



Consumer Credit
Legal Centre NSW

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Submission in relation to the Outstanding Issues for Resolution on Consumer Leases

by the
Consumer Credit Legal Centre (NSW) Inc

Consumer Credit Legal Centre (NSW) Inc ("CCLC") is a community-based consumer advice, advocacy and education service specialising in personal credit, debt, banking and insurance law and practice. CCLC operates the Credit & Debt Hotline, which is the first port of call for NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies. We provide legal advice and representation, financial counselling, information and strategies, referral to face-to-face financial counselling services, and limited direct financial counselling. CCLC took over 18,000 calls for advice or assistance during the 2011/2012 financial year.

A significant part of CCLC's work is in advocating for improvements to advance the interests of consumers, by influencing developments in law, industry practice, dispute resolution processes, government enforcement action, and access to advice and assistance. CCLC also provides extensive web-based resources, other education resources, workshops, presentations and media comment.

Thank you for the opportunity to comment on the reforms being considered in relations to consumer leases with an option to purchase, and the introduction of product-specific disclosure requirements and responsible lending requirements as applied to consumer leases.

General Comments

The Consumer Credit Legal Centre ('CCLC') strongly agrees that the lease provisions in the Credit Act are now out of date in relation to the common use of leases. In our view there are two types of leases:

1. Genuine leases where the lessee is seeking to rent the goods and return them.
2. Leases where there is an option to buy or where the lessee believes they have a right to buy.

The decision in the original Consumer Credit Code to enact separate and less effective provisions for leases meant that a lease industry developed business strategies to avoid the tougher protections for credit contracts. The result has been that:

1. Many consumers have entered into leases believing they can buy the goods (which is usually true in practice but not true according to the contract.) In some cases they believe they have already bought the goods.
2. The contract they sign states that they have no right to purchase the goods, contrary to what they understood at the point of sale.
3. Some contracts are designed so that the goods they have the right to purchase are not the goods they are currently renting just “comparable” goods.
4. Consumers are being sold leases in circumstances where they do not qualify for more competitive loan products, or often misleadingly, as cheaper than other credit options. The consumer is given the impression there is no practical difference between leasing and other forms of finance. This would be unsuitable when the purpose of the loan is to buy the goods.

It is acknowledged that considerable work has been done to improve the consumer protections for leases in the Credit Act.

The central problem still remains that if the consumer wants an option/right to buy the goods, then they need to be in a contract that reflects what they are trying to get. Currently, many consumers are in contracts that do not reflect the intention of the parties.

CCLC strongly supports legislative changes which ensure that leases actually reflect the intention of the parties.

Additionally, CCLC strongly supports improved disclosure in relation to leases. It is essential that consumers understand the cash value of the goods so they have an understanding of the cost of credit. This principle is in accordance with truth in lending principles. Interest rates are currently disclosed on car leases on a regular basis. This indicates that details of the cost of credit can be made available to consumers. Without understanding the true cost of a consumer lease it is impossible for consumers to shop around to compare deals. This not only hurts consumers, but it creates a distorted and uncompetitive market.

Our responses to specific submission inquiries are set out below.

Summary of Specific Submissions

CCLC strongly supports:

1. Changing the definition of consumer lease to include an option to purchase
2. Enhanced disclosure for leases as set out in the paper including the cash price of the goods and a notional interest rate.

CCLC agrees with Treasury that a contract with an obligation to purchase is in substance a credit contract and should be treated as such but in practice we do not see these contracts.

Specific Focus Questions for Comments

1. *What are the implications of changing the definition of a consumer lease to allow it to include an option for purchase, including the tax consequences for lessors and lessees?*

CCLC supports the change to the definition as it would better reflect the needs of many consumers who want an option to purchase the goods they are leasing. Our support is contingent however on there being adequate protection in the legislation to ensure that current misleading practices cannot continue.

CCLC contends that changing the definition would mean:

- a. The consumers wanting a right to purchase the goods would have that right
- b. The consumer can then negotiate the purchase value of the goods up-front allowing some certainty on the purchase costs at the end of the contract
- c. Advertisements such as rent/try/buy would not be misleading
- d. Consumers would not have to deal with the artificiality of finding they cannot purchase the goods they are renting
- e. The lessor could negotiate up-front on rights to purchase and give better disclosure for consumers.

CCLC does not have any expertise on the issue of tax consequences, however, we have received complaints from consumers who have ended up with a GST liability that was not expected as they thought they were getting a loan.

2. *Comments on the proposed options for disclosure of the amount payable under the contract relative to cash value of the goods?*

CCLC strongly supports the proposed disclosure for leases. We particularly support the disclosure of:

- a. Cash value of the goods
- b. Amount payable under the contract relative to the cash value of the goods (as proposed)
- c. An interest rate
- d. Any ancillary services and products

- e. The cost of any options to purchase and adjusted amounts under b. and c. in the event that the option is taken up.

As stated above, it is important that consumers understand the true cost of the lease they are entering into. The disclosure for leases should be comparable to the disclosure for credit contracts.

3. *Should there be disclosure of an assumed interest rate, and, if so, should this be disclosed in all cases or only where the rate would exceed a specified figure?*

There should be an interest rate disclosed to give consumers actual understandable information about the cost of credit. If a cash value can be determined (and it should be) the calculation of an interest rate should also be included. The interest rate should be disclosed in all cases to allow consumers to make informed decisions. If the notional interest rate is low this can only benefit the lessor in any event.

4. *Comments on the proposed options for disclosure of the cost of ancillary services and products?*

It is consistent with truth in lending principles for all ancillary services and products to be separately disclosed. The consumer may not want those services or products and may wish to negotiate for them to be removed. Consumers need to know what services are being bundled together and the cost of those services.

5. *Whether there needs to be a responsible lending obligation to make a specific inquiry as to whether the consumer wants to own the goods, and the extent to which this approach is consistent with current practices?*

CCLC contends that a responsible lending obligation is essential to ensure consumers obtain a suitable lease if they want to purchase the goods. It is hoped that this obligation would mean that consumers turn their mind to the issue of whether they want to own the goods which is a decision that should be considered.

6. *Do lessors already inquire into the cost-benefits of a consumer using a lease when applying the responsible lending obligations?*

In CCLC's casework experience and instructions from our clients, lessors do not inquire into the cost-benefit of leases for the consumer. Quite to the contrary they either deny there is a difference (you get to own the goods anyway) or talk up the value of ancillary benefits without giving any useful information about the costs of leasing compared to other methods of finance. If the true cost of the lease is disclosed along with the ancillary benefits, consumers can decide whether the benefits are worth any extra cost.

7. *If changes are made to allow a consumer lease to include an option to purchase the leased goods, would it still be necessary to specifically inquire as to the cost-benefits of a consumer using a lease?*

The main concern is that the responsible lending enquiries specifically need to consider the cost of buying the goods at the end of the lease. If there is a large payment at the end of the lease and the consumer could never afford this amount (or loan repayments on the amount) the lease is arguably unsuitable. Further, a large final payment to purchase the goods changes the entire cost of the contract and renders the proposed disclosure meaningless in any circumstances where the option is taken up.

As a means of improving disclosure in this regard, the CCLC recommends that the lessor must provide:

- a. Clear information up front on whether there is an option available to purchase the goods in the lease,
- b. The cost of any additional purchase price for the goods at the end of the lease,
- c. A section in the disclosure document which gives the revised amounts reflecting total costs compared to the cash price and a nominal interest rate reflecting the true cost of owning the goods (as this is a true comparison to other methods of financing ownership)
- d. A clear explanation of the process involved in purchasing the goods, and
- e. Whether the goods ultimately purchased by the consumer will be the same or comparable goods

Thank you again for the opportunity to comment on the outstanding issues for resolution on Consumer Leases. If you have any questions or concerns please do not hesitate to contact the Consumer Credit Legal Centre on (02) 9212 4216.



Karen Cox
Coordinator
Consumer Credit Legal Centre (NSW) Inc
Direct: (02) 8204 1340
E-mail: Karen.Cox@cclcnsw.org.au



Katherine Lane
Principal Solicitor
Consumer Credit Legal Centre (NSW) Inc
Direct: (02) 8204 1350
E-mail: Kat.Lane@cclcnsw.org.au