11 September 2023

Australian Financial Complaints Authority
Limited
GPO Box 3
Melbourne VIC 3001

By email: consultation@afca.org.au

Dear Sir/Madam,

Re: Feedback on Responsible Lending Consultation Draft

We appreciate the opportunity to provide feedback on AFCA's draft Approach to responsible lending on behalf of Rent4keeps (Aust) Pty Ltd and its franchisee network. Our comments are primarily focused on ensuring the approach accurately addresses the unique characteristics and considerations of consumer leasing. Before we address the specific questions posted in Section 3, we wanted to offer some insights and responses to Section 3.1 of the draft.

In Section 3.1 of the Responsible Lending Consultation draft, you discuss "assessing if a credit contract was unsuitable." However, it appears that there is a need to address the assessment of consumer leases separately from credit contracts. While there are common obligations, it is essential to acknowledge the differences in scale and disclosure provisions between these two types of credit products.

In terms of legal frameworks and past decisions, consumer leasing is primarily governed by the National Credit Act, and its policies are aligned with relevant sections of the Code. Nevertheless, there has been a past decision that we believe was incorrectly determined, as it relied on the wrong legal argument related to a credit contract, rather than a consumer lease. Since this decision is final and unappealable, it poses a potential risk to future consumer lease cases. Rectifying this inconsistency is crucial to ensuring fairness in the approach. The determination case number I refer to is Case Number [redacted].

Now, addressing the specific questions posed in Section 3:

<u>SECTION 3: HOW AFCA DECIDE IF A FINANCIAL FIRM HAS MET ITS RESPONSIBLE LENDING OBLIGATIONS</u>

ASSESSING REASONABLENESS OF INQUIRIES AND VERIFICATION STEPS

(Section 3.2: AFCA considers whether the inquiries and verification steps were reasonable)

Response to Question 1: Do you consider our approach to assessing the reasonableness of inquiries and verification steps align with the guidance in ASIC RG 209?

Yes, we believe that your approach aligns with ASIC RG 209, although it seems to be more tailored to credit contracts. Your emphasis on considering the consumer's circumstances and the nature of the credit product, as outlined in ASIC RG 209, is well-acknowledged. However, it is essential to underline that the assessment of reasonableness for inquiries and verification steps should differ significantly between consumer leases and other credit products, such as home loans or personal loans. Consumer leases involve substantially smaller amounts, different security mechanisms, and unique financial dynamics, necessitating a distinct and more nuanced evaluation process.

Response to Question 2: Do you have any other comments about our proposed approach to assessing the reasonableness of inquiries and verification steps?

Below is a table comparing credit contracts (home loans and personal loans) to consumer leases (rental agreements) based on various factors, along with information on how the level of assessment would differ:

Factor	Home Loans	Personal Loans	Consumer Leases (Rental Agreements)
Minimum Credit/Loan or Lease Amount	$150,000	$2,500	$1,000
Maximum Credit/Loan or Lease Amount	Up to $3 million (varies between lenders)	Up to $80,000	Up to $10,000 (rarely, on avg a lease is $3,500)
Types of Security	Home (e.g., house)	Varies (can be secured or unsecured, e.g., car, boat)	Personal & household items only and depends on what is being leased (e.g., fridge, washing machine or mobile phone)
Loan/Lease Terms	1 year to 30 years	6 months to 7 years	13 months to 36 months
Interest Rates	Variable or Fixed (vary based on factors such as owner-occupied rate is lower or investment rate is higher)	Based on credit score (ranges from as low as 0-1.5% or as high as 30%)	No applicable interest rates
Costs	Upfront and ongoing costs (e.g., application fees, valuation fees, settlement fees, account keeping fees and interest charges)	Upfront and ongoing costs (e.g., application fee which includes a broker fee, may include a settlement fee and interest charges)	Application fee (added to the total lease amount) / No ongoing costs
Repayment Type	Principal and Interest payments	Principal and Interest payments	Fixed fortnightly repayments of total lease amount
Ownership of	Yes, you own the	Yes, you own the	No, you do not own

Goods at Start	property or item.	item.	the item as you are leasing the item.
Right to Acquire Goods During Lease	Not Applicable.	Not Applicable.	No, you do not have a right to acquire the goods during the lease.
End of Lease Options	Not Applicable.	Not Applicable.	Options may include making an offer to purchase the item for a nominal amount or returning the goods to the lessor.

Assessment Differences:

1. **Credit Product vs. Consumer Lease:** The level of assessment would differ significantly based on whether it's a credit product (home loan or personal loan) or a consumer lease (rental agreement). The nature and purpose of these financial products vary, leading to distinct assessment criteria.

2. **Costs:** Home loans and personal loans involve upfront and ongoing costs, including application fees and interest charges. These costs are essential considerations when assessing affordability and suitability. In contrast, consumer leases typically have an application fee added to the total lease amount but do not have ongoing costs. The assessment would need to account for these differences in cost structures.

3. **Ownership:** Assessments for credit products must consider that the borrower will own the property or item from the outset. Consumer leases, on the other hand, involve no ownership of the leased item during the lease term, which affects the assessment of rights and obligations.

4. **Right to Acquire Goods:** Assessments for consumer leases should recognise that lessees do not have a right to acquire the leased goods during the lease term. This is a fundamental difference compared to credit products.

5. **End of Lease Options:** The assessment for consumer leases should include an evaluation of the end-of-lease options available to the lessee, such as the possibility to purchase the item for a nominal amount or return it to the lessor.

In summary, the level of assessment varies significantly between credit products (home loans and personal loans) and consumer leases (rental agreements) due to differences in cost structures, ownership, rights, and end-of-lease options. Assessments should be tailored to the specific characteristics of each financial product to ensure responsible lending practices.

An additional critical distinction is that if a customer defaults on a consumer lease credit product or faces financial hardship, the consequences are typically less severe than those associated with credit contracts like home loans or personal loans. Consumer leases generally involve lower debt amounts, reducing the risk of significant financial hardship or the need to sell essential assets, such as a home.

Moreover, AFCA highlights specific risk factors that may require financial firms to conduct more detailed inquiries, undertake further verification steps, or conduct a more thorough assessment when assessing credit suitability. These factors include indications of consumer vulnerability, recent increases in debts, multiple outstanding credit-related debts, frequent overdrawn savings accounts or reversed direct debit transactions, and the potential necessity for the consumer to sell their home if they default. These considerations underline the importance of a nuanced assessment approach, particularly when dealing with consumers facing higher risks of harm.

Ultimately, the assessment process should take into account the unique circumstances of each consumer, with a focus on ensuring that vulnerable individuals are protected and that consumers are not assuming undue financial burdens that could lead to harm.

CHANGES THE FINANCIAL FIRM COULD REASONABLY HAVE FORSEEN

(Section 3.3, page 19: Changes the financial firm could reasonably have foreseen)

Response to Question 3: Does our approach to considering a financial firm's assessment of reasonably foreseeable changes in a complainant's circumstances align with the guidance in ASIC RG 209?

AFCA's approach to considering a financial firm's assessment of reasonably foreseeable changes in a complainant's circumstances aligns with the guidance in ASIC RG 209 to a significant extent. ASIC RG 209 emphasises the importance of financial firms assessing the likelihood of a consumer's ability to meet their financial obligations under a credit contract, taking into account reasonably foreseeable changes in their circumstances.

In the context of a consumer lease credit product, where the characteristics and terms significantly differ from traditional credit contracts, it is imperative to apply a nuanced approach. While certain factors such as reaching retirement age and changes in variable interest rates are relevant to credit contracts, they may not be as pertinent to consumer leases. Instead, considerations specific to consumer leases, such as changes in the lessee's income, rental payment capacity, and the condition of the leased item, become essential.

It is crucial to recognise that in consumer leases, the lessee does not have ownership rights to the leased item during the term of the lease. Therefore, assessing the lessee's ability to meet lease obligations should focus on their ongoing financial capacity and the specific terms of the lease agreement, rather than traditional credit contract parameters.

While the approach aligns with ASIC RG 209's overarching principles, a tailored perspective is necessary for consumer lease credit products to ensure that assessments appropriately consider the unique characteristics and foreseeable changes specific to this type of financial arrangement.

Response to Question 4: Do you think it is it reasonable for AFCA to consider that where a borrower will likely reach retirement age during the loan term, the lender should, as part of its reasonable inquiries and verification steps:

- **assess how the borrower will repay the loan in retirement, and**
- **if it appears likely the borrower will need to sell assets to repay the loan, make inquiries about whether the sale of those assets at that time meets the complainant's requirements and objectives?**

Considering the specific characteristics of consumer lease credit products, it is reasonable for AFCA to make distinctions in its approach to assessing borrowers' ability to repay the loan in retirement and whether the sale of assets to repay the loan aligns with the complainant's requirements and objectives. Consumer leases, as mentioned previously, involve unique terms and obligations that differ significantly from traditional credit contracts like home loans or personal loans.

In the context of consumer leases:

1. **Assessing how the borrower will repay the lease in retirement:** Given that consumer leases typically have a fixed term, often limited to 36 months, and that the lessee does not have ownership rights to the leased item during the lease term, it may not be relevant to consider how the lessee will repay the lease in retirement. The shorter-term nature of consumer leases, in contrast to the longer terms associated with traditional credit contracts such as personal loans (up to 7 years) or home loans (up to 30 years), means that the lessee's repayment capacity is primarily evaluated based on their current financial situation rather than their retirement income. Ownership of the leased item does not transfer to the lessee during the lease, making considerations related to retirement income less applicable to consumer leases.

2. **Inquiries about whether the sale of assets meets the complainant's requirements and objectives:** In the case of consumer leases, where the lessee does not own the leased item during the lease term, inquiries about selling assets to repay the lease may not be applicable. The lessee's obligations primarily pertain to meeting regular lease payments until the end of the lease term or considering end-of-lease options. Asset sales to meet lease obligations are typically not part of the lease agreement since ownership remains with the lessor.

   In summary, while it is reasonable for AFCA to consider these inquiries for traditional credit contracts, it may not be directly applicable to consumer lease credit products due to the distinct characteristics and terms involved. Assessments for consumer leases should focus on the lessee's current financial capacity and the lease terms, as the ownership of the leased item remains with the lessor throughout the lease term.

Response to Question 5: Do you have any comments about our proposed approach to considering the reasonableness of applying interest rate buffers to loans?

In the context of consumer leases, the proposed approach to considering the reasonableness of applying interest rate buffers, which is primarily designed for traditional loans like residential home loans, may not be directly applicable. Consumer leases, as previously discussed, differ significantly in structure and terms from traditional credit contracts, and therefore, certain considerations related to interest rate buffers may not align with consumer lease arrangements.

Key points to consider when evaluating the proposed approach in the context of consumer leases:

1. **Fixed Interest Rates:** Consumer leases do not involve interest rates as they are not structured as loans with interest charges. Instead, they are agreements for the use of an asset for a fixed period, often with predetermined rental payments. Therefore, the concept of applying interest rate buffers is not relevant to consumer leases.

2. **Fixed Lease Terms**: Consumer leases often have fixed and relatively short lease terms, such as 36 months, as opposed to the longer terms associated with traditional loans. These fixed terms mean that rental payments are generally predetermined and do not fluctuate based on interest rate changes.

3. **Ownership:** In consumer leases, the lessee does not have ownership rights to the leased item during the lease term. The ownership remains with the lessor. As a result, the lessee's obligations primarily pertain to meeting regular lease payments, and considerations related to interest rate fluctuations are typically not part of the lease agreement.

Given these distinctions, it is essential to recognise that the application of interest rate buffers, as proposed for traditional loans, may not be directly relevant to consumer leases. Assessments for consumer leases should focus on the predetermined lease terms, rental payment capacity, and the specific obligations outlined in the lease agreement.

In conclusion, while the proposed approach to interest rate buffers is appropriate for traditional loans, it may not be suitable for consumer leases due to their unique structure and terms. When evaluating the reasonableness of applying interest rate buffers, it is crucial to consider the specific characteristics and obligations associated with consumer leases to ensure a tailored and appropriate assessment.

DETERMINING IF A LOAN WAS UNSUITABLE

(Section 3.4: AFCA determines whether the loan was unsuitable)

Response to Question 6: Do you have any comments about how we propose to seek and consider further information when we find a financial firm has made an error in its assessment?

In the context of consumer leases, where the assessment of suitability differs significantly from traditional credit contracts, it is important to consider how AFCA's approach to seeking and considering further information aligns with the unique characteristics of consumer lease credit products.

1. **Distinguishing Between Credit Products:** As mentioned, consumer leases are distinct from credit contracts, and their assessment criteria and suitability considerations vary. It is crucial for AFCA to recognise the differences between these credit products when seeking and considering further information. This includes understanding the nature of consumer leases, their shorter terms, and the fact that they do not involve interest rates or ownership of the leased item during the term.

2. **Third-Party Representatives' Understanding:** The noted practice of third-party representatives, such as financial counsellors, often referring to credit contract-related information on the Legal Aid website can lead to misunderstandings and misapplications of responsible lending principles to consumer leases. It is important for AFCA to bridge this knowledge gap by providing clear guidance and resources specific to consumer lease credit products.

3. **Reasonable Inquiries and Verification:** AFCA's approach to seeking and considering further information should also encompass evaluating whether the financial firm conducted reasonable inquiries and verification steps, taking into account the unique nature of consumer leases. This includes assessing whether the lessor appropriately evaluated the lessee's rental payment capacity, lease terms, and end-of-lease options.

4. **Understanding the Lessee's Perspective:** When seeking further information, AFCA should also consider the lessee's perspective and their understanding of the consumer lease agreement. This involves ensuring that lessees are adequately informed about the terms of their lease and their obligations, especially when dealing with third-party representatives.

5. **Tailored Resources:** AFCA may consider developing and providing educational resources specifically tailored to consumer lease credit products to help both financial firms and third-party representatives better understand the unique characteristics and responsible lending considerations related to consumer leases.

AFCA's approach to seeking and considering further information when financial firms have made errors in their assessment is commendable. However, it is crucial to adapt this approach to the specific characteristics of consumer lease credit products, bridge knowledge gaps, and ensure that assessments are conducted in a manner that reflects the unique aspects of consumer leases. This includes providing clear guidance and tailored resources to facilitate a more accurate assessment of suitability for consumer lease agreements.

Response to Question 7: Do you have any comments about how we propose to use further information to determine whether the loan was unsuitable for the borrower?

In the context of consumer leases, AFCA's proposed approach to using further information to determine whether the lease was unsuitable for the lessee aligns with the unique characteristics and obligations associated with consumer lease credit products. Here are some comments on the proposed approach:

1. **Relevance of Further Information:** AFCA's approach to using further information is crucial for evaluating whether a consumer lease was suitable for the lessee. It is essential to recognise that consumer leases have distinct terms and obligations compared to traditional credit contracts. Therefore, obtaining and considering additional information is necessary to make an accurate assessment.

2. **Calculation Errors and Omissions:** The proposed approach is particularly relevant for addressing calculation errors or omissions in the financial firm's assessment. In consumer leases, where rental payments are predetermined, errors or omissions in assessing the lessee's financial capacity can have a significant impact on suitability. Correcting such errors is essential to determine whether the lease was unsuitable.

3. **Verification and Reasonable Inquiries:** Consumer leases may require unique verification steps and inquiries compared to traditional loans. For example, assessing the lessee's capacity to make rental payments and understanding their requirements and objectives within the context of a lease agreement are critical. AFCA's approach should reflect the specific nature of these inquiries for consumer leases.

4. **Substantial Hardship and Uncommitted Income:** In cases where the revised assessment shows that the lease was unsuitable, AFCA's consideration of whether the lessee would face substantial hardship is appropriate. Given the shorter terms and fixed nature of consumer leases, the assessment of uncommitted income and affordability should be tailored to these specific terms.

5. **Focus on Information at the Time:** AFCA's emphasis on the information available at the time of the financial firm's assessment is essential, as it ensures that assessments are based on the circumstances and understanding of the lessee during the lease application process. This approach recognises that subsequent events should not be relevant to the assessment unless the financial firm was on notice of these events or could have reasonably discovered them.

We believe, AFCA's proposed approach to using further information to determine the suitability of a consumer lease aligns with the unique nature of these credit products. It recognises the need for tailored assessments, verification steps, and inquiries specific to consumer leases to ensure that lessees are provided with suitable lease agreements that meet their requirements and objectives.

SECTION 4: HOW AFCA DETERMINE FAIR OUTCOMES AND CALCULATE COMPLAINANT LOSS

(Section 4.2: Calculating responsible lending remedies, and Guide One.)

Response to Question 8: Do you have any comments about the way we propose to assess a complainant's loss and benefit?

In assessing a complainant's loss and benefit for a consumer lease, it is important to consider the unique characteristics and terms associated with consumer lease credit products. The proposed approach should be tailored to reflect the specific nature of these leases. Here are some comments on the proposed assessment:

1. **Definition of Gross Loss and Benefit:** The definition of gross loss as the extent to which the complainant becomes liable for a debt under an unsuitable credit contract is appropriate. In consumer leases, this would entail considering the total rental payments the complainant made during the lease term, including any additional fees and charges, to determine their gross loss.

2. **Benefit from the Lease:** To calculate the benefit the complainant received from the consumer lease, it is crucial to recognise that consumer leases do not involve interest rates or ownership of the leased item during the lease term. Therefore, the benefit should focus on the value derived from the use of the leased item for the agreed-upon term, rather than traditional interest payments. This could include the fair market value of using the item for the lease period.

3. **Offsetting Gross Loss:** Once the gross loss is determined, it should be offset by the benefit the complainant received from using the leased item during the lease term. This approach acknowledges that the complainant did receive value from the lease agreement, which should be considered when assessing their overall loss.

4. **Outstanding Debt Balance:** Subtracting the net loss from the outstanding debt balance at the time of the AFCA decision is a logical step in calculating the complainant's adjusted debt balance. This ensures that the complainant's loss is reflected in the final outcome, considering both their benefit and any outstanding obligations.

5. **Specific Consideration for Consumer Leases:** Consumer leases often have fixed terms, with predetermined rental payments. Therefore, the assessment should focus on these fixed terms, the lessee's payment history, and the value derived from using the leased item during the agreed-upon lease period.

AFCA's proposed approach to assessing a complainant's loss and benefit for a consumer lease is appropriate, provided that it considers the unique terms and obligations of consumer lease credit products. The key is to ensure that the assessment accurately reflects the complainant's financial situation and the value they derived from the lease agreement while considering the fixed nature of consumer leases and the absence of interest charges.

In addition to the above, it is imperative to address specific concerns regarding the calculation method used in AFCA’s Guide One specific to Consumer Leases on page 55 of 61, particularly when applied to consumer leases written before and after the June 12, 2023, reform.

Pre-Reform Consumer Leases: One significant concern pertains to consumer leases written before the June 12, 2023, reform. The current calculation method, as outlined in Guide One, makes reference to the "cash price" or "true value" of the goods at the beginning of the lease, and the ability to offset this against the complainant's gross loss. However, it's important to note that, during this pre-reform period, cash price was not a relevant component of consumer leasing disclosures. The legal obligations focused primarily on the frequency and amount of repayments, the lease term, and the total amount payable at the end of the lease. As such, the calculation approach must be revised to align with the disclosure requirements applicable during this period.

Post-Reform Consumer Leases: For consumer leases written after the June 12, 2023, reform, there is a need to ensure that AFCA's approach accurately reflects the new legal framework, including the concept of the "base price" as defined in Section 175AA (6) and Regulation 105AA of the National Credit Code (NCCP regulations 2010). The calculation method should be updated to reflect the changes introduced by the reform, taking into account the revised disclosure requirements and the distinction between "cash price" and "base price."

Clear References and Distinction: To enhance clarity and facilitate easy verification, the revised approach should include clear and specific references to the relevant legal provisions within the National Credit Code and NCCP regulations. Furthermore, it is advisable to clearly distinguish between consumer leases written before and after the reform within the guide to help financial firms and complainants determine the applicable calculation method based on the date of their lease agreement.

Consultation with Legal Experts: To ensure the accuracy and compliance of the revised approach, it is recommended that AFCA consult with legal counsel specialising in consumer leasing laws. Their expertise will be invaluable in aligning AFCA's methodology with the legal framework, both pre-reform and post-reform.

In conclusion, addressing these concerns and revising the calculation approach in a manner that accurately reflects the legal requirements and disclosure changes associated with consumer leases is essential. Clear and precise guidance will benefit both financial firms and complainants in understanding and complying with the law as it pertains to their lease agreements.

(Section 4.2: Calculating responsible lending remedies, and Guide One.)

Response to Question 9 and 10:

We do not have responses for questions 9 and 10 as they pertain specifically to investment property loans, which fall outside the scope of our feedback submission. Our focus is on providing feedback related to the consumer lease credit product, as this is the area of our expertise and relevance in this context.

(Section 4.2, especially page 36 Assessing how secured assets can be dealt with fairly and Guide One)

Response to Question 11: We propose to determine how a complainant should repay any outstanding debt. This approach may allow a complainant to retain an asset and repay any outstanding debt over time if it is fair in the circumstances of the complaint. Do you have any comments about our flexible approach to determining fair outcomes when an unsuitable loan is secured by an asset?

In the context of a consumer lease, it's essential to note that the dynamics surrounding secured assets may differ significantly from those of loans secured by traditional assets like homes or vehicles. Consumer leases typically involve personal household items like appliances or electronics as the leased assets, and these items have distinct characteristics.

However, if we were to apply a similar principle to consumer leases, it might involve assessing the fairness of requiring a complainant to surrender or retain the leased item, depending on the circumstances. Similar to loans secured by assets, external factors and practical implications would need to be considered. For instance, if a complainant were required to return the leased item, we would need to evaluate their ability to secure an alternative item or the impact of such a requirement on their daily life.

Conversely, if retaining the leased item were deemed fair, we would need to assess how the complainant should repay any outstanding debt associated with the lease. This flexible approach should consider the individual circumstances of the complaint, potentially allowing the complainant to repay any outstanding amounts over time.

Ultimately, the key principle here is to ensure fairness and balance between the interests of both parties involved in the consumer lease agreement. However, it's important to note that specific considerations for consumer leases may differ from those of secured loans, and any approach should be tailored to the unique characteristics of consumer leasing arrangements.

OTHER FEEDBACK

Response to Question 12: Do you have any comments about our tool which has been developed to assist financial firms provide detail to us about their unsuitability assessment?

Regarding the tool developed to assist financial firms in providing details about their unsuitability assessment, the serviceability assessment tool appears to be straightforward and user-friendly. However, there are a couple of suggestions for refinement and specificity to better accommodate consumer leasing:

1. **Incorporate "Lease" Terminology**: To ensure clarity and relevance for consumer leasing, it would be beneficial to incorporate the term "lease" or "consumer lease" where appropriate within the tool. This adjustment can help align the tool more closely with the specific requirements and nuances of consumer leasing agreements.

2. **Exclusion of Interest Rates in Credit Facilities Table:** Consumer leasing does not typically involve interest rates, unlike traditional credit facilities. To reflect this distinction, it would be advisable to update the credit facilities table to exclude any reference to interest rates. Instead, the table could include relevant terminology such as "lease," "lessee," and "lease security" to better capture the essential components of consumer leasing agreements.

These adjustments would enhance the tool's usability and relevance for financial firms engaged in consumer leasing, ensuring that it accurately aligns with the specific characteristics and requirements of this credit product.

Response to Question 13: Do you have any feedback about the ‘Quick reference guides’ included in the Approach?

Certainly, we appreciate the inclusion of 'Quick reference guides' in the Approach document, as they serve as valuable tools for understanding and navigating the processes related to remedies and loss calculations, among other aspects.

However, we would like to emphasise the importance of addressing a significant concern related to the application of these guides in the context of consumer leasing, particularly for agreements written before the June 12, 2023, reform. As previously mentioned, the current approach outlined in Guide One refers to the "cash price" or "true value" of goods at the beginning of the lease when calculating a complainant's loss and benefit.

In light of the legal changes introduced by the reform, it is crucial to ensure that the 'Quick reference guides' align with the National Credit Code and Regulations. Specifically, the guides should be revised to remove any references to "cash price" in relation to consumer leasing, as this term is no longer applicable to consumer leases written pre-reform. Instead, the guides should accurately reflect the concept of the "base price" as defined in Section 175AA (6) and Regulation 105AA, which is now relevant for consumer leases post-reform.

By making these adjustments, the 'Quick reference guides' will provide clear and accurate guidance on remedies and loss calculations for both pre-reform and post-reform consumer leasing agreements, ensuring compliance with the current legal framework.

Response to Question 14: Do you have any other feedback about how the draft Approach meets our objectives?

In summary, our feedback on the draft Approach to responsible lending, particularly in the context of consumer leasing, includes the following key points:

1. **Terminology and Clarity:** We continue to recommend the incorporation of "lease" or "consumer lease" terminology throughout the document to ensure clarity and alignment with the unique characteristics of consumer leasing. This would help avoid potential confusion between consumer leases and traditional credit contracts.

2. **Credit Facilities Table:** While we understand the need for the credit facilities table to encompass various credit products, we recommend making specific adjustments to accurately reflect the nature of each product. To accommodate the unique characteristics of consumer leasing, the column heading "interest rate" should be modified to "Interest Rate (if applicable)," as interest rates are not relevant to consumer lease credit products. Furthermore, to maintain clarity and consistency, we propose expanding the table headings to include terms such as "Loan/Lease," "Borrower/Lessee," "Credit Provider/Lessor," and "Loan Security/Lease Security" to better differentiate between the different types of credit products and their corresponding elements. This refinement would enhance the utility of the credit facilities table across various credit products while ensuring precision and relevance.

3. **Loss Calculation Approach for Consumer Leases:** The Approach should be revised to accurately reflect the legal changes introduced by the June 12, 2023, reform, particularly in relation to the calculation of a complainant's loss and benefit. References to "cash price" should be replaced with the concept of the "base price" as defined in the National Credit Code and Regulations. Additionally, it is vital to ensure that the approach accounts for consumer leasing agreements written pre-reform, where the concept of "cash price" did not apply, and adjustments should be made to appropriately assess these cases.

4. **Flexible Approach to Asset Securing:** The document's flexible approach to determining fair outcomes when an unsuitable loan is secured by an asset is appreciated. However, it should be adapted to consider the specific dynamics of consumer leasing, which may differ significantly from traditional secured loans.

5. **Tool and Quick Reference Guides:** The serviceability assessment tool is viewed as self-explanatory and user-friendly. To enhance its relevance for consumer leasing, it should incorporate the word "lease" and include terminology such as "lease," "lessee," and "lease security." Regarding the 'Quick reference guides,' they are beneficial tools, but it's essential to ensure their alignment with the National Credit Code and Regulations, particularly with regard to remedies and loss calculations for consumer leasing agreements.

6. **Unintended Consequences:** We expressed concern about potential unintended consequences arising from the draft Approach, particularly in the assessment of consumer leasing agreements written pre-reform. Incorrect assessments based on references to "cash price" may result in inequitable outcomes for complainants and financial firms, and this issue should be addressed to ensure fairness and accuracy.

7. **Early Termination of Consumer Lease Agreement:** A lessee has the right to terminate a consumer lease agreement at any time and for any reason,

including due to financial hardship. As noted, a lessee's circumstances can change after entering into an agreement. Hence there is a provision to terminate the lease agreement. Granted there are some application conditions, such as notice period, return of goods (or making them available for collection) and an early termination (if applied). In assessing a case involving Responsible Lending it is therefore essential that there is a clear view of a lessee's circumstances at the time of the application, rather than at the time that a case is presented to AFCA.

8. **Value of "Surrendered Security":** In the event that security attached to a consumer lease is "surrendered" it is important to note that its value is likely to be significantly less than at the time the lease commenced. Given that security is primarily in the form of personal goods (e.g., mobile phones, tablets, computers, etc and / or household goods (whitegoods, furniture, TVs, etc) it is dependent on the condition upon which it is returned. Moreover, even in excellent condition such goods will no longer be "the latest models" and their value is unlikely to be realised by a lessor who will need to find secondary markets, or even dispose of the goods. This is in stark contrast to assets used as security in other forms of consumer credit – notably property – which may actually appreciate in value over time. While we generally accept the approach taken to determine fair outcomes and calculate complainant loss, consideration should also be given to the position of the lessor whose return on the lease will be significantly reduced when goods are returned.

9. **Refund Expectations:** It's important to note that third-party financial counsellors and legal firms may occasionally argue that a consumer lease agreement exceeds the cash price or the recommended retail price (RRP) of the goods, suggesting that the lessee should be refunded the difference between the cost of the goods and the amount paid thus far. However, it's essential to clarify that a consumer lease is not designed to facilitate the acquisition of goods at their RRP or through instalment payments. Under consumer leasing arrangements (pre-12 June reform changes), the RRP is not a relevant factor.

   In the context of consumer leasing, if a lessee chooses to retain the goods, they are expected to continue making payments, and if they decide to return the goods, any release from obligations typically depends on the lessor's agreement. Importantly, there is no legal requirement for a lessor to grant a refund request. Additionally, lessors have the flexibility to negotiate with lessees, and they may choose to release the lessee from obligations if the lessee has covered the cost of the goods, at a minimum. This clarification underscores the distinct nature of consumer leases and helps prevent misconceptions surrounding refund expectations.

In conclusion, while the draft Approach to responsible lending demonstrates a commitment to fairness and consumer protection, our feedback emphasises the need for alignment with the unique characteristics of consumer leasing and the recent regulatory changes. These adjustments will help ensure that the Approach effectively achieves its objectives while maintaining compliance with applicable laws and regulations.

We would like to extend our sincere gratitude to AFCA for affording us the invaluable opportunity to provide feedback on this consultation. Your commitment to seeking input from stakeholders is commendable, and it underscores your dedication to fostering responsible lending practices. We believe that, through this collaborative effort, we can collectively contribute to the improvement of the draft Approach, ensuring it aligns more effectively with the unique nuances of consumer leasing and the regulatory framework.

Thank you once again for your receptiveness to our insights and for your ongoing commitment to enhancing industry standards. We look forward to witnessing the positive impact of this collaborative process.

Yours faithfully,

LILY CULHAM
R4K Compliance Manager
Rent4keeps (Aust) Pty Ltd