



# Top End Women's Legal Service Inc.

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14 October 2015

SACC Review Secretariat  
Financial System and Services Division  
Markets Group  
The Treasury  
Langton Crescent  
Parkes ACT 2600

By email: [consumercredit@treasury.gov.au](mailto:consumercredit@treasury.gov.au)

Dear SACC Review Secretariat,

**Re: Review of the Small Amount Credit Contract laws**

Thank you for inviting comments to the review and consultation on the regulation of small amount credit contracts ('SACC') and comparable consumer leases ('the Review'). The Top End Women's Legal Service Inc. ('TEWLS') welcomes the opportunity to make a submission to the Review, specifically with regard to the question of whether provisions under the *National Consumer Credit Protection Act 2009* (Cth) ('Credit Act') applicable to SACCs should be extended to comparable consumer leases. In this regard, we note that our submission will be confined to term of reference 3 regarding consumer leases.

About TEWLS

TEWLS is a community legal centre focused on the advancement of women's rights. We are funded by the Commonwealth Attorney General's Department to provide referrals, legal advice, casework and community legal education to women in the Top End of the Northern Territory. TEWLS provides assistance in a number of areas of law including domestic and family violence, sexual assault, family law, compensation for victims of crime, housing, discrimination, workplace health and safety, employment law, motor vehicles and consumer credit debts. We provide outreach services for culturally and linguistically diverse women, Aboriginal women in the town communities surrounding Darwin and women in prison.

Our Submission

**Consumer leases under the Credit Act**

We support the Review panel's consideration of whether Credit Act provisions applicable to SACCs should be extended to comparable consumer leases. In

our experience, the regulatory requirements applicable to consumer leases under Part 11 of the Credit Act have resulted in a significant costs gap between SACCs and consumer leases. Further, the less onerous regulatory requirements of consumer leases has led to the exploitation of consumers, particularly those who are in receipt of government benefits.

Overall, we recommend that the provisions of the Credit Act applicable to SACCs be made equally applicable to comparable consumer leases.

### **Current industry practice**

We draw the Review panel's attention to and endorse the September 2015 report published by the Australian Securities Investments Commission ('ASIC') regarding the cost of consumer leases.<sup>1</sup> Further, we note ASIC media release 15-141 regarding Amazing Rentals Pty Ltd.<sup>2</sup> Whilst ASIC is able to take action against consumer lessors under the current legislative scheme, we submit that the relevant consumer lessees would be offered greater protection under the SACC provisions in the Credit Act.

### Consumer leases comparable to SACCs

In our experience servicing disadvantaged clients in the Northern Territory, the majority of consumer leases entered into are comparable to SACCs. These consumer leases are comparable in terms of the prices of the respective goods, as well as the term of the leases themselves. It is our experience that the most common consumer lease periods are either 12 or 24 months.

### Maximum costs

In contrast with SACC provisions under the Credit Act, Part 11 of the Credit Act does not provide a cap for consumer leases. As noted by ASIC in their Report 447,<sup>3</sup> recent research conducted by the Royal Melbourne Institute of Technology ('RMIT') found that there is currently a significant variation in the interest rates charged by consumer lessors, both between goods under consumer leases as well as between SACCs and consumer leases. Further, in our experience consumer lessees do not understand that there are alternatives to these no-cap consumer leases, particularly in the form of taking out a SACC in order to purchase a relevant good.

We note that it is particularly troublesome situation where Centrelink recipients contracted for a consumer lease receive no protection under the Credit Act, in comparison with recipients contracted for a SACC. In our experience, it is these recipients that are primarily targeted by consumer

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<sup>1</sup> Australian Securities Investments Commission, 'Report 447: Cost of consumer leases for household goods', published September 2015.

<sup>2</sup> Australian Securities Investments Commission, '15-141MR ASIC accepts EU from Amazing Rentals', published 5 June 2015.

<sup>3</sup> ASIC above, n 1.

lessors, as well as lessees who identify as being Aboriginal or Torres Strait Islander, speak English as a second language or are socially / economically disadvantaged.

### Case Study – Mary’s Story

Mary is a woman living in an Aboriginal town community in the Northern Territory. Mary is in receipt of government benefits, speaks English as her second language and has a number of outstanding debts.

One day, a consumer lessor company attended Mary’s house without invitation. The company offered Mary what she believed to be a sale by instalment lease, where she would have fortnightly payments deducted from her Centrepay account in exchange for the lease and eventual ownership of a freezer. Mary was not told how much money she would be paying in total, the actual value of the freezer or the length of the lease. The company did not provide Mary with the relevant warning statement or obtain bank statements.

An employee of the company told Mary, “if you want a freezer, just sign this and pay \$70 per fortnight.” Mary signed the lease agreement provided by the Company without it being explained to her or a copy being provided to her.

Several months later, Mary asked TEWLS to help retrieve a copy of the agreement. We requested that the company provide all documentation regarding Mary’s lease agreement, which was complied with.

Upon reviewing the documentation, TEWLS advised Mary that she had not entered into a sale by instalment. Instead, Mary had entered into a consumer lease where there was no right or obligation to purchase the relevant good. The relevant consumer lease had an interest rate of 313% over a 12-month period, being \$825 more than what would be permitted under a SACC. Mary instructed that she did not want this form of agreement.

TEWLS wrote to the company on Mary’s behalf requesting that the lease be rescinded on the grounds of breaching both the Credit Act and the *Australian Consumer Law 2011* (Cth). Notably, the company did not assess whether the lease was unsuitable, rebut the unsuitability presumption or ensure that Mary’s payments were 20% of her Centrelink payments.

Mary was refunded part of her payments and negotiated to retain the freezer. In the interim, TEWLS made a complaint to the Credit and Investments Ombudsman Service, however, the matter was privately resolved.

### **Primary needs for consumer lessees**

#### Cap – maximum costs

In our experience, consumer lessees are adversely affected by the current legislative distinctions between SACCs and consumer leases under Part 11 of

the Credit Act. Overwhelmingly, consumer lessees are subject to higher rates of interest for a consumer lease than they would be for a SACC for the same good. Further, we support the example provided in the Review consultation paper regarding similar economic outcomes of SACCs and consumer leases. Whilst the current distinction lies in whether the respective consumer will have the “right or obligation to purchase the good” at the completion of the lease, it is often the case that consumer lessees are able to purchase the relevant good at the contract’s completion for a nominal amount. In addition, for consumer lessees in regional and remote communities, it is often the case that the lessee will continue to hold the good without taking ownership. In light of the above and particularly ASIC Report 447, it is clear that the lack of maximum caps for consumer leases is resulting in adverse consequences for consumer lessees.

***We recommend that consumer leases comparable to SACCs be made subject to the maximum caps provisions under the Credit Act so as to alleviate the notable difference between consumers of SACCs and consumer leases.***

#### Procedural requirement – bank statements

While consumer lessors are subject to the responsible lending requirements, it is our experience that consumer lessors will not make reasonable efforts to confirm the financial status of prospective lessees. We suggest that this is in part the result of consumer leases not being subject to the requirement to obtain and consider a consumer’s bank account statements under sections 117(1A) and 130(1A) of the Credit Act, as well as the fact that, in comparison with SACCs, the consumer lease market is unregulated.

***We recommend that consumer leases comparable to SACCs be made subject to the procedural requirement to obtain bank statements.***

#### Disclosure requirements

##### *Display a warning statement*

In our experience, the practice of consumer lessor companies presents problems regarding both the Credit Act and the Australian Consumer Law 2011 (Cth) (‘ACL’). The practice of unsolicited consumer agreements is currently a key issue in the Northern Territory, particularly within the Aboriginal town communities surrounding Darwin and Alice Springs where English is often a second, or even third or fourth language. While the practice of unsolicited consumer agreements is regulated under the ACL, we submit that imposing the requirement to display a warning statement about the alternatives available to consumer leases comparable to SACCs could assist consumer lessees as a whole, and particularly in the above situation.

In order to capture the multicultural character of our community, we recommend that any warning statement regarding alternatives to both SACCs and consumer leases be produced in multiple languages, including Aboriginal

languages, so as to provide the same warning to persons who speak English as a second language or otherwise. This recommendation is particularly related to our experience in Darwin, where 30% of our client base identifies as being Aboriginal and/or Torres Strait Islander, as well as 13.3% of our client base who speak English as a second language.

***We recommend that consumer leases comparable to SACCs be made subject to the warning statement disclosure requirements under the Credit Act.***

#### *Purchase price of the leased good*

Further, it is our experience that consumer lessees will be aware only of the fortnightly repayment amount and the term of the respective consumer lease; they will not know the purchase price of the leased good, the total amount payable under the lease or the interest rate applicable to their lease. While we accept that some consumers enter into contracts without knowing the complete terms and conditions, we submit that it is overwhelmingly the practice of consumer lessors in the Northern Territory to withhold information from consumer lessees, particularly those from socially and economically disadvantaged consumer bases. By extending the requirement to disclose the purchase price of the leased good or the amount that the respective consumer will pay in excess of the purchase price, we suggest that the current practice of withholding information would be reduced.

***We recommend that consumer lessors be required to disclose the purchase price of a leased good for consumer leases comparable to SACCs.***

#### Protection for Centrelink recipients

As a community legal centre, we are funded to assist all members of the community. However, the majority of our clients are those community members experiencing economic and social hardship, who are in turn commonly Centrelink recipients. It is an ineffective legislative scheme that provides for only some of these Centrelink recipients to be protected, where the difference in leases can simply be whether there is the "right or obligation to purchase the good" at the completion of the lease. As noted by ASIC,<sup>4</sup> Centrelink recipients are more likely to be charged more than the maximum payable under a comparable SACC. This finding speaks to the situation where the legislative distinction between SACCs and consumer leases under the Credit Act is producing adverse consequences for the most economically disadvantaged in our community, as well as adding to existing debt cycles.

***We recommend that the protection for Centrelink recipients who are consumers of SACCs under regulation 28S of the National Consumer Credit Protection Regulations 2010 (Cth) be extended to Centrelink recipients who are consumer lessees.***

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<sup>4</sup> ASIC, above n 1.

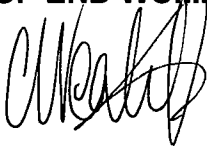
SACC and consumer lease database

We support the proposal for the establishment of a SACC and consumer lease database. We anticipate that commenters with relevant expertise will make recommendations to the Review panel regarding the structure and accessibility of this database.

We thank you for your consideration of the above and would be pleased to be contacted should you wish to discuss this submission further. Should you require further information, please do not hesitate to contact our office on (08) 8982 3000.

Yours sincerely,

**TOP END WOMEN'S LEGAL SERVICE INC.**

A handwritten signature in black ink, appearing to read 'CWeatherby-Fell', written over the printed name.

Caitlin Weatherby-Fell  
Solicitor