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WHY PROPOSED 'REFORMS' TO CONSUMER LEASES ARE JUST MORE RED TAPE

Gideon Rozner, Research Fellow

Red tape reduces Australian economic output by an estimated $176 billion each year. To encourage prosperity and growth, governments should reduce this regulatory burden, or at least not add to it.

Last month, the Treasury released an exposure draft of the National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill (the 'Draft Bill').[1] If passed by the parliament, this bill would add a substantial red tape burden to the providers of consumer leases for household goods and appliances. It is estimated that this industry is currently worth around $596 million.[2]

The proposed changes would add red tape to a highly regulated industry

Consumer leases, like all financial products, are subject to existing prudential regulation. Under credit law, for example, lessors are required to obtain a credit license and comply with responsible lending requirements.[3]

Providers of consumer leases are also subject to laws against unscrupulous conduct. These laws already prohibit the behaviour of 'rogue' consumer lease providers. Price discrimination, for instance, can be addressed by enforcing existing laws against misleading and deceptive conduct.[4]

The Draft Bill attempts to add even more red tape to the consumer lease industry. Proposed measures include:

- a cap on total payments that can be made under consumer leases;[5]
- a protected earnings amount that will prohibit lessors from charging rent more than 10 per cent of customers' net income;[6]
- a requirement that lessors to obtain and consider bank statements for the past 90 days from lessees;[7] and
- numerous additional disclosure obligations on lessors, including the base price of goods leased and other information prescribed by the Australian Securities and Investments Commission.[8]

Payment caps on lease repayments would amount to price controls

Under the proposed cap on lease payments, operators will be limited to charging interest of four per cent of the base price of the good for each month of the lease.[9] This cap would be, in effect, a price control measure.

Price caps are bad economic practice in general, as they tend to restrict and discourage supply relative to demand. In this instance, price caps would be particularly harmful given the unique nature of consumer leases as financial products. Obviously, consumer leases involve the transfer of tangible household goods, as opposed to cash. This means that they involve a number of supply costs that other financial products do not, such as sourcing and warehousing goods, maintenance and repair, and the depreciation of goods over the life of the lease. Price caps may therefore make many providers in the industry commercially unviable.

A 'protected earnings' limit would set a dangerous precedent

Another significant measure in the draft bill – a monetary limit on consumer lease repayments to 10 per cent of lessees' net incomes – would create a regulatory burden unlike anything that currently exists in Australia.[10]

Currently, restrictions on income expenditure only exist in limited circumstances and apply largely to recipients of government welfare payments.[11] The proposed 'protected earnings amount' will, for the first time, dictate the amount that all Australians are permitted to spend on debt repayments.

If implemented, this would set a dangerous precedent. All Australians – including those of modest means – should have the ability to decide what is in their best interests when it comes to spending their own income.

The proposed changes are based on paternalistic assumptions

Another fundamental flaw with Treasury's report is that its recommendations are based on a misguided and simplistic notion of 'financial inclusion', defined as:

> [A] concept that takes into account the relationship between high charges and broader social consequences, such as financial hardship... and is concerned with improvement in the consumer's situation, rather than it deteriorating or remaining unchanged.[12]

Of course, under the consumer lease business model, consumers will necessarily pay more overall to rent goods than to purchase them. However, by focusing on 'high charges', the report is ignoring the many reasons why consumers would make the rational decision to pay more overall to rent household goods.

In particular, consumer leases allow many Australians to access basic household amenities that would otherwise be unavailable. The following hypothetical case studies illustrate the social good provided by the consumer lease industry.

Case study one – Heather

Heather has been forced to leave her home to escape an abusive and violent partner. She had two young children, who she takes with her.

While Heather is able to find an affordable apartment for her and her children, it is unfurnished and after paying for the bond and first month's rent, her savings are largely depleted.

Fortunately, Heather is able to enter into a consumer lease for appliances and furniture, such as beds and a refrigerator. The lease means that these essential goods are delivered and installed in just a few days.

Case study two – Paul

Paul is a recipient of the Newstart Allowance. He has a history of drug addiction, homelessness and mental illness. After some time in crisis accommodation, Paul has been able to access state-funded social housing, which is unfurnished.

Because he has a low income and has defaulted several times in the past on utility bills, Paul is considered a credit risk by most financial institutions. With no savings, he therefore has no access to the finance needed to furnish his accommodation.

Through the Centrepay system, Paul is able to arrange for a percentage of his fortnightly government payments to be paid directly to a consumer lease provider. In this way, he is able to access household goods that he would otherwise be unable to afford.

In both instances, Heather and Paul would pay more in total to lease these goods than they would if they had bought them. However, there is an obvious benefit to Heather and Paul in having essential household goods that they would otherwise be unable to access.

By focusing purely on difference in costs between purchasing and renting household goods, the report ignores these benefits. 'Financial inclusion' is therefore both too vague and too limited a notion with which to consider the benefits of the consumer lease industry. Consideration must be given to material inclusion as well.

There is no evidence of widespread problems with consumer leases

Additional red tape seems particularly unnecessary given that the number of complaints made about consumer leases is relatively low. In the 2016-17 financial year, for example, the Credit and Investments Ombudsman received just 270 complaints related to consumer leases.[13] This is a low figure in an industry worth around $596 million.[14]

Supporters of the proposed changes point to the report released by Treasury – from which the measures in the Draft Bill are drawn – which outlines examples of unscrupulous behaviour in the industry.[15]

However, these examples appear to be limited, anecdotal and preoccupied with extreme examples of a handful of 'rogue' operators. It would be thoroughly unjust if the government used this scant evidence as a justification to add a substantial regulatory burden to the vast majority of responsible consumer lease providers.

1 See Treasury, National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2017 – Exposure draft, accessed 6 November 2017, https://static.treasury.gov.au/uploads/sites/1/2017/10/c2017-t229374-Exposure-Draft.pdf.

2 IBISWorld, *Home Appliance Rental in Australia* (August 2015), 3, quoted in Treasury, *Review of the Small Amount Credit Contract Laws: Final Report* (March 2016), 3, accessed 6 November 2017, https://static.treasury.gov.au/uploads/sites/1/2017/06/C2016-016_SACC-Final-Report.pdf, 48.

3 See *National Consumer Credit Protection Act 2009* (Cth), sch 3.

4 See *Competition and Consumer Act 2010* (Cth), sch 2.

5 Above n 1, sch 1, items 58 and 64.

6 Above n 1, sch 1, item 34.

7 Above n 1, sch 1, item 32.

8 Above n 1, sch 1, items 54 and 55.

9 Above n 1, sch 1, item 58.

10 See above n 7.

11 Examples include cashless welfare card schemes and the current 20 per cent gross income limit on SACCs provided to recipients of certain welfare payments.

12 Treasury, *Review of the Small Amount Credit Contract Laws: Final Report* (March 2016), 3, accessed 6 November 2017, https://static.treasury.gov.au/uploads/sites/1/2017/06/C2016-016_SACC-Final-Report.pdf.

13 Credit & Investments Ombudsman, *Annual Report on Operations 2016/17*, 47, accessed 6 November 2017, https://www.cio.org.au/assets/4130557/CIO%202017%20Annual%20Report%20on%20Operations.pdf.

14 Above n 2.

15 Above n 12.

For more information contact Gideon Rozner, Research Fellow at grozner@ipa.org.au