



**ASIC**

Australian Securities & Investments Commission

---

**Exposure Draft of the  
National Consumer Credit  
Protection Amendment  
(Small Amount Credit  
Contracts and Consumer  
Leases Reforms) Bill 2017**

**Submission by the Australian  
Securities and Investments  
Commission**

November 2017

# Contents

<b>Executive summary</b> .....	<b>3</b>
Review of the small amount credit contract laws .....	3
Purpose of this submission .....	4
<b>A Cap on costs for consumer leases</b> .....	<b>6</b>
Maximum permitted cost of consumer leases .....	6
Design of the cap on costs for consumer leases .....	8
<b>B Anti-avoidance provisions</b> .....	<b>10</b>
Introduction of anti-avoidance provisions .....	10
Design of anti-avoidance provisions .....	13
<b>C Protected earnings amount</b> .....	<b>15</b>
<b>D Unsolicited credit invitations and consumer lease offers</b> .....	<b>16</b>
Prohibition on unsolicited credit invitations .....	16
Prohibition on unsolicited consumer lease offers .....	17
<b>E Warning statements and the disclosure of the value of leased household goods</b> .....	<b>19</b>
<b>F Civil penalties regime extended to lessors</b> .....	<b>20</b>
<b>G 90 days of account statements</b> .....	<b>21</b>
<b>H Indefinite leases</b> .....	<b>22</b>
<b>I Other amendments</b> .....	<b>23</b>
<b>Appendix 1: ASIC’s consumer lease outcomes</b> .....	<b>24</b>
<b>Appendix 2: ASIC’s payday lending outcomes</b> .....	<b>28</b>
<b>Key terms</b> .....	<b>32</b>

## Executive summary

- 1 The Australian Securities and Investments Commission (ASIC) is Australia's national consumer credit regulator, with oversight of lenders, consumer lease providers (lessors) and credit assistance providers who offer consumer credit products to Australians.
- 2 We support the financial inclusion objectives of the [Exposure Draft of the National Consumer Credit Protection Amendment \(Small Amount Credit Contract and Consumer Lease Reforms\) Bill 2017](#) (the Bill). The consumer harms that can be associated with payday loans and consumer leases are a longstanding and systemic feature of these sectors and often fall on financially vulnerable and disadvantaged consumers. We consider that the Bill will provide an effective suite of protections commensurate to the risk of harm to consumers from these products, balanced against the need to ensure that the industry can remain viable.
- 3 In particular, we support the level of the cap on costs for consumer leases proposed in the Bill. We expect a cap set at this level will address the excessive costs some lessors charge consumers, while still allowing a viable and sustainable consumer lease sector.
- 4 We also support the introduction of the Bill's comprehensive anti-avoidance regime, which will benefit both consumers and compliant businesses. These measures will be essential to address the increased risk of avoidance activity following the introduction of the reforms.

## Review of the small amount credit contract laws

- 5 Section 335A of the *National Consumer Credit Protection Act 2009* (National Credit Act) required that the Minister initiate an independent review of the small amount credit contract laws as soon as practicable after 1 July 2015. On 7 August 2015 the Minister released the terms of reference for the independent review (the review). The [Review of small amount credit contracts: Final report](#), March 2016 (final report) was released by the Minister on 19 April 2016 for consultation, with the Australian Government (Government) providing its response on 28 November 2016.
- 6 We provided three public submissions relating to the review. Our [first submission](#) (PDF 452 KB), made in response to the [review's consultation paper](#) (PDF 733 KB), contained a number of suggestions for improvements to the rules that currently apply to small amount credit contracts and consumer leases. Our [second submission](#) (PDF 190 KB) provided our comments on the observations and policy options identified in the [review's interim report](#) (PDF 602 KB). Our [third submission](#) (PDF 447 KB) provided

our feedback to the Government on the final recommendations set out in the review's final report.

Note: In this submission we refer to 'small amount credit contracts' as payday loans.

## Purpose of this submission

- 7 This submission provides our comments on the Bill, which has been drafted to implement the recommendations of the review that were accepted by the Government.
- 8 We address the reforms proposed in the Bill and provide commentary where we consider changes could be made to better meet the objectives of the consumer credit legislation.
- 9 In the Government's [response to the final report](#), the Minister for Revenue and Financial Services, the Hon Kelly O'Dwyer MP, said:
- The final report has made a number of recommendations designed to increase financial inclusion and reduce the risk that consumers may be unable to meet their basic needs or may default on other necessary commitments.
- 10 We support the objective of greater financial inclusion, as our work on both payday loans and consumer leases (particularly for household goods) has identified a range of practices that disadvantage consumers, especially those who are financially vulnerable.
- 11 We consider the key changes that will make substantial improvements to the current regulatory framework, and help ASIC act quickly to address practices that fail to comply, include:
- (a) reducing the amounts lessors can charge consumers under consumer leases, given that we have previously found that some lessors were charging excessive amounts—see Section A;
  - (b) introducing anti-avoidance provisions, which address practices that can cause harm (including financial harm) to consumers, disadvantage legitimate providers, and result in a 'race to the bottom' (where one provider adopts an unfair practice and others copy that behaviour to compete)—see Section B;
  - (c) introducing a protected earnings amount for consumer leases (similar to payday loans), under which consumers cannot be required to pay more than 10% of their net income in repayments, which will promote financial inclusion for consumers and increase the affordability of consumer leases—see Section C;

- (d) introducing a prohibition on unsolicited credit invitations and door-to-door selling of consumer leases, which will lessen the likelihood of consumers falling into debt spirals—see Section D;
  - (e) introducing a requirement for lessors (and updating the requirement for payday lenders) to provide warning statements to help consumers to make better decisions—see Section E;
  - (f) extending the application of the civil penalty regime in Pt 6 of the National Credit Code (at Sch 1 to the National Credit Act) to consumer leases and payday loans—see Section F;
  - (g) introducing ‘bright line’ obligations that give greater certainty to industry on what conduct is needed to comply with the law (e.g. the requirement for lessors to obtain and consider 90 days of account statements when assessing consumer lease applications)—see Section G; and
  - (h) bringing in indefinite leases as a regulated credit product to ensure consumers using that product are afforded all of the protections under the National Credit Act—see Section H.
- 12 Since 2013, we have taken numerous actions against both payday lenders and lessors. Details of these actions are set out in Appendix 1 and Appendix 2. Our actions have resulted in:
- (a) lessors being fined or making community benefit payments of \$1.4 million, and also being required to remediate consumers almost \$8 million (through a combination of refunds and debt write-offs)—see Appendix 1; and
  - (b) payday lenders being fined close to \$21 million (\$1.5 million in infringement notice penalties and \$19.7 million in penalties ordered by the courts) and refund consumers over \$14 million—see Appendix 2.
- 13 The number and range of these outcomes further demonstrates the need for the important changes proposed in the Bill as despite repeated regulatory intervention, avoidance and exploitative practices continue to occur.

## A Cap on costs for consumer leases

### Key points

We support the introduction of a cap on costs for consumer leases. In our experience, the market for household goods is characterised by a lack of competition, enabling some lessors to charge excessive prices.

We also support the cap at the level proposed in the Bill, which will allow lessors to earn up to 82% on their leases. We consider that strikes an appropriate balance between protecting consumers from excessive costs while also allowing lessors to recover a reasonable amount.

Some industry submissions to the review suggested the cap be set at higher rates, which would result in finance being provided at a cost equivalent to an interest rate of up to 156%. We do not support a higher cap.

### Maximum permitted cost of consumer leases

- 14 We support the introduction of a cap on costs for consumer leases. Currently, consumer leases are the only product regulated by the National Credit Act, aside from those offered by authorised deposit-taking institutions (ADIs), where there is no limit on the maximum amount that consumers can be charged.
- 15 [Report 447](#) *Cost of consumer leases for household goods* (REP 447), released in September 2015, sets out the findings from our review of the cost of consumer leases. We found the market for household goods was characterised by a lack of competition, enabling some lessors to charge excessive prices.
- 16 Since we published our report in 2015, lessors continue to charge very high costs. For example, a recent review of a current lessor's prices in October 2017 found that they are offering a washing machine that costs \$769 if purchased new on a three-year lease for a total cost of \$4,517 (approximately \$29 per week), which is an effective interest rate of 195.48%.
- 17 This indicates that, despite consultation and proposals over the past two years about a cap on costs, the consumer leasing market has not changed its practices, demonstrating the need for Government intervention.
- 18 We support the cap at the level proposed in the Bill. This allows lessors to charge a maximum of the sum of:
- (a) the base price of the goods; and
  - (b) an amount equal to multiplying 4% for each whole month of the lease to a maximum of 48 months (for a fixed-term lease).

- 19 The cost of finance for consumer leases under the cap, when converted to an interest rate, varies between 68% (for a lease with a four-year term) and 82% (for a lease with a one-year term). This is significantly higher than the cap of 48% that is the maximum amount payable for loans other than payday loans or medium amount credit contracts.
- 20 Our view is that setting the cap at this level strikes an appropriate balance between protecting consumers from excessive costs while also allowing lessors to recover a reasonable amount.
- 21 We are aware that the two industry bodies for lessors, the Australian Finance Conference—now called the Australian Finance Industry Association (AFIA)—and the Consumer Household Equipment Rental Providers Association (CHERPA), have put forward proposals that the cap be set at a higher limit (Table 9 in the final report). These proposals suggested that the maximum cap should allow lessors to charge amounts equivalent to interest rates of between 94% and 156%.
- 22 The following examples illustrate the outcomes for consumers under the industry caps using a transaction in which a consumer leases a fridge with a retail value of \$1,000.
- 23 If the lease runs for one year:
- (a) under the AFIA cap, the consumer would pay \$1,800, and be charged the equivalent of an interest rate of 129%; and
  - (b) under the CHERPA cap, the consumer would pay \$2,000, and be charged the equivalent of an interest rate of 156%.
- 24 Under both the AFIA cap and the CHERPA cap, it would be cheaper for the consumer to use a payday loan to buy the goods (rather than a lease), as they could only be charged a maximum of \$1,480.
- 25 If the lease runs for four years then under both the AFIA cap and the CHERPA cap:
- (a) the consumer would pay \$4,000 (for a TV worth \$1,000); and
  - (b) the consumer would be charged the equivalent of an interest rate of 90%.
- 26 Again, it would be cheaper for the consumer to use a loan at the maximum rate of 48% to buy the goods (rather than a lease), as they could only be charged a maximum of \$2,250, or \$1,750 less than under the AFIA and CHERPA proposed caps and the consumer would own the goods.
- 27 We do not support caps that would allow such high costs to be charged. We agree with the observation in the final report at p. 53:
- The Panel has considered the various caps suggested by industry but, in its view, these have been set at levels above what is appropriate and would

likely allow instances of egregious pricing to continue in cases where lessors are unconstrained from effective competition.

- 28 We are aware that there are lessors in the market that are already offering household goods for lease at prices below the proposed cap. Our view is that the high prices charged by some lessors reflect a willingness to exploit the lack of competition in the consumer leasing market, rather than reflecting inherently high business costs.

## Design of the cap on costs for consumer leases

- 29 To ensure the cap on costs operates as intended, we consider that it needs to be:
- (a) *straightforward to comply with*—it should be clear, and beyond dispute, what amount should be used for the base price; and
  - (b) *effective*—it should be broad in terms of the costs and charges included in the cap to address the risk of avoidance.
- 30 It may therefore be appropriate to consider changes to the Bill to:
- (a) the definitions of recommended retail price and market value so that these can be determined with precision;
  - (b) review the definition of add-on fee in s175AA(4), to ensure that it minimises the risk of lessors introducing new fees or costs that are outside the existing definition (and can therefore be charged in addition to the cap); and
  - (c) include the sale price of the goods in the cap (if they are sold to the consumer at the end of the lease).
- 31 It is current practice at the end of a lease for lessors to either give away or sell goods to lessees for a nominal price. However, some lessors may respond to the cap by requiring consumers to pay an additional lump sum to own the goods. This could result in consumers making payments greater than permitted under the cap rendering the consumer leasing cap ineffective.
- 32 This difference in cost is demonstrated by a hypothetical lease of one year for leased goods with a base price of \$1,000 and fortnightly payments of \$56:
- (a) In Scenario 1, the consumer is sold the goods for \$1 at the end of the lease (consistent with some lessors' current practices). The total repayments are \$1,457 and the effective interest rate is 78.25%.
  - (b) In Scenario 2, the lessor sells the goods to the consumer at the end of the lease for \$300. The total repayments are now \$1,756, and the cost of finance is 104.68%.



33

We also consider that:

- (a) the term 'agreed purchase price' does not reflect current practice as the consumer and the lessor do not agree on a purchase price, as the consumer is leasing the goods, not buying them;
- (b) capping the depreciation percentage at 30% of the recommended retail price is likely to result in some lessors leasing old or second-hand goods that have a nominal value but using a base price of 70% of the original recommended retail price, that will be much higher than the good's retail value; and
- (c) greater precision in the base price of second-hand cars could be achieved by allowing lessors to rely on industry guides (noting that some cars can depreciate by more than 30% within two years of sale).

## B Anti-avoidance provisions

### Key points

We support the introduction of comprehensive anti-avoidance provisions. Our experience has been that some providers respond to new obligations—especially those introducing caps on the maximum amount payable—by engaging in a range of avoidance practices.

Such avoidance practices disadvantage both consumers (e.g. by paying excessive costs) and legitimate providers (who lose customers to those engaging in avoidance).

For ASIC, addressing avoidance under the current laws is resource intensive and does not have a broader deterrence impact. We consider the creation of anti-avoidance provisions is an effective means of addressing the increased risk of avoidance that will arise from the implementation of the reforms.

### Introduction of anti-avoidance provisions

- 34 The final report (p. 93) recommends that the Government introduce broad anti-avoidance provisions that address both:
- (a) *‘business model avoidance’*—where a provider structures the financial products it provides so that they are not regulated by the National Credit Act and so not subject to the licensing or conduct requirements of the Act; and
  - (b) *‘internal avoidance’*—where the provider offers a credit contract or a consumer lease of household goods regulated under the National Credit Act but structures the contract, or includes certain terms, to avoid requirements of the Act.
- 35 We support the introduction of comprehensive anti-avoidance provisions. Avoidance practices disadvantage:
- (a) *consumers*—they do not receive the intended protections under the National Credit Act; and
  - (b) *legitimate businesses*—they lose consumers to businesses that attempt to avoid the law, and therefore can come under pressure to adopt the avoidance practices of their competitors.
- 36 The experience under the former Uniform Consumer Credit Code (UCCC) and the National Credit Act is instructive and indicates there is a substantial risk of avoidance activity following introduction of the proposed reforms.
- 37 Some lenders responded to the introduction of a cap on the maximum amount that can be charged under a credit contract, and other conduct obligations applying to payday loans, by developing a range of avoidance practices. Five different avoidance models developed in response to the cap

on costs for credit contracts under the UCCC were discussed in the Regulation Impact Statement: see *National credit reforms: Addressing avoidance of the National Consumer Credit Protection Act 2009* at p. 910.

38 This suggests that there is a need to seek to address the future risk of avoidance, particularly in response to the introduction of a cap on costs for consumer leases and the mandating of a protected earnings amount.

39 Avoidance techniques can result in licensed lenders not having to meet certain requirements under the National Credit Act when offering payday loans (avoidant payday lenders), or in some cases, unlicensed lenders avoiding the consumer credit laws in their entirety (unregulated lenders).

40 Consumers can experience an increased risk of financial harm (through increased cost) if they enter into a contract with an unregulated lender as well as losing vital protections such as access to a free external dispute resolution (EDR) scheme.

#### Case study 1: Fast Access Finance

In 2013 ASIC took action to stop an elaborate diamond trading scheme offered by Fast Access Finance.

Two years later (in 2015) the court found that Fast Access Finance constructed a business model deliberately designed to avoid the protections offered to consumers by the National Credit Act and earlier this year ordered the company to pay compensation of approximately \$17,000 together with fining the relevant companies \$730,000.

By the time the final orders were made in 2017, it was approximately four years after we had commenced our action.

#### Case study 2: Teleloans

In mid-2015 ASIC was unsuccessful in its action against Teleloans and Finance & Loans Direct Pty Ltd (Finance & Loans Direct). This business model required consumers to enter into near simultaneous agreements with Teleloans and Finance & Loans Direct.

Contracts between consumers and Finance Loans Direct included a charge of 5% of the loan amount, and therefore fell within the short-term credit exemption in s6(1) of the National Credit Code. Contracts with Teleloans included further fees such as a financial supply fee (calculated as a percentage of the loan amount and number of repayments) and a weekly account keeping fee.

We argued that these contracts together meant that fees and charges exceeded the maximum amount permitted by s6(1). We provided the court with five loans where the combined fees and charges of Teleloans and Finance & Loans Direct were as high as 160% of the loan amount.

However, the court did not accept that the contracts should be read together, but viewed the arrangement as separate contracts and therefore falling outside the scope of the National Credit Code.

- 41 Avoidant payday lenders, who are licensed lenders offering loans functionally the same or similar to payday loans (in loan amount and loan term) but structured in a way that avoids the specific payday lending obligations, increase the risk of financial harm to consumers.
- 42 For example, consumers are not given information about alternatives to a payday loan, they do not have the benefit of the prohibition on charging an establishment fee when refinancing, and lenders are not required to obtain consumers' account statements before providing a payday loan.

### Case study 3: Fair Go Finance

In early 2016 an ASIC investigation into Fair Go Finance found that approximately 550 consumers paid around \$34,500 in excess of the maximum amount allowed under the cap on cost laws (including an establishment fee of more than twice the 20% maximum amount allowed).

Our investigation identified that the loans were set up in a manner that attempted to avoid consumer protections. Although the credit contracts stated the loans could be repaid over a three-year period, in practice the consumer was required to repay the loan over a substantially shorter period (which could be as short as 19 days). Consumers were also charged a default fee if they failed to meet the shorter repayment terms.

- 43 The difference in conduct by regulated payday lenders, avoidant payday lenders and unregulated lenders is illustrated in Table 1.

**Table 1: Comparison of conduct by regulated, avoidant and unregulated payday lenders**

Obligation	Regulated payday lenders	Avoidant payday lenders	Unregulated lenders
Disclosure of a warning statement	Lenders must advise consumers before they enter into a payday loan of the high cost of borrowing small amounts of money and of alternatives to the loan.	No obligation to provide a warning statement. Lenders can advertise and provide high-cost loans without providing any information to consumers on alternatives.	No obligation to provide a warning statement. Lenders can advertise and provide high-cost loans without providing any information to consumers on alternatives.
Assessment of consumer's capacity to meet repayments	Lenders must obtain and consider account statements for the preceding 90 days when verifying the consumer's financial situation and ensure that repayments do not exceed the protected earnings amount.	Where the product is regulated credit, but not a payday loan, lenders must comply with the general responsible lending obligations but are not required to comply with the specific protections to obtain and consider account statements or ensure repayments fall within the protected earnings amount.	Lenders can enter into loans without making any assessment of the consumer's financial situation or ability to repay the loan.

Obligation	Regulated payday lenders	Avoidant payday lenders	Unregulated lenders
Right to seek a variation on grounds of financial hardship	Lenders must consider whether to provide a variation. Consumers can complain to a free EDR scheme if they are unhappy with how the lender responds.	Lenders must consider whether to provide a variation. Consumers can complain to a free EDR scheme if they are unhappy with how the lender responds.	Lenders can ignore a request for variation and enforce the contract if the consumer cannot meet repayments.
Cost of credit	Lenders cannot charge interest and can only charge an establishment fee (20% of the amount of credit) and a monthly fee (4% of the amount of credit). If the consumer is using the new loan to pay out another payday loan, the lender cannot charge an establishment fee. If the consumer defaults under the payday loan, the total amount repaid cannot equal more than double the amount borrowed.	While there are other cap-on-cost laws that may apply to the contract, these do not restrict the amount lenders may charge in refinancing or default situations.	Lender can charge exploitative amounts.
Resolution of complaints	Lenders must develop internal complaints handling procedures, and be a member of an EDR scheme.	Lenders must develop internal complaints handling procedures, and be a member of an EDR scheme.	Lenders can ignore complaints unless the consumer commences court action and are not required to be members of an EDR scheme.

## Design of anti-avoidance provisions

- 44 Our view is that the anti-avoidance provisions should be designed in a way that will deter or reduce the extent of avoidance activity by giving ASIC an effective regulatory tool to take action quickly.
- 45 In our experience, addressing avoidance under the current laws (i.e. on an ad-hoc basis) is resource intensive and does not have a broader deterrence effect in the payday lending and consumer leasing markets.
- 46 While we have been able to take action in the past against some avoidance practices this work has been characterised by certain restrictions:
- (a) *Inconsistent outcomes*—We have not always been successful when we have taken court action, or in negotiating with providers to abandon an avoidance practice.
  - (b) *Delays in securing outcomes*—In the absence of an ability to take court action specifically for avoidance activity, it can take a considerable period of time to achieve a negotiated resolution or to take and finalise court action.

(c) *Limitations in outcomes*—We are not always able to obtain refunds or compensation for consumers for the financial disadvantage or losses they incur as a result of avoidance activity.

47 We consider that the anti-avoidance provisions will address all of these restrictions. The draft provisions direct the court to consider factors that are likely to be indicators of avoidance (such as artificial complexity or promoting a contract as providing credit when its legal structure is different). These factors reflect our experience with numerous avoidance schemes over many years.

48 The draft provisions identify different factors for business model avoidance and internal avoidance, and therefore operate in a nuanced way that targets the particular practices associated with each type of avoidance.

49 We have reservations about s323B of the National Credit Act, which provides that the anti-avoidance provisions do not apply to, in summary, a scheme connected to an exempt contract. ASIC agrees that the exemptions referred to in s323B should not be affected when properly relied upon. However, we consider that there is an opportunity for advantage to be taken of these exemptions. In our view, it is consistent with the policy underpinning the anti-avoidance provisions that they should apply to avoidance schemes connected to exempt contracts.

50 We are aware that some industry stakeholders have expressed concerns about the risk that legitimate conduct will be captured by the anti-avoidance provisions. Our view is that this risk has been addressed, first, by the use of factors associated with avoidance (providing a guide to businesses about the conduct that flags an intention to avoid) and by the exemption power proposed in the Bill: see s323D.

## C Protected earnings amount

### Key points

We support the introduction of a protected earnings amount for consumer leases.

We also support the protected earnings amount for payday loans being reduced to 10% of net income, and broadened to cover all consumers.

- 51 We support the introduction of a protected earnings amount for consumer leases, which would prevent lessors from charging consumers more than 10% of the consumer's net income in lease payments. We also support the protected earnings amount for payday loans being reduced to 10% of net income, and broadened to cover all consumers, not just recipients of Centrelink benefits.
- 52 Our view is that a protected earnings cap will facilitate financial inclusion and reduce the risk that consumers may be unable to pay for basic needs, or be forced to default on other necessary commitments. Such a cap will mitigate these outcomes and can be expected to improve a consumer's financial position by smoothing expenditure, limiting shortfalls in paying utilities or rent, and reducing dependency on higher cost forms of finance.

## D Unsolicited credit invitations and consumer lease offers

### Key points

We support the introduction of a prohibition on lenders making unsolicited invitations for payday loans to current and former payday loan consumers.

We also support the prohibition on door-to-door selling of consumer leases for household goods. However, we consider that the Government should consider expanding the scope of the current operation of this prohibition.

### Prohibition on unsolicited credit invitations

- 53 We support the introduction of a prohibition on lenders making unsolicited invitations for payday loans to current and former payday loan consumers.
- 54 The review's [final report](#) referred to the prohibition on unsolicited credit card limit increase offers in the National Credit Act and the rationale for this as set out in the Revised Explanatory Memorandum:
- ... to assist consumers to actively choose whether to increase their credit limit, rather than being prompted to do so by written letters from their credit provider. A consumer who accepts these types of offers can, over time, have a high credit limit and find they are unable to repay the debt in full within a relatively short period of time.
- Note: The Revised Explanatory Memorandum to the National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Bill 2011 at para 3.23, quoted in the final report at p. 34.
- 55 The review considered that a similar concern arose with payday loan offers. We support a prohibition on payday lenders making unsolicited invitations that is broadly framed to ensure that lenders cannot to set up structures to circumvent the prohibition. We continue to see consumers entering into multiple payday loans within short periods of time.
- 56 We consider that this is, at least in part, likely the result of invitations made to consumers, particularly at points in time where the lender is aware that consumers may be increasingly susceptible to the offer (e.g. as a result of fluctuations in the consumer's income and/or expenses, or when an existing loan is due to be repaid).



## Prohibition on unsolicited consumer lease offers

- 57 We also support the prohibition on door-to-door selling of consumer leases. The final report stated at p. 72 that ‘sales through unsolicited approaches are unfair and have the capacity to cause financial harm irrespective of the target market.’
- 58 However, our view is also that the Government should consider expanding the scope of the current operation of this prohibition. Lessors should be prevented not only from visiting a place of residence, but also from offering goods from vehicles outside or in proximity to a person’s place of residence.
- 59 Some practices fall outside the traditional definition of ‘door-to-door’ sales, but are, nevertheless, predatory practices that seek to take advantage of vulnerable consumers.
- 60 We are aware of practices such as lessors entering Indigenous communities with a van full of goods and attracting consumers by honking their horn, hosting a barbeque or offering inducements to a senior community member to provide introductions to other community members. This encourages impulse decision-making when, especially for consumers on low incomes, they may not need those goods or cheaper alternatives may be available.

### Case study 4: Sales practices in Indigenous communities

In July 2013, staff from ASIC’s Indigenous Outreach Program were in a large regional community, with a significant Indigenous population, when they witnessed the sale practices of a rental company first-hand.

A person was driving a van with the rental company’s logo on it through the community. The van would stop in a street and the driver would honk the van’s horn. People came out of a house and walked up to the van. They were then shown items in the back of the van.

After a short while, the people who had been looking in the van went back into their house and returned with documents which they showed to the driver. They then appeared to sign some paperwork. They were not provided with any goods from the back of the van. They then walked back to their house. This process took about 10 minutes. The driver then drove the van about another 20 metres up the road and honked its horn in front of another house, where the same events occurred again. Our staff watched the driver do this four times.

- 61 In our experience, many consumers who enter into leases in remote Indigenous communities have reduced access to electronics and whitegoods and a limited understanding of terms and conditions of a consumer lease contract. When a truck enters the community, they are attracted by the ease of access to whitegoods, but may be unaware of the total amount payable under the lease.

- 62 Further, as consumers in these communities often have limited opportunity to compare products and offerings or select an alternate provider, lessors can be in a strong position to persuade consumers to enter into a contract.
- 63 In 2013 ASIC took action against Mr Rentals in Port Augusta, which had targeted Indigenous consumers in the Anangu Pitjantjatjara Yankunytjatjara lands in remote South Australia. In that investigation, we found that more than 40 consumers were asked to sign several documents together with a lease agreement, none of which were explained to them, which included a ‘customer declaration’ indicating they understood all the paperwork and that they were not intoxicated.
- 64 While we welcome the proposed prohibition on door-to-door selling of consumer leases for household goods, we support the extension of any prohibition on the marketing of leases to be broader than only preventing lessors visiting a place of residence. This would cover situations, for example, where canvassing is done in regional communities or towns from vehicles outside or in proximity to a person’s place of residence to ensure consumers living in remote communities have the benefit of this important protection.
- 65 We note that the Do-Not-Knock Informed Communities program has been rolled out in a number of Indigenous communities in Northern Queensland to educate community members on how to exercise their consumer rights and to remind traders about their legal obligations under the Australian Consumer Law.

## E Warning statements and the disclosure of the value of leased household goods

### Key points

We support the introduction of a requirement for payday lenders and lessors to provide warning statements to consumers.

We consider the current payday lending warning could be more effective.

The proposed requirement for disclosure of the base price and related matters by lessors will help consumers understand the value offered by consumer leases and make better purchasing decisions.

- 66 We support the introduction of a requirement for payday lenders and lessors to provide information, as set out in an ASIC legislative instrument, to consumers to help them make informed decisions.
- 67 While there is a current requirement for payday lenders to provide consumers with a warning statement, we have seen warning statements that are technically compliant, but are ineffective due to the prominence of the message, the lack of a hyperlink to ASIC's MoneySmart website, or additional messaging in the warnings. We also consider that there is potential to improve the effectiveness of the warning by better targeting when it is provided.
- 68 Our view is that giving ASIC the power to specify warning statement requirements in a legislative instrument will increase our ability to respond to changing business models, technology and consumer behaviour.
- 69 It is also consistent with an emerging view that communication with consumers through a range of different media (such as mobile phone messages or interactive tools on websites) increases the ability to engage with them and facilitate improved decision-making.
- 70 It is also proposed that ASIC be given power to specify disclosure requirement in relation to:
- (a) the base price of the household goods hired by the consumer; and
  - (b) the difference between the base price of the goods and the total amount payable.
- 71 We consider that specifying the base price and the amount payable above that figure can be done in a way that will help consumers make better purchasing decisions, given that lessors are currently under no obligation to disclose the value of the leased goods.

## F Civil penalties regime extended to lessors

### Key points

We support the extension of the application of the civil penalty regime in Pt 6 of the National Credit Code to consumer leases and payday loans.

We also support the introduction of penalties for lessors who contravene the prohibition on entering into a consumer lease that breaches the cap on costs.

- 72 We support the extension of the application of the civil penalty regime in Pt 6 of the National Credit Code to consumer leases and payday loans. We also support the introduction of penalties for lessors who contravene the cap on costs through the loss of entitlements to any fees or charges above the base price of the goods hired under the lease.
- 73 Our view is that, where key consumer protection obligations are not complied with, lessors should be unable to recover repayments from the consumer in excess of the base price of the goods.
- 74 This approach is consistent with the approach for payday loans, where the lender can be penalised by being unable to recover more than the amount of credit provided: s23A of the National Credit Code.

## G 90 days of account statements

### Key points

We support the introduction of a requirement for lessors to obtain and consider 90 days of account statements when verifying a consumer's financial situation. We consider this will give greater certainty to industry on how to comply with their legislative obligations.

The introduction of this requirement reflects current industry best practice.

- 75 We support the introduction of a requirement for lessors to obtain and consider 90 days of account statements when verifying a consumer's financial situation. Evidence from the work we have undertaken since the commencement of the responsible lending conduct obligations indicates that there are inconsistent standards in the leasing sector, resulting in a greater need for statutory direction.
- 76 ASIC has taken numerous actions against lessors in response to poor responsible lending practices and continues to see a lack of understanding of how a lessor can meet their obligations: see Appendix 1 for a list of consumer lease outcomes.
- 77 We are aware that some lessors are already obtaining consumers' account statements, so the introduction of this requirement reflects current best practice.

## H Indefinite leases

### Key points

We support the regulation of indefinite leases under the consumer leasing regulatory regime. This will ensure a level playing field for industry and better protections for consumers who use this product.

- 78 We support the regulation of indefinite leases under the consumer leasing regulatory regime. As this product type is currently exempt, lessors offering indefinite leases have limited compliance costs meaning they have an unfair advantage over licensed lessors in that they can maintain a higher profit margin when competing on price.
- 79 Further, consumers entering into an indefinite lease have no protections under the National Credit Act (i.e. they have no access to a free EDR scheme, no ability to make a hardship application and the lessor has no obligation to assess the consumer's financial situation before they enter into a lease).

### Case study 5: Mr Rentals

In 2013, ASIC investigated the conduct of Mr Rentals, which purported to be offering consumers indefinite leases for household goods.

We found that consumers had no independent and free avenue to dispute the charges under the contract, including a 'calculation period adjustment fee'.

As part of our action, approximately 1,560 consumers, who were charged this fee when they terminated their rental agreement, were refunded more than \$300,000.

- 80 We are aware that there are a considerable number of businesses offering indefinite leases that still do not hold an Australian credit licence (credit licence) and are therefore operating outside the consumer leasing regulatory regime, leaving consumers vulnerable to exploitative practices with limited avenues for redress.

## I Other amendments

### Key points

Table 2 suggests some technical amendments to the Bill.

**Table 2: Suggested technical amendments**

Item	Suggested amendment
Item 14—s132(2A)	<p>Section 129A requires a credit licensee to record unsuitability assessments in the form and content set out in an ASIC legislative instrument. Section 132 requires credit licensees to provide a copy of their assessment to a consumer if requested.</p> <p>We suggest s132 could be amended to require that the assessment provided to the consumer must be in the form required by s129A(2).</p> <p>Similar amendments could be made to s120 (to refer to the proposed s116A(2)), s143 (to refer to the proposed s139A(2)) and s155 (to refer to the proposed s152A(2)).</p>
Item 22—s133CF	We suggest inserting into s133CF(5)(a)(iii) 'is' before 'a person that the licensee knows'.
Item 34—s156A(1)	We suggest deleting 'to be paid' and 'by the lessee' to be consistent with the proposed new s133(1).
Item 36—Pt 3-6A, Div 5 heading	We suggest replacing 'or' with 'and'.
Item 36—s160F(1)	We suggest replacing 'an account statement' with 'account statements' consistent with, for example, s130(1A) and the proposed s140(1A) and s153(1A).
Item 58—s175AA	<p>A 10% depreciation rate may be too conservative in relation to:</p> <ul style="list-style-type: none"> <li>• <i>the amount of depreciation</i>, because many types of leased goods have higher depreciation than 10% each year; and</li> <li>• <i>the rate of depreciation</i>, because used goods often have the highest depreciation in the first year and decreasing depreciation rates in subsequent years.</li> </ul> <p>10% depreciation per year is also unlikely to be realistic for some classes of leased goods, for example:</p> <ul style="list-style-type: none"> <li>• <i>used vehicles</i>, which often depreciate as soon as the buyer takes delivery, and depreciates at a diminishing rate in subsequent years.</li> <li>• <i>some consumer electronics</i> (e.g. iPhones), which depreciate substantially when a newer model is released.</li> </ul> <p>ASIC supports the use of a formula to determine the depreciation as this reduces ambiguity for both ASIC and lessors. However, a 10% depreciation rate may enable lessors to charge a higher base price for used goods than the goods' actual value. We consider depreciation schedules (e.g. those used in taxation) would provide a useful basis for further consideration of depreciation rates and the effective life of leased goods.</p>

## Appendix 1: ASIC's consumer lease outcomes

### Key points

Since 2013, ASIC action has resulted in lessors being fined or making community benefit payments of \$1.4 million, and also being required to remediate consumers (comprising refunds and debt write-offs) almost \$8 million.

We have entered into three enforceable undertakings, cancelled three credit licences and banned four individuals from engaging in credit activities.

**Table 3: Enforcement actions and outcomes regarding consumer leases**

Lessor	Date	Enforcement actions and outcomes
King Quartet Pty Ltd (trading as The Rental Guys)	July 2017	<p>The Rental Guys agreed to pay \$100,000 to regional consumers after ASIC surveillance found it had failed to meet its responsible lending obligations when renting whitegoods and furniture.</p> <p>In particular, we were concerned that The Rental Guys failed to make proper inquiries, conduct verification and carry out unsuitability assessments when entering certain consumers into new contracts.</p> <p>Note: See <a href="#">Media Release (17-243MR)</a> <i>The Rental Guys refund more than \$100,000 to vulnerable consumers</i> (20 July 2017)</p>
Affordable Car Loan Pty Ltd, DTGN1 Pty Ltd, DTGQ1 Pty Ltd, DTGS1 Pty Ltd, DTGV1 Pty Ltd (Motor Finance Wizard)	May 2017	<p>We accepted an enforceable undertaking from Motor Finance Wizard after surveillance found it had failed to meet its responsible lending obligations for both consumer leases (for the rent of motor vehicles) and credit contracts.</p> <p>The enforceable undertaking requires Motor Finance Wizard to:</p> <ul style="list-style-type: none"> <li>• pay over \$11 million in refunds and write-offs to 1,511 consumers who entered into a consumer lease or loan between 1 July 2010 and 16 July 2014 (\$7.2 million relates to leases);</li> <li>• pay \$100,000 to a community benefit program funding consumer initiatives;</li> <li>• re-assess each consumer's capacity to make payments under the affected contract through a remediation program overseen by an independent auditor (who will report to ASIC);</li> <li>• give affected consumers the option to remain in or terminate the consumer lease or loan;</li> <li>• allow consumers to keep the car at the end of the lease term, if they elect to keep the lease; and</li> <li>• engage an independent expert to: <ul style="list-style-type: none"> <li>– review its current business operations and compliance with the consumer credit regime; and</li> <li>– report to ASIC.</li> </ul> </li> </ul> <p>Note: See <a href="#">Media Release (17-150MR)</a> <i>Motor Finance Wizard to pay over \$11 million in remediation over responsible lending concerns</i> (24 May 2017).</p>



Lessor	Date	Enforcement actions and outcomes
S & S Enterprises Pty Ltd (trading as Rent To Own Appliances)	November 2016	<p>We cancelled the credit licence of Rent To Own Appliances. We found that, while it had attempted to characterise its contracts as consumer leases, its 'rent to buy' product was a credit contract. It had therefore charged consumers an annual interest rate higher than the 48% maximum allowable under the National Credit Act.</p> <p>We found that Rent To Own Appliances charged consumers an effective rate of interest as high as 208%.</p> <p>In response to our concerns, Rent To Own Appliances agreed to stop collecting payments on all current contracts and allow consumers under these 'rent to buy' contracts to keep the goods being purchased under the contracts.</p> <p>Note: See <a href="#">Media Release (16-403MR)</a> ASIC cancels credit licence of Rent To Own Appliances (23 November 2013).</p>
Make It Mine Finance Pty Ltd	November 2015	<p>The Federal Court awarded penalties totalling \$1.25 million against Make It Mine for breaching consumer credit laws under the National Credit Act, including its responsible lending obligations. The decision followed ASIC launching civil action against the company in November 2014, and Make It Mine voluntarily issuing its own proceedings before the court.</p> <p>Note: See <a href="#">Media Release (15-349MR)</a> Consumer leasing company to pay \$1.25 million in penalties (20 November 2015).</p>
Amazing Rentals Pty Ltd	June 2015	<p>We entered into an enforceable undertaking following an ASIC investigation into concerns about Amazing Rentals' compliance with the credit legislation, including the responsible lending obligations under the National Credit Act.</p> <p>The enforceable undertaking requires Amazing Rentals to:</p> <ul style="list-style-type: none"> <li>• close the Darwin store for at least one year;</li> <li>• refund consumers;</li> <li>• make donations totalling \$10,000 to the North Australian Aboriginal Justice Agency and the Top End Women's Legal Service; and</li> <li>• appoint an independent external compliance expert to: <ul style="list-style-type: none"> <li>– assess Amazing Rentals' policies and procedures for compliance with its responsible lending and documentation obligations;</li> <li>– make any recommendations about required changes; and</li> <li>– report to ASIC.</li> </ul> </li> </ul> <p>Note: See <a href="#">Media Release (15-141MR)</a> ASIC accepts EU from Amazing Rentals (5 June 2015).</p>

Lessor	Date	Enforcement actions and outcomes
Rent the Roo Pty Ltd	November 2013	<p>We issued a \$27,500 infringement notice and entered into an enforceable undertaking after finding deficiencies in Rent the Roo's responsible lending, operating and compliance practices.</p> <p>The enforceable undertaking required Rent the Roo to appoint an independent compliance consultant to review its policies and make recommendations to increase its compliance with the National Credit Act. The consultant's recommendations included that Rent the Roo should:</p> <ul style="list-style-type: none"> <li>• verify third-party income where this is used to assess suitability; and</li> <li>• have flexibility in its hardship and dispute resolution procedures to address financial hardship as a result of a change in a consumer's financial circumstances.</li> </ul> <p>Note: See <a href="#">Media Release (13-301MR)</a> <i>Rental goods provider pays \$27,500 dollars penalty—enters into enforceable undertaking</i> (1 November 2013).</p>
Mr Rental Port Augusta	October 2013	<p>Our surveillance found that consumers were asked to sign several documents together with a lease agreement, none of which were explained to them, and included a 'customer declaration' indicating they understood all the paperwork and that they were not intoxicated.</p> <p>As a result of our findings, Mr Rental Port Augusta released consumers from their contracts.</p> <p>Note: See <a href="#">Media Release (13-288MR)</a> <i>ASIC action sees Indigenous consumers released from contracts</i> (24 October 2013).</p>
Ray Rentals Pty Ltd	August 2013	<p>An ASIC investigation found that Ray Rentals was providing regulated credit without a credit licence and was promoting this activity on its website. Ray Rentals was found to be largely targeting consumers living in remote Indigenous communities.</p> <p>We banned this unlicensed Victorian-based lessor and its sole director from offering credit for four years.</p> <p>Note: See <a href="#">Media Release (13-207MR)</a> <i>ASIC this Ray Rentals with a four year credit ban</i> (9 August 2013).</p>
Mobile Rentals Pty Ltd and franchisees	February and September 2013	<p>We banned the director of Mobile Rentals from engaging in credit activities for five years and cancelled its credit licence for failing to comply with the responsible lending obligations.</p> <p>Mobile Rentals was found to be targeting vulnerable consumers in Victoria. We subsequently also took action against Mobile Rentals' franchisees for failure to meet their responsible lending obligations.</p> <p>We imposed licence conditions on one franchisee, which operated under its own credit licence. This required the licensee to appoint an external independent expert to report to ASIC on whether the business was complying with its obligations in the future.</p> <p>The remaining franchisees entered into written undertakings with ASIC stating they would not engage in credit activities for three-and-a-half years. Consumers were also released from their obligations under the contracts and were given ownership of their goods.</p> <p>Note: See <a href="#">Media Release (13-028MR)</a> <i>ASIC takes action against mobile rentals, cancelling its licence and banning its director</i> (19 February 2013) and <a href="#">Media Release (13-245MR)</a> <i>ASIC removes Mobile Rentals franchisees from industry</i> (3 September 2013).</p>

Lessor	Date	Enforcement actions and outcomes
Zaam Rentals Pty Ltd and franchisees	February and August 2013	<p>We banned the director and former director of Zaam Rentals from engaging in credit activities for six years and four years, respectively. We also cancelled Zaam Rentals' credit licence for failing to comply with the responsible lending obligations.</p> <p>Zaam Rentals was found to be targeting vulnerable consumers in remote Indigenous communities in Mildura, Victoria, and surrounding areas in New South Wales.</p> <p>We subsequently also excluded the directors of Zaam Rentals' franchisees from the industry by requiring them to enter into written undertakings with ASIC stating they will not engage in credit activities for three-and-a-half years. This followed an ASIC surveillance into the franchisees' responsible lending practices.</p> <p>Note: See <a href="#">Media Release (13-021MR)</a> ASIC takes action against Zaam rentals, cancelling its licence and banning its directors (11 February 2013) and <a href="#">Media Release (13-235MR)</a> ASIC takes action against rental company's franchisees (28 August 2013).</p>
Mr Rental Australia Pty Ltd	February 2013	<p>We entered into an enforceable undertaking with Mr Rental, under which the lessor was required to refund 1,560 consumers over \$300,000 and amend the standard rental contract used by the 52 franchisees operating under the Mr Rental banner.</p> <p>This followed an ASIC investigation into Mr Rental's standard rental contract, which raised concerns that a term allowing Mr Rental to charge a 'calculation period adjustment' (i.e. an additional fee if consumers terminated their rental agreements early) was an unfair contract term.</p> <p>Note: See <a href="#">Media Release (13-022MR)</a> ASIC accepts enforceable undertaking from Mr Rental (12 February 2013).</p>

## Appendix 2: ASIC's payday lending outcomes

### Key points

Since 2010, our enforcement action has resulted in payday lenders being required to refund more than \$14.2 million to consumers, with insurers refunding around \$2.4 million for related products.

Payday lenders have been fined close to \$21 million: \$1.5 million in ASIC infringement notices and \$19.7 million by the courts.

**Table 4: Enforcement actions and outcomes regarding payday loans—Responsible lending**

Lender	Date	Enforcement actions and outcomes
Cash Converters Personal Finance Pty Ltd	November 2016	<p>Following an investigation, we entered into an enforceable undertaking with Cash Converters on 4 November 2016. Cash Converters was required to:</p> <ul style="list-style-type: none"> <li>• refund eligible consumers \$10.8 million in fees;</li> <li>• have Deloitte review its consumer credit compliance and report to ASIC at 6-month and 12-month intervals (to be completed by May 2018); and</li> <li>• pay infringement notices totalling \$1.35 million.</li> </ul> <p>Note: See <a href="#">Media Release (16-380MR)</a> <i>Cash Converters to pay over \$12M following ASIC probe</i> (9 November 2016).</p>
Nimble Australia Pty Ltd (previously known as Cash Doctors)	March 2016	<p>In 2016 we accepted an enforceable undertaking from Nimble following concerns about Nimble's responsible lending practices. Nimble was required to refund \$1.5 million and make a \$50,000 community benefit payment to Financial Counselling Australia.</p> <p>Note: See <a href="#">Media Release (16-089MR)</a> <i>Payday lender Nimble to refund \$1.5 million following ASIC probe</i> (23 March 2016).</p>
The Cash Store and Assistive Finance Australia (The Cash Store)	February 2015	<p>The Federal Court awarded nearly \$19 million in civil penalties against The Cash Store in February 2015 for responsible lending failures and unconscionable conduct in selling consumer credit insurance.</p> <p>Note: See <a href="#">Media Release (15-032MR)</a> <i>Federal Court orders record penalty</i> (19 February 2015).</p>
Abaz Pty Ltd (Moneyplus)	November 2014	<p>In 2014 we issued Moneyplus with a \$42,500 fine for failing to obtain account statements for the past 90 days for consumers who had taken out a previous loan with Moneyplus.</p> <p>Note: See <a href="#">Media Release (14-313MR)</a> <i>Payday lender penalised for breaching new responsible lending laws</i> (25 November 2014).</p>

**Table 5: Enforcement actions and outcomes regarding payday loans—Avoidance**

Lender	Date	Enforcement actions and outcomes
Web Moneyline Pty Ltd and Good to Go Loans Pty Ltd	October 2017	<p>In October 2017 we accepted enforceable undertakings from two payday lending businesses (Web Moneyline and Good to Go Loans). The lenders were offering a loan product that fell outside the definition of a 'small amount credit contract', but operated in the same manner. Under the enforceable undertaking, the lenders agreed to:</p> <ul style="list-style-type: none"> <li>• write off all these outstanding loans, including any outstanding debts that have arisen as a result of entering into these loans;</li> <li>• notify the relevant credit reporting body that these loans have been settled, to correct the affected consumer's credit records; and</li> <li>• not enter into this loan product with any new consumers.</li> </ul> <p>Note: See <a href="#">Media Release (17-344MR)</a> ASIC concerns see Web Moneyline Pty Ltd stop offering loan product (12 October 2017).</p>
Fast Access Finance Pty Ltd, Fast Access Finance (Beenleigh) Pty Ltd and Fast Access Finance (Burleigh Heads) Pty Ltd (the FAF companies)	March 2017	<p>In March 2017 the Federal Court issued the FAF companies a fine of \$730,000 for unlicensed credit activities. The FAF companies' business model involved consumers seeking a payday loan entering into agreements to buy and sell diamonds. The court previously ordered the FAF companies to pay five consumers approximately \$17,000.</p> <p>In October 2017, following the FAF companies penalty decision of the Federal Court, we banned Robert Legat from engaging in credit activities for a period of three years. We found that Mr Legat created and caused the FAF companies to implement the diamond model, which was designed to circumvent the 48% legislative interest rate cap that would have been applicable. This conduct demonstrated a lack of judgement, integrity and professionalism on Mr Legat's part and a disregard for the law. We therefore determined that Mr Legat is not a fit and proper person to engage in credit activities.</p> <p>Note: This matter is currently under appeal at the Administrative Appeals Tribunal.</p> <p>Note: See <a href="#">Media Release (17-060MR)</a> Payday lenders fined \$730,000 for diamond trading 'sham' (10 March 2017).</p>
Australian Money Exchange (in liquidation) (AMX)	August 2016	<p>In August 2016 we banned Peter Elfyd Llewellyn from engaging in credit activities for 10 years. We found that AMX engaged in unlicensed credit activities between 1 July 2011 and 23 September 2013, in which Mr Llewellyn was knowingly involved.</p> <p>Note: See <a href="#">Media Release (16-281MR)</a> ASIC bans former director of payday lender from credit activities for ten years (30 August 2016).</p>
Fair Go Finance Pty Ltd	February 2016	<p>In 2016 Fair Go Finance paid \$34,000 in penalties and refunded approximately 550 consumers around \$34,500 for interest and fees collected in excess of that allowed.</p> <p>Note: See <a href="#">Media Release (16-027MR)</a> Payday lender penalised for overcharging consumers (9 February 2016).</p>

Lender	Date	Enforcement actions and outcomes
Money3 Corporation Limited	July 2015	<p>In 2015 Money3 agreed to stop offering its two-payment 'fixed fee' loan arrangement. The loan structure required consumers to make two repayments:</p> <ul style="list-style-type: none"> <li>• the first, a nominal amount, which was generally due a week after the loan was entered into; and</li> <li>• the second, usually 90% of the total amount to be repaid, which was due 15 months later.</li> </ul> <p>Money3 refunded more than \$100,000 to approximately 400 consumers following our concerns that it had breached consumer credit laws and engaged in misleading conduct.</p> <p>Note: See <a href="#">Media Release (15-168MR)</a> <i>Money3 provides over \$100,000 in refunds to consumers as ASIC's payday lending crackdown continues</i> (1 July 2015).</p>
Teleloans Pty Ltd and Finance & Loans Direct Pty Ltd (FLD)	June 2015	<p>In 2015 we brought action against Teleloans. Teleloans' business model involved consumers entering into near simultaneous agreements with Teleloans and FLD. Contracts between consumers and FLD included a charge of 5% of the loan amount, falling within the exemption in s6(1) of the National Credit Code. Contracts with Teleloans included further fees.</p> <p>We argued the contacts together meant that fees and charges exceeded the amount permitted by s6(1). The court did not accept that the contracts should be read together, but viewed the arrangement as separate contracts, therefore falling outside the National Credit Code.</p> <p>Note: See <a href="#">Media Release (15-165MR)</a> <i>Decision in Teleloans and Finance &amp; Loans Direct civil action</i> (30 June 2015).</p>
Courthouse Holdings Pty Ltd (trading as Cash Loan Money Centres) and Sunshine Loan Centres Pty Ltd	October 2014	<p>In 2014 Cash Loan Money Centres and Sunshine Loans agreed to stop offering 'leaseback' arrangements at high cost to consumers who wanted a payday loan.</p> <p>Under a 'leaseback' arrangement, the consumer 'sells' a household item (such as a washing machine or fridge), mobile phone or car to a business in return for a sum of money, and simultaneously 'leases' the goods back from the business. In practice, the goods never change hands and the business never actually sees the goods or confirms the current market value before 'purchasing' them from the consumer.</p> <p>In both these cases, we were concerned that consumers were charged considerably more than the amount allowed under the legislative cap on costs for payday loans.</p> <p>Note: See <a href="#">Media Release (14-278MR)</a> <i>ASIC continues crackdown on payday lending avoidance models</i> (22 October 2014).</p>
Fast Easy Loans Pty Ltd	December 2014	<p>In 2014 Fast Easy Loans agreed to refund more than 2,000 consumers \$477,900 following our concern that it charged a brokerage fee that was prohibited.</p> <p>Note: See <a href="#">Media Release (14-328MR)</a> <i>ASIC crackdown stops another payday lender from overcharging consumers</i> (9 December 2014).</p>

**Table 6: Enforcement actions and outcomes regarding payday loans—Advertising**

Lender	Date	Enforcement actions and outcomes
PAID International Ltd (formerly known as First Stop Money Ltd)	April 2014	In 2014 PAID International paid \$30,600 in penalties after we issued three infringement notices for misleading representations in its online advertisements.  Note: See <a href="#">Media Release (14-065MR)</a> <i>Small amount lender pays \$30,600 penalty for misleading online advertisements (2 April 2014)</i> .
Ferratum Australia Pty Ltd	October 2013	In 2013 Ferratum, an online payday lender, paid a penalty of \$10,200 to ASIC for false or misleading advertising and refunded affected consumers all transaction fees.  Note: See <a href="#">Media Release (13-284MR)</a> <i>Small amount lender pays infringement notice penalty for 'Free' loan offer (21 October 2013)</i> .
Foresters Community Finance Ltd (trading as Fair Finance Australia)	April 2013	In 2013 Fair Finance Australia paid a \$6,600 penalty for false or misleading advertising and removed the offending advertisement.  Note: See <a href="#">Media Release (13-088MR)</a> <i>Fair Finance Australia pays infringement notice penalty (24 April 2013)</i> .
Nimble	May 2013	In 2013 Nimble changed its advertising following our concern it was potentially misleading regarding a continuing credit contract with an indefinite term.  Note: See <a href="#">Media Release (13-112MR)</a> <i>ASIC concerns sees payday lender change advertising (23 May 2013)</i> .

**Table 7: Enforcement actions and outcomes regarding payday loans—Cap on costs**

Lender	Date	Enforcement actions and outcomes
Cash Stop Financial Services Pty Ltd	February 2014	In 2014 we agreed to an enforceable undertaking from Cash Stop, which required Cash Stop to refund \$14,000 to more than 650 consumers for charging a subscription fee in contravention of the credit laws.  Note: See <a href="#">Media Release (14-035MR)</a> <i>ASIC investigation leads to Cash Stop Financial Services Pty Ltd refunding more than 650 consumers (24 February 2014)</i> .
PAID International	September 2015	In 2014 we accepted an enforceable undertaking from PAID International, requiring it to refund approximately \$1.1 million to 6,650 consumers (for 20,273 loans) who were charged an excessive fee after taking out loans, including payday loans.  PAID International went into administration in early 2015 and, as at the end of June 2015, \$239,308 had been refunded. In late 2015 we suspended PAID International's credit licence.  Note: See <a href="#">Media Release (15-262MR)</a> <i>ASIC suspends payday lender's credit licence (21 September 2015)</i> .
Fair Loans Foundation Pty Ltd	July 2013	In 2013 we entered into an enforceable undertaking with Fair Loans, which required it to refund around \$157,000 in overcharged interest to 864 consumers and appoint an independent consultant to ensure future compliance with the credit laws. Fair Loans also paid \$22,000 in penalties for related breaches.  Note: See <a href="#">Media Release (13-190MR)</a> <i>Lender to refund consumers and pay financial penalty following interest rate errors (24 July 2013)</i> .

## Key terms

Term	Meaning in this document
17-243MR (for example)	An ASIC media release (in this example numbered 17-243)
ADI	An authorised deposit-taking institution—a corporation that is authorised under the <i>Banking Act 1959</i> . ADIs include: <ul style="list-style-type: none"> <li>• banks;</li> <li>• building societies; and</li> <li>• credit unions</li> </ul>
AFIA	Australian Finance Industry Association
ASIC	Australian Securities and Investments Commission
base price	The price specified as the value of the leased goods when determining the maximum amount that can be charged to a consumer under the proposed lease cap on costs. This value is to be disclosed to consumers
Bill	The Exposure Draft of the National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2017
CHERPA	Consumer Household Equipment Rental Providers Association
consumer lease	A consumer lease to which the National Credit Code applies <p>Note: See s169–171 of the National Credit Code.</p>
credit activity	Has the meaning given in s6 of the National Credit Act
credit licence	An Australian credit licence under s35 of the National Credit Act that authorises a licensee to engage in particular credit activities
credit licensee	A person who holds a credit licence under s35 of the National Credit Act
EDR scheme	An external dispute resolution scheme approved by ASIC under the National Credit Act (see s11(1)(a)) in accordance with our requirements in <a href="#">Regulatory Guide 139</a> <i>Approval and oversight of external complaints resolution schemes</i> (RG 139)
final report	Treasury, <a href="#">Review of the small amount credit contract laws: Final report</a> , March 2016
Government	Australian Government
lessor	A lessor under a consumer lease



Term	Meaning in this document
National Credit Act	<i>National Consumer Credit Protection Act 2009</i>
National Credit Code	National Credit Code at Sch 1 to the National Credit Act
payday lender	A credit provider that provides payday loans
payday loan	Has the meaning given to 'small amount credit contract' in Sch 3 to the <i>Consumer Credit Legislation Amendment (Enhancements) Act 2012</i>
protected earnings amount	The amount of money a lender cannot access for the purposes of loan repayments. This submission refers to a protected earnings amount in two ways: <ul style="list-style-type: none"> <li>• the current protected earnings amount, set out in reg 28S(3) of the National Consumer Credit Protection Regulations 2009; and</li> <li>• the recommendations to extend protected earning amounts separately to all payday loan and consumer lease consumers, with the maximum amount of a consumer's net income able to be devoted to repayments set at 10%</li> </ul>
REP 447	An ASIC report (in this example numbered 447)
review	Review of the small amount credit contract laws
s47 (for example)	A section of the National Credit Act (in this example numbered 47), unless otherwise specified
small amount credit contract	Has the meaning given in Sch 3 to the <i>Consumer Credit Legislation Amendment (Enhancements) Act 2012</i>
UCCC	Uniform Consumer Credit Code