8 August 2017

Mr Christian Mikula
ACT Regional Commissioner
Australian Securities and Investments Commission

By email: [redacted]
CC: FlexCommissions@asic.gov.au

Dear Christian,

Comment on ASIC proposed ban on flex-commissions

Thank you for the opportunity to make additional comments on the proposed *ASIC Credit (Flexible Credit Cost Arrangements) Instrument* (the **proposed Instrument**) banning flex-commissions. Consumer Action Law Centre (**Consumer Action**) supports this proposal. In our view, it will reduce the poor outcomes for people who take out loans at car yards.

Flex-commissions effectively reward car dealers for acting against the interests of their customers, and to do so without their customers' knowledge. Flex-commission arrangements mean that loan interest rates may be based purely on what the customer can bear. We note the observations in our initial submission that we have seen significant variations in interest rates on loans taken out in car yards.[1]

We reiterate that it would be more effective to ban flex-commissions entirely, so that any variation in interest rates is solely decided by finance providers and not by car dealers. However, the proposed 'cap and collar' on interest rates and the restrictions on dealer benefits and credit fees and charges is a welcome alternative.

The way the proposed instrument is formulated, and the explanatory material, makes it clear that:

[1] Consumer Action, *Comment on ASIC CP 279: Flex commission arrangements in the car finance industry, 28 March 2017*, p 1.

- the maximum cost of loans should be obvious to people at car yards,
- finance providers will need to have a clear rationale for the fees and charges they set,
- dealers will not be able to recoup any lost revenue from opaque flex-commissions through opaque fees and charges, and
- the restricted interest rate discounting possible before a dealer loses any financial benefit will better standardise the cost of car loans.

However, even better outcomes could be achieved through:

- **Car dealers not setting interest rates at all**. The finance provider alone would set these. This would mean that people do not unknowingly pay the highest interest rate possible at the car yard, purely because they feel unable to negotiate, or are otherwise vulnerable.
- **ASIC enforcement action.** In light of the harm flex-commissions have already caused, and the considerable transition period proposed, enforcement action may be a viable option to drive the transition towards compliance with the new arrangements. The possible contraventions of consumer credit laws identified by ASIC[2] have seen many people ripped off, and we fear this will happen to many more until the prohibition commences.

Please contact Susan Quinn on 03 9670 5088 or at susan@consumeraction.org.au if you wish to discuss this letter.

Yours sincerely,

CONSUMER ACTION LAW CENTRE

Denise Boyd
Acting Chief Executive Officer

Susan Quinn
Senior Policy Officer

[2] ASIC, *Regulation Impact Statement: Flex commission arrangements in the car finance market*, March 2017, para 11.