

SUBMISSION TO ASIC: FINANCIAL SERVICE PANEL CONSULTATION PAPER 281

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This submission seeks to address the Australian Securities and Investments Commission consultation in relation to the Establishment of a Financial Services panel.

Rent The Roo Pty Ltd is an Australian family owned company dealing in the Consumer Leases market space with franchisees in all states across Australia.

### **Proposal**

B1 We propose that establishing the Panel may improve regulatory outcomes by: (a) assisting ASIC with making administrative decisions on certain matters relating to financial services and credit activities; and (b) enhancing the impact of ASIC's administrative decisions.

B1Q1 How would the Panel improve regulatory outcomes?

- The basis of a peer review would in our opinion be beneficial given that ASIC's administrative decisions may not be based on a thorough understanding of current industry practises and standards. Whilst these decisions may "look good on paper" those providing credit on a regular basis may have a slightly different view to purely regulators
- The regulator has a certain skill set that allows it to make decisions based purely on the legislation before it and whilst this may be legally correct it may



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fail to make the decision based on experiences and perspectives that can be obtained from both industry and consumer bodies alike

- Education is the key to any peer review process and would allow any representative to undertake education within their given field of expertise whilst serving as a panel member

B1Q2 How do you see the Panel, as a peer review mechanism, enhancing the impact of ASIC's administrative decisions?

- It is possible to enhance the impact of the regulators administrative decisions by allowing the industries covered by the National Credit Act to be seen as self-regulating. Whilst it is important to remember that the regulators decisions are significant a peer review system allows both consumer advocates and industries to work together

#### **Matters the Financial Services Panel would consider**

##### **Proposal**

C1 We propose that when a matter is referred to the Panel, the Panel would be responsible for determining whether ASIC will make a banning order against an individual for misconduct in the course of providing financial services (as defined in s766A of the Corporations Act) and/or engaging in credit activities (as defined in s6 of the National Credit Act). Specifically, the Panel would consider banning orders for misconduct by financial services participants (excluding corporate AFS licensees) and participants in the credit industry.

C1Q1 What are your views on the Panel initially only being referred matters to consider that relate to the making of banning orders?

- This is a good starting point it would be inconsistent not to allow the Financial Services Panel to be restricted purely on the basis that it may not be cost effective. Whilst a monetary value is important so are matters that may not necessarily meet some monetary guideline as set by the regulator



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C1Q2 What other areas of regulatory priority should be included in the scope of the matters to be considered by the Panel (in addition to individual misconduct in the financial services and credit industries) either now or in the future?

- The panel could also be strengthened to include shared values between the regulator, consumer groups and industry. This alone would set a tone from the largest providers of credit to the small micro lenders in any given industry and would strengthen the panel as well as providing industry with some additional guidance

### Proposal

C2In deciding whether to refer a matter to the Panel, we would consider whether it is appropriate for peer review because of its significance, complexity or novelty. Whether a matter is appropriate will depend on the facts of each matter. In addition, we would take into account: (a) the objects of Ch 7 of the Corporations Act, that is to promote: (i) confident and informed decision making by consumers of financial products and services while facilitating efficiency, flexibility and innovation in the provision of those products and services; and (ii) fairness, honesty and professionalism by those who provide financial services; and Note: See s760A(a) and (b) of the Corporations Act. We also take into account the objects of the ASIC Act as contained in s1(2). (b) the objects of the National Credit Act, that is to better inform consumers and prevent them from being in unsuitable credit contracts.

C2Q1 Is 'complexity, significance or novelty' an appropriate measure for the types of matters to be considered by the Panel?

- Yes, it would appear appropriate, however a clear definition would need to be established prior to the panels appointment

C2Q2 What are your views on how ASIC should distinguish between 'complex' and 'simple' matters and which do you see as more appropriate to be considered by the Panel?

- There is no doubt that complex matters should be considered by the panel however without a clear definition of 'simple' as compared to 'complex' it is difficult to provide feedback



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C2Q3 What alternative or additional criteria should be used to assist in determining which matters would be referred to the Panel?

- See answer in C2Q2 above

### Proposal

C3 We propose that only matters that are contested by the notice recipient (Recipient) would be referred to the Panel.

C3Q1 Should uncontested matters also be referred to the Panel?

- Uncontested matters could be distributed for reading purposes only but need not be referred to the Panel

### Other administrative powers

#### Proposal

C4 We may consider expanding the Panel's powers and/or the scope of the matters to be referred to the Panel in the future. Some examples of powers that we may delegate to the Panel in the future include the power to:

- (a) issue infringement notices;
- (b) refuse an AFS licence or credit licence application;
- (c) impose conditions on an AFS licence or credit licence; and/or
- (d) cancel or suspend an AFS licence or credit licence.

C4Q1 What other administrative powers should we delegate to the Panel (in addition to the power to make banning orders) now or in the future?

- The introduction of increased powers would appear to be a logical step in the growth of the Panel and would allow continued education of the industry as well as consumer groups and the regulator



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## Membership of the panel

### Proposal

D1 We propose that one of the three options set out in Table 1 would form the basis for selecting members of the Panel.

D1Q1 Of the options for the Panel's composition that we have set out in Table 1, which is the most suitable for the Panel's purpose?

- Option two would be a preferred option given that the Panel would be seen to be made up from industry, consumer groups and ASIC staff

D1Q2 Are there other options for the Panel's composition that we should consider? Please explain

- There does not appear to be any further options

Table 1: Proposed options for selecting members of the Financial Services Panel  
Option Description

1. Industry participants only

Up to two members to be drawn from a pool of industry participants. The third member would be an ASIC staff member.

2. Industry and non-industry participants from a range of professions

Up to two members to be drawn from a pool comprised of industry participants and non-industry participants with relevant expertise (e.g. lawyers, academics and consumer representatives). The third member would be an ASIC staff member.

3. Industry and independent participants

One member to be an industry participant, and one member to be a participant independent of the financial services and credit industries (e.g.



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experienced Tribunal member). The third member would be an ASIC staff member.

Should you require any additional information or clarification I am only too happy to assist?

In regards to the composition of the panel I would like to place my name forward as a member. With over 30 years' experience in the financial sector including banking, mortgage broking and consumer leases I would be able to offer a unique perspective to any panel. A full resume is available when required.

Regards



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