

Banking and finance update

September 2015

Consumer leasing - a perfect storm

The recent release by the Australian Securities and Investments Commission (ASIC) of its report on the cost of consumer leases for household goods (Report 447), coupled with other recent changes, is likely to create a perfect storm for the consumer leasing industry in Australia.

The report by ASIC follows hot on the heels of other recent developments in relation to the consumer leasing industry, including:

- The announcement by Centrelink in May 2015 that it would no longer permit the Centrepay benefit deduction scheme to be used for consumer leases that were not regulated by the National Credit Code;
- The announcement by Federal Treasury in August 2015 of its planned review of small amount credit contracts. The review includes consideration as to whether additional legislative protections are required for consumers entering into consumer leases – particularly those consumers who are Centrelink recipients;
- Recent enforcement action taken by ASIC against various providers of consumer leases, particularly focusing on responsible lending obligations; and

- The passing by the Senate last week of draft legislation designed to exclude all consumer lease products from the Australian Government Centrepay bill paying service for welfare recipients. That bill was introduced into Federal Parliament by the Shadow Minister for Human Services, Senator Doug Cameron. It must now pass the House of Representatives. Whether it has Government support is unclear.

WHAT REPORT 447 IS BASED ON AND FINDINGS

The ASIC report is based on a market survey data report prepared by RMIT University together with ASIC's own internal findings as a result of recent investigations of various lessors.

The findings of the RMIT market survey data were:

- **Finding 1:** the amounts charged by different lessors for the same goods vary significantly.
- **Finding 2:** the financial benefits of a longer term lease are questionable.
- **Finding 3:** no consistency in total amounts charged for different goods with a similar retail price.
- **Finding 4:** the same lessor's charge significantly different amounts for the same goods, in particular Centrelink recipients were charged more than the advertised costs.
- **Finding 5:** Centrelink recipients were charged more than the maximum payable under a small amount credit contract.

ASIC'S FOUR AREAS OF CONCERN

In Report 447, at paragraph 76, ASIC notes that there are four areas of concern that could be given further consideration to improve consumer outcomes:

1. The high cost of consumer leases, particularly those over a longer term (eg. leases that are 2 years or longer);
2. The lack of consumer understanding about consumer leases;
3. The impact of high cost consumer leases on Centrelink recipients; and
4. The lack of consistency and regulatory treatment of consumer leases compared with other small amount credit contracts.

To the listed four concerns of ASIC, we would add another area that might well be of concern to ASIC, namely:

- The impact of consumer leases on indigenous communities, in particular those receiving Centrelink benefits.

WHAT'S NEXT?

The ASIC report will form part of ASIC's submissions to the enquiry by Federal Treasury currently getting underway.

Federal Treasury will have a difficult task ahead. Consider these points:

- Many renters are Centrelink customers, in fact it has been suggested that Centrelink customers are the mainstay of this industry.
- The Centrepay system gives a way for Centrelink customers to manage their financial affairs and obtain consumer goods that they may otherwise be unable to have.
- There are good social policy reasons why Centrelink customers should be entitled to have consumer goods and access to credit if they can do so without causing undue hardship.

FURTHER LINKS

- [Centrelink announcement, 22 May 2015](#)
- [Federal Treasury announcement, 7 August 2015](#)
- [The Social Security \(Administration\) Amendment \(Consumer Lease Exclusion\) Bill 2015 passed by the Senate last week](#)
- [The Explanatory Memorandum accompanying the Bill](#)
- [The ASIC report on the cost of consumer leases for household goods, September 2015](#)
- [The ASIC media release, 11 September 2015](#)

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- There are currently no pricing controls on consumer leases. Realistically some controls will be introduced, particularly where Centrelink customers are involved.
- Any pricing controls need to strike a balance and be fair to both the lessor and the customer. If the pricing lever is pulled too much one way it will be detrimental to all parties.
- The imposition of pricing controls will always lead some operators to consider avoidance mechanisms. A fair price reduces the incentive to adopt avoidance mechanisms but will never exclude avoidance.
- How to assess capacity to pay without undue hardship will be critical. It is one thing to make reasonable enquires about income and expenditure, but where should the reality check benchmark be? I understand that in a recent case before an EDR scheme the benchmark for assessing reasonable expenses was set on the basis of application of the Henderson Poverty Index (HPI). Bear in mind that according to HPI quarterly reports most categories of Centrelink customers are below the "poverty line". [Refer to Table 4 of the quarterly reports](#)

While I don't agree that the solution proposed by the Shadow Minister for Human Services is necessarily the way to proceed, it does to my mind provide the seed of the solution – some way to accredit lessors providing responsible consumer leasing services with Centrelink.

How Federal Treasury handles its task will depend to a significant extent on stakeholder inputs to the process. It is hoped that all stakeholders work constructively.

Watch this space.

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