (including cash) are available to them and at what cost. The Panel's Recommendation 18 – to ban unsolicited marketing of consumer leases – will put a stop to the distribution model in which consumers are least likely to fully understand the relative cost of finance compared to other options.

As noted in our covering letter, we also question the value of further disclosures in the absence of a Government strategy to facilitate enhanced financial literacy, particularly for the financially vulnerable market segment. Enhanced financial literacy would assist in ensuring that a consumer has the necessary skills to make use of information that has been disclosed to make good financial decisions. As noted in the Centrepay Review Report <http://www.humanservices.gov.au/spw/corporate/publications-and-resources/centrepay-review/resources/report-of-the-independent-review-of-centrepay.pdf>

“Financial literacy, in turn, is about understanding money and finances and being able to apply that knowledge confidently to make effective decisions. Good financial literacy skills help individuals and families make the most of opportunities, meet their goals and secure their financial wellbeing, as well as contribute to the economic health of society.

“Improved financial literacy can increase economic participation and social participation, drive competition and market efficiency in the financial services sector, and potentially reduce regulatory intervention. As noted in the submission from the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), there are currently a range of government-funded programs and services for those on low incomes at risk of financial exclusion to improve their financial literacy and build self-reliance. These include Indigenous Community Links and the Financial Management Program, offered through over 750 non-government organisations nationally”.

And finally, in the AFC view, the real policy issue with financial vulnerability is one of social and income inequality. This is because some consumers are forced to borrow to meet pressing basic needs, not because the poorest consumers pay more for credit or face the prospect of over-commitment through the use of credit as often alleged. Consumers with limited income and resources have no choice other than to borrow to meet basic needs.

No amount of regulatory responses, including additional disclosure, to credit or other finance product provision will change this situation. The unintended outcome of further regulation will be to make consumer leases more difficult or expensive to get, thereby resulting in the exclusion from the consumer finance market of low income earners or those with poor credit ratings. As a result, these consumers may resort to other sources of finance, including unregulated sources. In effect, the outcome of the regulation will be to harm rather than protect consumers and to cause a market failure.

ASIC Modification Powers – Content & Display Requirements

We note the proposal for ASIC to potentially use its powers to modify to dictate the form of the warning statement and timing of its disclosure. This reflects a trend of recent years of requiring the regulator to not only enforce law but to make it; a trend we submit should not be continued by your Government.

AFC Position:

AFC support consumers being provided with a pre-contractual form that outlines the nature of finance contract being entered into and the obligations of the lessor and lessee to one another (refer page 6 of AFC's submission following the Panel's Interim Report).

Further, a warning statement in the absence of a strategy to enhance financial literacy particularly for financially vulnerable consumers merely adds compliance cost to providers of consumer leases. In addition, enhanced financial literacy aids a competitive market, which in turn operates to assist the

	<p>'at risk' consumer market segment. And Government should look for a solution that addresses the social and income inequality issues and consequently the underlying causes of consumers being financially vulnerable rather than treating its symptoms through proposed additional regulation of consumer finance providers.</p>
<p>Recommendation 22: Disclosure</p>	<p><i>Mandatory Disclosure of Cost of Consumer Lease as an APR%</i></p> <p>Unlike a loan, there is not a “principal” and “interest” component in a consumer lease. A cap based on an APR% is therefore not relevant or appropriate and this appears to have been accepted by the Panel and reflected in the cap recommendations noted earlier. Equally, an obligation to effectively create an APR% for a consumer lease to meet a mandatory disclosure obligation would not be appropriate. It is an artifice that potentially confuses a consumer lease with a loan or other credit contract product; a distinction which the Panel has recognised in the Report is appropriate and should be retained. And a distinction which is critical to other components of the regulatory landscape in which our Members operate, including in particular, the tax regime.</p> <p><u>AFC Position:</u> The AFC opposes an obligation on consumer lessors of household goods to disclose the cost of their products as an APR%.</p> <p>As reflected in our 15 December 2015 additional submission and proposed summary of key information in pre-contractual documentation, the AFC supports the disclosure of “base price” (noting AFC’s proposed definition of this term in our response to Recommendation 12) as well as the disclosure of the difference between the base price and the total cost of the lease.</p>
<p>4.GENERAL DETERRENCE</p>	
<p>Recommendation 23: Penalties</p>	<p>We note that the basis for inclusion of this recommendation is somewhat unclear. It is not a proposal on which we have been invited to respond in earlier components of the Review. The basis for its inclusion is therefore difficult to understand. The logical conclusion appears a “one size fits all” approach. In short, these provisions apply to credit contract providers and could be applied to consumer lease providers. We note there is some attraction with this type of argument, but again question how it might sit with your Government’s commitment to best-practice regulation. In short, a commitment to regulatory reform designed to target and address evidence-based shortcomings exposing consumers to harm or to address market failure. We are not aware of evidence produced to the Review Panel that would justify such a regulatory response.</p>
<p>Recommendation 24: Avoidance</p>	<p>We note the current carve out in the NCC that see consumer leases of household-good being legitimately offered for an indefinite period or on an on-going basis.</p> <p>We also note that in stark contrast, should a lease for a fixed term contain an inertia rental provision, the provider would be at risk of challenge under the unfair contract terms provision that would likely see a Court declare the term void. Further, that the provider would be obliged to issue the customer with an “end of lease” statement prior to the end of the originally contracted term; providing the customer with a timely and concise reminder that the term of the contract is approaching and the options available to the customer post-end.</p> <p>We note the proposal announced by the Government to take action in concert with the State Governments to address this current short-coming in the NCCCPA / NCC regulation. We encourage the Government to take action to address opportunities for unscrupulous consumer lease providers to exploit this gap to the detriment of financially vulnerable consumers.</p> <p><u>AFC Position:</u> The AFC encourages the Government to address potential avoidance activities that may arise with the carve out for indefinite term consumer leases.</p>

	<p>For completeness, the AFC does not consider a lease that converts to a month-to-month agreement following the end of a fixed term of a regulated lease to be a form of lease seeks to avoid the legislation. Such a lease is regulated throughout its fixed term, and the requirement for lessors to send end of lease statements means that consumers are clearly aware of their options at the end of the fixed term. This means that consumers are in a position to decide whether or not to enter into an inertia period following the fixed term's expiry (e.g. to continue to receive service cover for the item being leased).</p> <p>In looking more generally at provisions designed to address avoidance we note the importance of innovation and competition with product design in the context of consumer credit regulation. Not all products or business models that fall within exemptions provided for in the policy design of the NCCPA/NCC have as their sole basis avoidance of regulation. In short, providers consider regulation when designing products and look to create products to facilitate a competitive market and give a consumer choice. The consumer is the overall beneficiary of a diverse and competitive market and would be impacted by a Government response of a blanket or general anti-avoidance approach that would operate to stifle innovation, competition and potentially access to consumer finance.</p>
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15 December 2015

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

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

REVIEW OF THE SMALL AMOUNT CREDIT CONTRACT LAWS

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

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

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

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

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

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

While noting financially vulnerable consumers do not make up the greatest majority of the base (eg based on comments at the Roundtables appear to represent less than 1%) either for our Members, or the broader market, nevertheless our Members believe the concerns raised warrant action to mitigate risk of inappropriate behavior of any market participant to

assist quarantine the potentially unwarranted yet damaging reputational contagion for our Members and the balance of the consumer leasing sector.

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

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

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

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

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

Kind regards.

Yours truly

A handwritten signature in black ink, appearing to read 'Helen M. Gordon', with a horizontal line underneath.

Helen Gordon
Deputy Executive Director

AFC FURTHER SUBMISSION TO SACC REVIEW PANEL

KEY ISSUES + PROPOSED OPTIONS TO ADDRESS

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

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

Background

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

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

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

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

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

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

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

1. Maximum Pricing Controls (ie caps)

A. General Pricing Control:

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

Key principles:

- A cap based on an APR%, while appropriate for a SACC (or credit contracts more generally) is not appropriate for a consumer lease given the features of a consumer lease and what is encompassed in the rental payments (e.g. delivery, installation; in-home service, maintenance, relocation, collection, flexibility, etc).
- Caps should more appropriately be based on a formula built on a multiple of the concept of the “cash price” for “household goods” over nominated lease terms. This would necessitate a definition to be included in the NCC based on the following:
 - for new goods – “cash price” to be the Manufacturer's Recommended Retail Price (RRP) or third party supplier's price. (Supplier includes retailer);
 - for used goods (i.e. re-rent stock) – “cash price” would be the price as determined by the lessor but no higher than the original RRP or third party supplier's price
 - Household goods – we suggest an exclusionary definition would be appropriate proposed (e.g. household goods does not include vehicles or like goods. This concept has been recently defined in work being undertaken by ASIC. Attachment 1 AFC Draft household goods definition)
- Our Members propose caps based on the above calculated as follows:

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

- The cap to be introduced would be for all consumer leases that satisfied the product type of “household goods”. From a system and operations perspective, it is simpler not to have a distinction on whether a contract is a “cap or no cap contract” based on consumer type or lease contract term.
- Having a cap based on multiples of the “cash price” for nominated lease terms recognises the distinction between consumer leases and credit contracts (as has been outlined in detail in the AFC submission and those of our members) and allows the lessors in the market to compete on price, cover the costs of running a

leasing business and provide a return to shareholders. The proposed caps will fundamentally prevent egregious charging by consumer lessors and therefore protect consumers in general.

- The introduction of pricing caps will automatically give ASIC power to prosecute lessors who enter into a consumer lease for an amount greater than the cap. AFC presume that similar to the SACC laws, the NCC would be amended to have prohibited monetary obligations, meaning a consumer lease for which a cap applies must not impose a prohibited monetary obligation on the lessee.
- By way of completeness, our Members recognise that in considering this solution it may be appropriate for the Panel to consider potential market developments and whether any additional regulation may be required. For example, in relation to early termination provisions including fees levied. For example, concerns that consumer lessors may seek to include an early termination fee provision set at a level that might inhibit a customer from terminating the agreement early effectively requiring them to continue to pay rentals to the end of the lease as contracted. We suggest that there is extensive existing legal inhibitors that currently operate to prevent an early termination fee proposed to be charged in these circumstances exceeding a reasonable level and potentially found by a Court to be a penalty, which is legally prohibited. Further, we would also advise the Panel that if our Members have an early termination provision, that in relation to situations where a consumer lease has been varied as a result of a NCC-hardship notice (e.g. agreement to allow the customer to return the goods and for the lease to be terminated) that their practice is to waive that requirement as part of the negotiated-termination of the lease.

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

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

Key principles:

- For a consumer that receives at least 50% of their gross income as payments under the Social Security Act 1991 – rentals under the consumer lease offered to that customer would not exceed 20% of the consumer's gross income for the payment cycle.
- Our Members recognise that this would be in addition to the broader NCCPA responsible lending requirements under which *inter alia* our Members are obliged to make reasonable inquires about, and verify, the customer's financial circumstances (including any other repayment / payment obligations under other credit products or consumer leases).

2.Enhanced disclosure

(1) Disclosure of Cash Price:

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

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

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

(2) Other Proposed Disclosures to Assist Consumer Understanding

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

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

Key Principles:

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

BEFORE YOU SIGN:

IMPORTANT THINGS YOU MUST KNOW

You are entering into a consumer lease contract. A consumer lease contract is different to a credit contract. The key differences are set out below.

- You will not own the goods at the end of the consumer lease.
- The total amount of rental payable as shown in the consumer lease will be more than the cash price of the goods.
- A consumer lease provides you with benefits such as having the goods delivered to you and if there is a fault with the goods, having the goods repaired or replaced during the term of the consumer lease. These benefits are provided at no additional cost.

The goods must be returned to the lessor at the end of the consumer lease unless the lessor is prepared to negotiate the sale of the goods with you.

[OMIT the following if not applicable]

The lessor is prepared to negotiate the sale of the goods to you at the end of the consumer lease.

The lessor will provide you with an estimate of what the sale price of the goods will be at the end of the consumer lease and how to contact the lessor to negotiate the sale of the goods.

If you do not want to negotiate to own the goods at the end of the consumer lease, then the goods must be returned to the lessor.

If the goods are not returned you will be required to continue paying the rental amount shown in the consumer lease.

If this contract says so, you may also arrange with the lessor to continue renting the goods from the lessor at an agreed rental amount, or upgrade or downgrade the goods and enter into a new consumer lease.

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

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

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

Attachments:

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

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ATTACHMENT 1

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

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

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

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

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

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

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

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

Annexure A

Part 4—Limit on door-to-door selling

National Consumer Credit Protection Act 2009

17 Section 156 of the National Credit Code

Repeal the section, substitute:

156 Canvassing of credit etc. at home

- (1) A credit provider, a prospective lessor under a Part 11 consumer lease or a supplier who has a linked credit provider or a linked lessor must not (personally or through an employee or agent) induce a person at the person's place of residence to do any of the following acts (each of which is a *credit commitment act*):
- (a) apply for or obtain credit;
 - (b) enter into a Part 11 consumer lease;
 - (c) give information that may be relevant to a decision, to be made later by a credit provider or prospective lessor under a Part 11 consumer lease, whether or not to enter into a credit contract or Part 11 consumer lease with the person.

Criminal penalty: . 100 penalty units.

Exception—invited visit to place of residence

- (2) Subsection (1) does not apply if a person who resides at the place of residence invited the credit provider, prospective lessor, supplier, employee or agent to visit that place to enable a person who resides there to do a credit commitment act.
- (3) For the purposes of subsection (2), the following acts by a person are taken not to be invitations to the credit provider, prospective lessor, supplier, employee or agent to visit that place:
- (a) the person giving his or her name or contact details other than for the predominant purpose of doing a credit commitment act;
 - (b) the person contacting the credit provider, prospective lessor, supplier, employee or agent in connection with an unsuccessful attempt by the credit provider, prospective lessor or supplier (personally or through an employee or agent) to contact a person who resides at that place;
 - (c) the person agreeing to have someone visit the person's place of residence to give a presentation to help anyone at that place decide whether to purchase goods or services if:
 - (i) the agreement was made following contact by someone (the *rep*) operating in a place where the rep could readily make uninvited approaches to consumers in person; and
 - (ii) it is reasonable to expect that most consumers who do or will purchase goods or services through the rep do or will do so as a result of presentations made in their places of residence; and
 - (iii) the terms on which the goods or services mentioned in subparagraph (ii) are offered do not differ substantially on the basis of whether or not a presentation is made in the purchaser's place of residence.

Effects of contravention on credit contract, consumer lease etc.

- (4) Subsections (5), (6), (7), (8) and (9) apply if:
- (a) a person is induced in contravention of subsection (1) to do a credit commitment act; and
 - (b) at or after the time the person does the act, the person:
 - (i) enters into a credit contract with the credit provider who contravened that subsection or a credit provider who was, at the time of the contravention, a linked credit provider of the supplier who contravened that subsection; or
 - (ii) enters into a Part 11 consumer lease with the lessor who contravened that subsection or a lessor who was, at the time of the contravention, a linked lessor of the supplier who contravened that subsection.

Subsections (5), (6), (7), (8) and (9) apply whether or not anyone is charged with, or convicted of, an offence against subsection (1).

- (5) Despite the credit contract or Part 11 consumer lease, the person:
- (a) is not liable (and is taken never to have been liable) to make a payment to the credit provider or lessor under the contract or lease; and
 - (b) may recover such a payment as a debt due to the person by the credit provider or lessor, in a court of competent jurisdiction.
- (6) If goods are supplied to the person under a credit contract described in subparagraph (4)(b)(i), the goods are the property of the person, free from all mortgages, liens and charges of any description in favour of the credit provider.
- (7) If goods are supplied to the person under a Part 11 consumer lease described in subparagraph (4)(b)(ii), the goods become the property of the person, free from all liens and charges of any description in favour of the lessor, unless the lessor:
- (a) gives the person written notice within 60 days after the supply of the goods that the lessor intends to collect the goods from the person; and
 - (b) collects the goods from the person within 30 days after giving the notice.
- (8) If goods become the property of the person under subsection (7), they do so:
- (a) 60 days after the goods are supplied, if the lessor does not give notice as described in paragraph (7)(a); or
 - (b) 30 days after the lessor gives notice as described in paragraph (7)(a), if the lessor gives such notice but does not collect the goods from the person within that period.
- (9) A guarantor of the person's liability under the credit contract:
- (a) is not liable (and is taken never to have been liable) to make a payment to the credit provider under the guarantee; and
 - (b) may recover such a payment as a debt due to the guarantor by the credit provider, in a court of competent jurisdiction.

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