

Thursday, 12 August 2021

By email

Claire McKay
Director, Consumer Credit Unit
Treasury

cc: DDOteam@treasury.gov.au

Dear Claire McKay,

Re: Design and Distribution Obligations and consumer leases

We refer to Treasury's [recent announcement](#) that the Government intends to make amendments to the design and distribution obligations (DDO) regime. As part of this amendment process, we strongly urge the Government to also address the exclusion of consumer leases from the DDO regime.

As you are likely aware, the requirement to make a target market determination and broadly comply with the DDO regime will not apply to consumer leases (as defined by the *National Consumer Credit Protection Act 2009* (NCCP Act)). Consumer leases are rendered exempt via a complex exercise in subordinate legislation cross-referencing, requiring the operation of both sub-regulation 2B(3) of the *Australian Securities and Investments Commission Regulations 2001*, and sub-regulation 7.8A.20(9)(c) of the *Corporations Regulations 2001*, to give meaning to the exclusion under s 994B(3)(f) of the *Corporations Act 2001*.ⁱ

We understand that this outcome was the result of an unintended drafting error. This makes sense considering the Explanatory Memorandum to the *Treasury Laws Amendments (Design and Distribution Obligations and Product Intervention Powers) Bill 2018* (which introduced the DDO regime) made no reference whatsoever to the exclusion of consumer leases. The Explanatory Statement to the *Corporations Amendment (Design and Distribution Obligations) Regulations 2019*, which introduced the relevant amendment to the *Corporations Regulations 2001*, also does not mention consumer leases at all.

Considering all other forms of credit captured by the *Australian Securities and Investments Commission Act 2001* will be subject to the DDO regime, consumer leases should also be captured. The need for the DDO regulation is arguably even more pronounced for consumer leases because they are one of the most expensive and high-risk forms of credit, and sales practices predominantly target people on low incomes. In particular, our experience from financial counselling and legal assistance is that:

- Consumer leases are commonly designed to cause harm – these are marketed as a type of 'rent to buy' arrangement, but the catch is that despite paying huge amounts for basic goods and vehicles, the lessee actually has no contractual right to own the goods. There is no cap on fees charged by consumer lease



providers, unlike other credit providers. Lease providers are also not required to advertise the total rental amount or retail price (or an effective interest rate). Consumer leases generally cost at least twice the retail price, usually three times and sometimes more. The cost of a consumer lease is usually advertised as a low 'per week' amount, but lease providers do not disclose the total rental amount or retail price in advertisements. These products are targeted at people who cannot afford the upfront cost of basic household goods and vehicles. If the design and distribution obligations applied to consumer leases, they would be required to be designed fairly and targeted at consumers who could afford and understand the credit contracts they were entering into.

- Consumer leases are commonly targeted towards groups experiencing vulnerability – these include women escaping domestic violence, or people with experiencing gambling addictions. We see consumer lease providers promoting motor vehicles to low-income groups, including people who have been bankrupt or those with poor credit histories. Advertising can indicate that the target audience is inappropriate for high costs leases.

We continue to see unsuitable consumer leases cause significant harm amongst people seeking assistance from our services. The harm has been well demonstrated for years.ⁱⁱ Consumer leases must not be excluded from the operation of the DDO regime.

We strongly encourage the Government to take steps to ensure that this unintended loophole is closed so that the DDO regime can help improve consumer outcomes in relation to consumer leases.

Please contact Tom Abourizk, Policy Officer, on 03 9670 5088 or at tom.a@consumeraction.org.au if you would like to discuss this issue further.

Yours faithfully,

CONSUMER ACTION LAW CENTRE



Gerard Brody
Chief Executive Officer

ⁱ See ASIC Regulatory Guide 274, paragraph 274.21(e)(viii) for further information.

ⁱⁱ See for example, our comments in our 2020 submission to the Senate Standing Committee on Economics, available at: <https://consumeraction.org.au/small-amount-credit-contracts-senate-inquiry/>.

