



**Response to Position and Consultation Paper 4 -  
Industry Codes in the Financial Sector**

## Contents

Introduction.....	3
Background.....	3
The Consumer Household Equipment Rental Providers Association (CHERPA).....	3
CHERPA Members .....	4
Response to Position and Consultation Paper 4 - Industry Codes in the Financial Sector .....	5
Question 1 - Would a requirement to subscribe to an ASIC approved industry code result in improved outcomes for consumers? .....	6
Question 2- In respect of which financial sector activities should the requirement apply? .....	7
Question 3 - Should these requirements apply to providers of services covered by the ePayments Code? Or should that code be mandated by other means? If so by what means? .....	7
Question 4 - What costs or other regulatory burden would the requirement imply for industry? .....	7
Question 5 - Should conduct associated with subscription to approved codes be deemed to be authorised under section 51 of the Competition and Consumer Act?.....	7
Question 6 - Will ensuring enforceability provisions of codes meet a minimum standard, improve consumer outcomes?.....	8
Question 7 - Do any problems arise with imposing these requirements in relation to particular financial sector activities? .....	8
Question 8 - Are contractual arrangements with code monitoring bodies is the most effective enforcement mechanism?.....	8
Question 9 - Is it appropriate that, where feasible, code content be incorporated into contracts with customers?.....	9
Question 10 - Should the composition of individual code monitoring bodies and arrangements for enforcement be subject to ASIC approval?.....	9
Question 11 - What characteristics should code-monitoring bodies have? (for example, what level of independence should they have?) .....	9



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## Introduction

CHERPA, the Consumer Household Equipment Rental Providers Association, represents 45 businesses and over 90 individual businesses around Australia. Our members write approximately 25%<sup>1</sup> of all consumer leases written in the market and currently service approximately 230,000 consumers directly with consumer leases which indirectly service 550,000 people.

## Background

### The Consumer Household Equipment Rental Providers Association (CHERPA)

2 The rental of household goods to consumers has been taking place happily and without problem in Australia for at least 80 years. Many CHERPA members have a very long history, 40+ years, of successfully renting essential household goods to happy consumers.

3 In the early 2000's the nature of the industry began to change with advent of the "rent-to-own" paradigm interplaying simultaneously with credit finance companies who began providing financing and loans for small amounts of credit on consumer goods – and confusingly using the word "rent" in their business name and product offering.

4 The resulting consumer confusion created the need for clarification which was supposed to arrive in the form of the NCCP Act.

5 However, the introduction of the NCCP Act in 2010 left the industry in a significant state of confusion. Since that time lessors then operating in the industry have been increasingly concerned to see the entrance of many new players in the market, including a proliferation of operators who appear to be of dubious and unethical intent.

6 **Industry Code of Conduct** - In 2013 the industry formed a peak body, the Consumer Household Equipment Rental Providers Association, CHERPA, to address concerns that the long term industry operators held. CHERPA began engaging with stakeholders to understand their concerns and in 2014 an Industry Code of Conduct was accepted at CHERPA's Annual General Meeting.

7 CHERPA has continued engaging with stakeholders since that time culminating in the recent voluntary upgrade to its Industry Code of Conduct for members to include:

- Return of items at no cost under hardship
- Recommended Retail Price disclosure
- Specific percentage caps on both the amount of net income and discretionary income that can be used as payment for a consumer lease provided by members.

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<sup>1</sup> Note that Radio Rentals/Thorn has about 50% share of the market

### CHERPA Members

8 On average CHERPA members have been in the industry for more than ten years

9 There are more than 10 members who have been in the business for more than 20 years

10 There are a few members who have been in the business as employees or business owners for more than 40 years.

11 The estimated total number of goods rented out by CHERPA members is currently 300,000

12 Businesses range in size from:

>\$100,000 turnover with 200-300 units on lease and approx. 150 -200 customers to \$40,000,000 turnover with approximately 27,000 units on lease and approx. 24,000 customers.

13 CHERPA members as a cohort in the consumer leasing industry have been highly compliant with regulatory requirements, have excellent customer relations and have demonstrated ongoing industry best practice as evidenced by the very low number of complaints received by our members – an order of magnitude less (one-tenth) than complaints for mainstream mortgages, credit cards and personal loans.

## Response to Position and Consultation Paper 4 - Industry Codes in the Financial Sector

14 Although this paper appears to be targeting industries that are AFS licensees and their authorized representatives, CHERPA would like the government to consider industry codes for the consumer leasing/rental industry – a forgotten area of the financial sector.

15 CHERPA welcomes a positive approach to:

- a. More efficiently and more effectively applying regulation to industry
- b. Co-regulation with industry
- c. Enhancing both impact AND understanding of regulation
- d. Improve regulatory outcomes for consumers and industry alike.

15 CHERPA is committed to building, sustaining and maintaining the integrity and reputation of the consumer leasing industry so that the community at large and direct consumers of the leases can be confident that the behaviour of licensed lessors not only comply with their legal obligations but are also ethical and within reasonable expectations of the community.

16 CHERPA believes that, without a shadow of doubt, ASIC's strategic intent<sup>2</sup> of improving gatekeeper performance and industry and individual business culture would be very well served by the inclusion of CHERPA in co-regulation activities.

17 CHERPA is a leading proponent of co-regulation and has been trying to work with ASIC in this capacity with limited success.

18 We've achieved very significant gains in bringing the industry more in line with community expectations as follows:

- a. As an industry association CHERPA was set up 5 years ago in response to unethical behaviour by newcomers in the consumer leasing industry. Its intent then was to establish standards of best practice and ethical behaviour in the consumer leasing industry. That intent continues today and is evolving with community expectations.
- b. CHERPA quickly implemented a Member agreed Code of Conduct following inception and has continued to develop it, responding over time to community expectations and industry best practice (and instances of malpractice).
- c. CHERPA is currently developing a set of Principles for consumer leasing operators similar to the FCA (UK) Principles for regulated credit businesses.
  - i. CHERPA has the runs on the board in terms of direct influence of the industry: i. In the last quarter of 2016 CHERPA worked with the three largest consumer leasing franchise groups (Rent4Keeps, Rent-The-Roo, Local Appliance Rentals) to establish an industry position for the improvement of industry. Notably they all agreed to significant concession to their current business models. Specifically: 1. Reign in their

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<sup>2</sup> ASIC's Corporate Plan 2016-2017 to 2019-2020

total cost multiples and limit the total amount that can be charged to consumers to the limits set by CHERPA for the specified time frames (significantly less than their current charges);

- ii. Zero cost terminations for consumer leases post the first 90 days with a maximum chargeable of 90 days rental for the first 90 days.
- iii. Prohibition of any kind of “door to door” selling in any community.
- iv. Set a maximum upper limit of 20 percent of net income that could be used for consumer leases for people who have 50% or more of their net income coming from Centrelink.
- v. Furthermore, CHERPA has established an industry credit bureau database to: i. Ensure that consumers cannot deliberately or inadvertently overload themselves with consumer lease payments
- vi. Allow lessors to more accurately and effectively conduct and fulfil responsible lending obligations by increasing the breadth, depth and quality of data available to lessors;
- vii. Reduce costs of loss of goods by registering all equipment leased to consumers so that pawn brokers, police, insurance companies and others can check the current ownership of goods. (For example, amongst others, Cash Converters has agreed to use the database to verify ownership of goods being sold to them.)
- viii. Provide the potential for reporting accurate industry statistics to a regulator to assist with and improve regulatory outcomes. (The credit bureau, Compuscan, already does this in other places around the world.)

### Question 1 - Would a requirement to subscribe to an ASIC approved industry code result in improved outcomes for consumers?

Undoubtedly an ASIC approved industry code in the financial sector has the potential to improve outcomes for consumers. An industry code is likely to result in improved standards of practice (and therefore improve consumer confidence in the industry), ethical behaviour and a general uplift in standards of compliance as well as a pathway for dispute resolution.

However, of utmost importance is that the regulated code be established in close consultation with the industry.

As Rod Shogren ex-Commissioner, ACCC and Member of the Australian Competition Tribunal warned in his speech in August 2015<sup>3</sup>:

*“As soon as you go down the path of emphasizing consumers’ interests – making consumer welfare the be-all and end-all – you have to acknowledge that in the long term, consumers’ welfare cannot be maximised at the short-term expense of the interests of producers. That is, regulation will not lead to good outcomes for consumers if it focuses, for example, on lower prices without regard to reasonable producer returns.*”

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<sup>3</sup> Plenary 2 - Rod Shogren - ACCC & AER Regulatory Conference 2015

*The reason is obvious: without the expectation of reasonable returns, investment will dry up, and eventually consumers will be worse off than they would have been.”*

Thus it is important to establish a separate code monitoring body that includes industry members who are intimately acquainted with the detail of the sector. Reporting to ASIC, this body should provide some transparency to how the code is established and maintained.

#### **Question 2- In respect of which financial sector activities should the requirement apply?**

There does not seem to be any reason to exclude any section of the financial sector. As mentioned previously, there are many benefits to introducing a code of conduct. However the financial sector is diverse and it is unlikely that one set of regulations will be relevant to all sectors and several codes may be required.

As referenced in the paper, we note that currently ASIC only has the power to approve codes under the Corporations Act that relate to AFS licensees.

#### **Question 3 - Should these requirements apply to providers of services covered by the ePayments Code? Or should that code be mandated by other means? If so by what means?**

Since ePayments are not currently utilised in the rental/leasing industry, CHERPA has no opinion on this code. It is noted, however, that the costs of ePayments for consumers is generally vastly out of sync with the true costs of providing epayments services, to the disadvantage of the consumer. Thus it could be questioned as to whether the code is adequate to the task.

#### **Question 4 - What costs or other regulatory burden would the requirement imply for industry?**

Regulatory burden and associated costs are already being borne by our industry every time that government shifts the regulations. This is spread across multiple categories such as costs for development of new systems and infrastructure, additional compliance costs and also, in the case of the leasing industry, increasing delinquencies as provider protections have been almost completely stripped away in favour of consumer protections.

It is unlikely there would be much additional cost by bringing industry under an endorsed code apart from reporting requirements and annual membership fees such as is the case in the Telecommunications Industry where participation is an aide in considering compliance. The proviso is sufficient industry participants to share the load on an equitable basis.

#### **Question 5 - Should conduct associated with subscription to approved codes be deemed to be authorised under section 51 of the Competition and Consumer Act?**

It is reasonable to expect that code of conduct would be authorized under section 51 of the Competition and Consumer Act, with Part IVB of the Competition and Consumer Act 2010 (CCA) providing the prescription of mandatory or voluntary industry codes. However as stated in the Policy Guidelines on

Prescribing Industry Codes there are advantages to have a voluntary code of conduct that is administered by the participants in the industry<sup>4</sup>. Namely,

- *Industry participants are usually better placed to tailor codes of practice to the business conditions and other circumstances facing an industry.*
- *Self regulation will often impose lower compliance costs on business than government regulation.*
- *Self regulation is more flexible, as voluntary codes of conduct can be amended by industry participants as required, independent of governmental and parliamentary processes.*
- *Self regulation does not impose costs on government in terms of implementation, compliance monitoring and enforcement action.*

Furthermore the guidelines suggest:

‘... codes of conduct which can be effectively developed, implemented and enforced by the participants in an industry are generally to be preferred over the prescription of industry codes in law. An industry will generally only be subject to government intervention where there is a demonstrable problem affecting other participants or consumers which the market cannot or will not overcome.’

CHERPA would qualify as an industry lead administrative body prescribing voluntary industry codes. Implementing codes of conduct would be more effective with endorsement from ASIC or at least open dialogue. To date, ASIC has not been open to discussion with CHERPA.

#### **Question 6 - Will ensuring enforceability provisions of codes meet a minimum standard, improve consumer outcomes?**

Ensuring codes are enforced would definitely improve consumer outcomes purely from the benefits of having a more regulated industry. The key to exactly how beneficial the enforcement would lie in what is defined as a “minimum standard”. Ultimately there should be a definition of *usual* practices as well as *best* standard and operational practices.

#### **Question 7 - Do any problems arise with imposing these requirements in relation to particular financial sector activities?**

We cannot comment on the rest of financial sector but CHERPA would welcome an industry code for the consumer leasing/rental industry.

#### **Question 8 - Are contractual arrangements with code monitoring bodies is the most effective enforcement mechanism?**

Contractual arrangements would certainly be a means to enforce compliance. However, a most effective mechanism would be one which compels the operator to comply in order to operate within the industry. One simple way to achieve this is to issue an annual license to those who wish to operate within the industry. Issuing of the license would be under the proviso of compliance to industry codes/ regulations.

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<sup>4</sup> The Treasury, ‘Policy Guidelines on prescribing industry codes under Part IVB of the *Competition and Consumer Act 2010*’, May 2011, p. 2



Regulations would be established and monitored by a code monitoring body that includes licensed industry members. The body may have the power to revoke licenses or this could rest with ASIC.

**Question 9 - Is it appropriate that, where feasible, code content be incorporated into contracts with customers?**

Code should be incorporated into customer contracts where the content is relevant to the customer such as in the area of consumer right and protection.

**Question 10 - Should the composition of individual code monitoring bodies and arrangements for enforcement be subject to ASIC approval?**

This would seem to be a logical extension of the code itself being approved by ASIC. However, there should also be a means for appeal for decisions that are perceived to be unfair and without merit. CHERPA would prefer to see ASIC operating in close consultation with the code monitoring body.

**Question 11 - What characteristics should code-monitoring bodies have? (for example, what level of independence should they have?)**

As mentioned previously there are advantages to having a code that is administered by the industry in terms of cost, knowledge and flexibility. Ideally a code monitoring body would have maximum input from the industry but should have a balance between the interests of consumers and those of the industry. The code monitoring body should work in consultation and act with the endorsement of ASIC.