



Australian Finance Industry Association Limited
ABN 13 000 493 907
L11 130 Pitt Street Sydney NSW 2000
02 9231 5877 www.afia.asn.au

Senator Chris Ketter

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Chair

Senate Economics Reference Committee

By email: economics.sen@aph.gov.au

Dear Senator

Credit and Financial Services Targeted at Australians at Risk of Financial Hardship

The Australian Finance Industry Association [AFIA] welcomes the opportunity to provide a response to the Senate Committee's Inquiry into '*Credit and Financial Services Targeted at Australians at Risk of Financial Hardship*'. AFIA is committed to working with the Committee, and more broadly with the Government, to address consumer protection risk, particularly for vulnerable consumers, while ensuring customers continue to have access to, and choice in, finance product selection that meets their requirements and objectives and is not unsuitable.

AFIA Background

AFIA is well placed to provide a response on behalf of the finance sector given our broad and diverse membership of over 100 financiers operating in the consumer and commercial markets through the range of distribution channels. Further background on AFIA is available through: www.afia.asn.au.

AFIA's members are a core part of a dynamic finance industry that contributes \$150 billion to Australia's National GDP, employs over 450,000 people nationwide and funds hundreds of billions of assets to consumers and businesses throughout the country.

AFIA Consumer Lessor Members

This submission is on behalf of three AFIA members who operate in the consumer lease of household goods market: Thorn Group, Flexigroup and Walker Stores. Together they represent a major component 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 (e.g. 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 (channels, customer segment focus, credit risk appetite etc), fundamentally the consumer lease product that our members offer is sufficiently similar for the purposes of this response for AFIA 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 Committee about their specific business, customers and product. The purpose of this submission is to provide an over-arching response demonstrating the importance of maintaining the availability and viability of consumer lease products to meet consumer needs.

Object of the Inquiry

We understand that this Inquiry is in response to concerns about potential risk of financial hardship for consumers arising from particular finance products that the Royal Commission into Banking and Financial Services is not specifically looking to consider and therefore make any recommendations on. However, we note the context in which the Commissioner is conducting his Inquiry.

The Government, through its appointed Independent Treasury Panel, has recently conducted an extensive inquiry into the regulation of Small Amount Credit Contracts (SACCs) and consumer leases of household goods and agreed to adopt a range of the recommendations. Implementation has progressed through consultation on draft legislation designed to implement these recommendations.

AFIA and its relevant members have been actively engaged in this process, including proactively proposing solutions even before final reform settings had been determined, in both the Review and consultation on the implementation legislation. Further, they have provided extensive operational insight to inform and support the Government's delivery of the underlying policy objectives.

Subsequently, we understand the Government looked to revise the draft to address these concerns prior to introducing the final version and note:

- That the proposed reforms appear to have bi-partisan support, with members of the opposition on two occasions seeking to advance implementation through the introduction of a private member's Bill in the same form as the Government's original draft legislation;
- That there has been policy reform work underway (e.g. the Government's proposed amendments in relation to SACCs and consumer leases) that would address the Commission's concerns targeted at the micro/product-specific level;
- The extensive work undertaken by ASIC to review the 'buy now, pay later' segment and imminent release of a Report with ASIC's findings and recommendations for reform; and

- ASIC's Report may be of significance to inform the Committee's Inquiry [Terms of Reference paragraph (a(ii))].

Government's Exposure Draft Bill – Consultation + AFIA Feedback

Our Members support the overarching intent of the Treasury Panel Review into SACC and consumer leasing and its recommendations, especially the imposition of a price cap at or around proposed levels, which is seen as the most critical intervention to protect more vulnerable Australians.

From our Members' perspective:

- The Review clearly addressed areas covered in paragraphs a) and b) of your Inquiry's Terms of Reference;
- Recommendations supported by the Government reflected in their Exposure Draft Bill adequately address concerns about the consumer leasing sector, its impact on individuals, communities and the broader Financial Services system and whether current regulation meets community standards;
- In addition to the additional regulation proposed by the Government, our Members comply with the NCA and other consumer regulation aimed at ensuring:
 - appropriate customer outcomes (such as responsible lending, hardship etc) and that
 - customers continue to have access to, and choice in, finance product selection that meets their requirements and objectives and is not unsuitable and;
- They are disappointed with the apparent delay in the introduction of the Government's reform Bill and continue to engage with the Government to support this process.

AFIA Recommendation

As consumer leasing has already been the subject of an extensive review culminating in an informed Government response and release of exposure draft legislation, AFIA Members encourage the Committee:

- To recommend introduction of the Government's Bill (noting the refinements proposed by individual AFIA Members (i.e. to improve clarity and fairness and reduce unintended consequences);
- Not to re-prosecute the reform proposals as a part of this Inquiry as they relate to consumer leasing as the unintended outcome of further regulation may:
 - Be to make products like consumer leases more difficult or expensive to access;
 - Result in the exclusion from the consumer finance market of low-income earners or those with poor credit ratings leading to consumers resorting to other sources of finance, including unregulated sources;
 - Create confusion and uncertainty; and

- Be to harm rather than protect consumers and to cause a market failure.

In parallel, AFIA will continue to work with the Government and other key stakeholders on areas for improvement in this version of the Bill (already highlighted through its prior submission) and on areas that require further clarification before operationalisation can commence such as:

- **Overpayments:** Revision of the sanction provisions to address an unintended consequence in relation to overpayments initiated by a customer. As currently drafted, lessors are prohibited from "*accepting payment*" of an amount that exceeds the caps or face significant sanctions. This would appear to also apply where payments are not initiated or driven by the lessor. If a payment is not a result of action by the lessor, it may nevertheless result in the total amount paid under a consumer lease exceeding the protected earnings cap and/or on the overall cap on costs which would expose lessors to significant risk in terms of potential imposition of criminal and civil penalties for accepting payments which exceed the cost caps. We understand this was not intended and the provisions should consequently be revised.
- **Criminal and Strict Liability Offences more generally** - we agree, consumers should be protected from any unscrupulous activity, but as many of the provisions in the current Bill are not consistent with other areas of the Law and seek to criminalise actions that may arise from minor inadvertence or administrative errors, we suggest consideration of sanctions proportional with potential consumer risk or harm is provided.

Next steps

Should you wish to discuss our feedback further, or require additional information, please contact me at

[REDACTED] or Karl Turner, Associate Director at [REDACTED] or both via
[REDACTED]

Kind regards

Helen Gordon
Chief Executive Officer