



Consumer Leasing Code of Conduct

Consumer Household Equipment Rental Providers Association (CHERPA) – INDUSTRY CODE OF CONDUCT

Scope of this Code

This Code applies and is enforceable as a contract between Members of CHERPA. This Code applies to the consumer household equipment rental industry. The Code objectives are to ensure Members comply and meet the key initiatives as set out in clause 2(c). The Code further objectives are to ensure consistent application of rules for the consumer rental industry which will support the integrity of the industry.

1. Definitions

In this Industry Code of Conduct, the following words and phrases have the meanings and references set out below:

ASIC the Australian Securities and Investments Commission

CHERPA means an incorporated association under this name incorporated pursuant to the Association Incorporation Reform Act 2012 (VIC) (Act) for the purpose of being an industry association for the consumer goods leasing industry.

CHERPA Disciplinary Rules means the disciplinary rules adopted by the Committee in relation to conduct of Members in breach of this Code.

Code means this CHERPA Industry Code of Conduct.

Committee means a committee formed by CHERPA under its constitution which has the function to review and monitor compliance of Members with this Code.

Complaint means an expression of dissatisfaction made to the CHERPA in relation to a conduct of another Member or made to a Member in relation to its goods and services it supplies where a response or a resolution is expressly or impliedly expected.

Consumer means a natural person (i.e. an individual) or a strata corporation as defined in the National Consumer Credit Protection Act 2009.

EDR means an external dispute resolution scheme approved by ASIC for the purposes of the National Consumer Credit Protection Act 2009 (Cth) in compliance with Regulatory Guide 165.

Fit and Proper in relation to an individual, means the person has the necessary competence to either own, manage or be involved with, on a senior level, a consumer leasing business taking into account their knowledge, skills and experience.

Governance Subcommittee means an independent subcommittee, appointed by the governing Committee under Part 5 of the CHERPA Rules, with a mandate to manage, review, amend and enforce this Code as it deems fit.

IDR means an internal dispute resolution as a mechanism adopted by Members to deal with Complaints.

Laws means any statute, regulation, ASIC class order or any other industry binding determination that applies to a consumer leasing business and the industry.

Member means a person or a business that is engaged in consumer leasing activities and who is member of CHERPA OR voluntarily subscribes to the Consumer Leasing Code of Conduct

Misconduct is a conduct, act or omission of a Member which is a breach of this Code and involving (without limitation):

- a) fraud or dishonesty;
- b) misleading or deceptive conduct;
- c) knowingly making a false statement;
- d) gross negligence;
- e) refusing, neglecting or failing to comply with a provision of the Rules or this Code, the COSL Rules or any other ASIC authorised EDR Rules or the CHERPA Disciplinary Rules;
- f) unreasonably failing or refusing to provide information to CHERPA or the Committee;
- g) misrepresenting material facts in relation to an application for Membership of the CHERPA;
- h) misrepresenting material facts or making a false statement or being grossly negligent concerning continuing professional development hours earned or to be earned as a Member;
- i) a breach of any Law applying to the Member's business activities;
- j) any activity that is prejudicial to the reputation or interests of the CHERPA;
- k) any activity the Committee may prescribe from time to time as Misconduct provided its determination has been made generally known for at least one (1) calendar month.

Rules means the CHERPA Rules as adopted by Members and as amended from time to time.

2. Our Compliance Obligations, Effective Date and Key Initiatives

- (a) This Code is published by CHERPA and is endorsed by the Committee. It becomes effective immediately on the date CHERPA is incorporated and it applies to every Member of CHERPA.
- (b) By becoming a Member, Members expressly consent to the provisions of this Code and undertake to comply with this Code, as amended from time to time.
- (c) Upon becoming a Member, this Code shall bind Members as a contract between Members and between CHERPA and Members.
- (c) Key initiatives of this Code are
 - (i) Members comply with all Laws;
 - (ii) Members hold the appropriate license or exemption to carry out their business activities;

- (ii) Members have in place system, process and procedures to ensure compliance with the Law and this Code;
- (iv) Members act honestly, diligently and ethically in their business practices;
- (v) Consumers are not disadvantaged when dealing with Members in relation to leasing arrangements; and
- (vi) the leasing industry communicate and liaised with ASIC and is transparent in its dealings.

3. Amending the Code and ASIC

- (a) The Committee and the Governance Subcommittee are committees formed under the Rules and their mandate is determined by the Rules.
- (b) The Committee and the Governance Subcommittee shall be responsible for the administration of the Code. This Code may be amended by the Governance Subcommittee, from time to time, to ensure that the Code remains relevant to the industry, if required by ASIC or if considered appropriate by the Committee to react to market expectations, consumer advocacy groups or for better business administration.
- (c) If the Governance Subcommittee determines to amend the Code, the Committee will provide Members with notice of any amendments no later than one calendar months before these changes take effect to allow Members to accommodate and comply with the changes.
- (d) The Governance Subcommittee undertakes to consult the industry before amending the Code. Any consultation period and the terms of consultation will be determined by the Governance Subcommittee in its discretion. The Governance Subcommittee will seek written submissions from the industry and Members before making its determination in relation to amendments to the Code.
- (e) To the extent that it is practicable to do so, the Governance Subcommittee will seek to consult with ASIC before amending the Code. As soon as this Code is endorsed or adopted by Members and following every change to this Code, the Governance Subcommittee undertakes to provide ASIC with a copy of the Code.

4. Breaches of the Code and Sanctions

- (a) If CHERPA receives a Complaint about a Member, CHERPA will;
 - (i) advise the Member concerned of the Complaint;
 - (ii) allocate such resources as is reasonable to investigate the Complaint;
 - (iii) liaise with both the Member concerned and the Complainant in relation to the progress of the investigation and its conclusion.

Any person or organisation may lodge a Complaint with CHERPA in relation to a conduct of a Member.

- (b) If it is determined that a Member breached the Code and the matter cannot be resolved to the satisfaction of the Governance Subcommittee, the Governance Subcommittee may impose a sanction on the Member as follows;
- (i) in extreme circumstances, the Governance Subcommittee will recommend to the Committee to suspend the Member's membership with CHERPA;
 - (ii) the Governance Subcommittee may issue a formal warning to the Member;
 - (iii) the Governance Subcommittee may require the Member to undertake compliance training, failing of which may result in suspension of membership;
 - (iv) the Governance Subcommittee may publish on its website the name of the Member against whom a Complaint was lodged or published on its website that a Member was suspended; or
 - (v) the Governance Subcommittee may impose an obligation on the Member to compensate its customer for any direct financial loss or damage caused to the customer as a result of the Member's breach of the Code .
- (c) Subject to the Rules, the Governance Subcommittee will only issue sanctions against Members if the Governance Subcommittee is satisfied that the Member;
- (i) is guilty of a Misconduct;
 - (ii) is guilty of a breach of Laws and the breach is not remedied;
 - (iii) receive a request for information or request to take certain action and the Member ignored the Committee's request; and
 - (iv) breached any undertaking to the Committee.
- (d) Members will be in breach of this Code if;
- (i) their employees, agents or representatives act in a way that is contrary to the Code;
 - (ii) they are guilty of Misconduct;
 - (iii) they are guilty of breaching any Laws.
- (e) The Governance Subcommittee may audit any Member for compliance with this Code by giving the Member not less than 21 calendar days notice of its intention to audit compliance.
- (f) If a Member receives a notice of audit under clause 4(e), the Member must cooperate with the Governance Subcommittee and enable access to the Governance Subcommittee or its delegates to the Member's records.
- (g) A Member must not hinder or obstruct the operation of the Governance Subcommittee or its delegate when conducting an audit.

- (h) The Governance Subcommittee will report the finding of the audit to the Committee. If any compliance issues were discovered as part of the audit, the Governance Subcommittee will determine the appropriate remedial action it will require and advise the Member of this action.
- (i) Members must comply with any directive of the Governance Subcommittee.
- (j) The Governance Subcommittee may require, as an alternative to conducting an audit, that a Member's auditors or some other approved delegate conduct a compliance audit and submit its finding to the Governance Subcommittee.
- (k) Members must adhere to any reasonable request by the Governance Subcommittee in relation to audit or confirmation or compliance with the Code.
- (l) If appropriate, the Governance Subcommittee may designate an annual compliance certification with the Code pursuant to which Members must submit an annual confirmation that to the best of their knowledge, they comply with the Code and the Law.

5. The Roles of the Committee

- (a) The Governance Subcommittee will be an independent committee of Members and external parties appointed by the Committee of CHERPA and will largely consist of representatives of the industry. It will be established under the Rules.
- (b) To the extent possible, the Governance Subcommittee will function as an independent committee exercising its powers as set out in the Rules from time to time.
- (c) Without limiting the powers set out in the Rules, the Governance Subcommittee main functions are;
 - (i) monitor and enforce compliance with the Code;
 - (ii) liaise with ASIC and other regulators or government bodies in advancing industry issues and the leasing industry best interest;
 - (iii) communicate with Members on compliance and other relevant issues to the industry;
 - (iv) receive and investigate Complaints about Members;
 - (v) educate Members;
 - (vi) establish appropriate data reporting and collection procedures;
 - (vii) sanction Members for non compliance with the Code;
 - (viii) review or ensure that the Code is independently regularly reviewed in order to ensure that the Code is up to date and aligned with market expectations and ASIC guidelines;
 - (ix) ensure that the Code is adequately promoted;

- (x) ensure that staff is appropriately trained about the Code;

6. General standards

- (a) This section describes the minimum mandatory obligations Members must comply with when dealing with Consumers.
- (b) Members must;
 - i) provide their customers with all relevant documents to the transaction and disclose, if ascertainable, any fees and charges applicable to the transaction;
 - ii) Act honestly and with integrity and must not act in a manner that may bring the industry and CHERPA into disrepute;
 - iii) not engage in any form of Misconduct;
 - iv) be a Fit and Proper person of good character and maintain a good and positive reputation;
 - v) comply with this Code and the Laws at all times;
 - vi) remain up to date with and comply with all Laws, regulations and practices relevant to their business;
 - vii) undertake education and training programs recognised by CHERPA to ensure minimum regulatory Continuing Professional Development (CPD) hours to maintain Membership;
 - viii) employ, contract or otherwise engage persons who have the relevant licences or authorisations, and who have the experience and qualifications necessary to deal competently and professionally with Consumers.
 - ix) always conduct their business in accordance with the Constitution of CHERPA.
 - x) Always communicate with Consumer effectively and efficiently
 - xi) Provide Consumers with terms and conditions of their services which must be expressed in plain English
 - xii) provide a fair and balanced view of the relationship between the Consumer and the Member.
 - xiii) Always disclose commissions paid to the Member or paid by the Member in relation to any transaction with the Consumer.
 - xiv) act with expertise, care and diligence and observe reasonable instructions of Consumers where appropriate.
- (c) A Member is liable for all acts or omissions of any employee or representative that are within the scope of the employees' or representatives' duties.
- (d) If the requirements of any Law or regulation impose a higher standard than the standard specified in this Code, then the higher standard will apply.

- (e) If this Code conflicts with any Law, the conflicting provision in the Code shall be suspended to the extent of the conflict/inconsistency but the remainder of the Code will not be affected and remain in force..
- (f) For the purpose of this Code and the definition of Fit and Proper , the person is a fit and proper person taking into account the appropriate level of knowledge, skills, experience, competence, judgment, character, honesty and integrity, and the person has not;
 - (i) been the subject of discipline, disqualification or removal by a professional or regulatory body, court or relevant tribunal;
 - (ii) had any adverse findings in relevant criminal or civil proceedings against them;
 - (iii) been refused a licence or registration for a commercial or professional activity;
 - (iv) been the subject matter of a negative credit report;
 - (v) been a responsible officer in a failed business;
 - (vi) been convicted of a breach of Laws or being sanctioned by ASIC or disqualified by ASIC to manage or be involved with a licensed business;
 - (vii) been convicted of Misconduct.

6.1 Specific Leasing Code of Conduct

Preamble

Members acknowledge that;

- (a) in recent times, the consumer household rental industry came under scrutiny and criticism in relation to conduct of some of its participants particularly in relation to operators whose customer base are recipients of Centrelink benefits;
- (b) in order to protect the integrity of the leasing industry in Australia and ensure its sustainability for the future, Members are required to adhere to specific contractual management items as listed below.

Termination and or Break Fee.

- (c) If the lessee wishes to terminate a lease agreement, Members must not charge a break or termination fee if the lease has been in operation more than 90 days and the lessee complied with the payment obligations under the lease;
- (d) If the lessee wishes to terminate a lease agreement and the lease agreement has not been in operation for 90 days or the lessee has not complied with the payment obligations under the lease, Members may only charge a break or termination fee that

grosses up that total of lessee payments to a total of 90 days of the related rental contract;

- (e) If the lessee wishes to terminate a lease before the expiry of its fixed term and it is determined that the lessee wishes to terminate the lease due to genuine hardship, Members will not charge the lessee minimum rental payments or terminate fee subject to the leased goods being returned to the Member in good working order, reasonable wear and tear excepted;
- (f) If lessee returns the leased goods to the Member and the goods are not in good working conditions, reasonable wear and tear excepted, the Member can charge the lessee reasonable cleaning and/or repair costs at fair commercial prices.

Responsible Lending Additional Requirements

- (g) Members must not approve or enter into a lease agreement with a lessee unless one of the following tests applies:
 - (i) The lease agreement rental payment does not exceed 20% of the lessee’s income after tax
OR
 - (ii) The lease agreement rental payment does not exceed 50% of the lessee’s net disposable income after tax and living expenses
- (h) Members must, in addition to the requirement to disclose lease repayments as set out in the NCCP Act and NCC, disclose to prospective customers the retail value of the leased goods. The retail value of the leased goods can be the recommended retail price which may provide the prospective customer with an indicative price of the goods if the customer went and acquired the goods from a retail outlet outright.
- (i) Members must include an acknowledgement in either their lease documentation or in supplementary or ancillary documentations to the lease document substantially in a form and substance substantially similar to the acknowledgement set out below and on the condition that the acknowledgement is disclosed prior to the prospective customer signing the lease agreement.

Acknowledgement

I acknowledge that if this lease agreement runs its full term, the total cost of the lease payments payable by me under this Agreement is significantly higher when compared to the cost of buying the same goods outright from a retailer.

Relative Retail Price including delivery if purchased from a Retail

Outlet: \$.....

Total Lease Payments Under This Lease Agreement: \$.....

Non Solicitation Commitment

- (j) Members undertake that they will not actively suggest or recommend that a prospective customer break or terminate his or her lease agreement with another Member (noting the above commitment as to termination fees) for the purpose of that Member providing the prospective customer with a lease agreement for the same or similar goods.

Industry Database

- (k) CHERPA has negotiated an arrangement with a service provider to provide a Comprehensive Credit Reporting System which provides certain credit reporting and asset tracking functionality. This system will be known as the Comprehensive Leasing Equipment and Assessment Register, or CLEAR. Whilst it is not compulsory for Members to use the credit reporting functionality of the CLEAR system all Members must upload all details of all client applications and maintain the current status of each client's application and any contract subsequent to an application.

7. Professional Indemnity Insurance and Compensation

- (a) Unless specifically exempt, all Members must maintain adequate professional indemnity insurance as required under the Law.
- (b) If the Member is exempt from holding a professional indemnity insurance, the Member must have in place provisions, process and procedures dealing with compensation to Consumers in the event the dealing with the Member resulted in a loss to the Consumer.

8. Confidentiality

- (a) Members must keep personal information that has been provided by a Consumer confidential and secure and only disclose information as required by Law or as authorised by the Consumer.
- (b) Members must not use personal information disclose by Consumers for any other purpose except for the purpose for which the information was disclosed to them.
- (c) Members must ensure that personal information is protected from misuse and unauthorised use and is kept up to date.
- (d) Members must allow Consumers access to their personal information and enable them to update their personal information if required to.

9. Dispute Resolution – IDR, EDR, and the CHERPA Tribunal

- (a) Members must establish Internal Dispute Resolution (IDR) procedures in accordance with Regulatory Guide 165 and the NCCP Act. CHERPA may issue additional guidelines from time to time and if these are issued, the Member must adhere to any guidelines issued by the CHERPA. Members must provide details of their IDR procedures available to all Consumers.
- (b) Members must ensure that their Complaints contact person has the authority to respond to a Complaint made by a Consumer.
- (c) Members must maintain a written IDR policy and make it available on request.
- (d) Members are committed to responding to Complaints and disputes in a way that is:
 - (i) prompt and efficient;
 - (ii) transparent;
 - (iii) consistent with the Law, this Code and good industry practice, and
 - (iv) fair to the Consumer.
- (e) Members must ensure that all Complaints are treated courteously.
- (f) Members must not impose any fee on a Consumer who makes a Complaint.
- (g) Members dispute and Complaint resolution process should be consistent with Australian Standards dispute resolution provisions.
- (h) If the Consumer Complaint is not resolved to the satisfaction of the Consumer, Member should explain to the Consumer any escalation process available to the Consumer.
- (i) Complaints and dispute should be resolved within a defined and disclosed time frame unless the Consumer has been informed as to any delay and the revised time table for resolution.
- (j) If Members are required by Law to be Licensed, Members must be a member of an External Dispute Resolution (EDR) scheme. Members must provide details of their EDR scheme available to all Consumers.
- (k) Members must respond in writing to written requests from their EDR scheme within ten business days.
- (l) Members must respond in writing to all written requests from the CHERPA Investigating Officer, the CHERPA Tribunal or the CHERPA Secretary within ten business days.
- (m) Members must maintain a record of written complaints made against them and supply a copy to the CHERPA on request.

For the avoidance of doubt, clauses 9(a)-9(i) inclusive apply to Members even if the Member is not required to be licensed under the Law to operate its business.

10 Responsible Lending and Hardship Applications

- (a) Members must comply with the National Consumer Credit Protection Act 2009 (NCCP Act) in relation to responsible lending. Members must assess the suitability of the agreement to their customers and follow the guidelines issued by ASIC on responsible lending (Regulatory Guide 209).
- (b) Members must have in place a hardship policy as required by the NCCP Act.
- (c) the Member's hardship policy must:
 - (i) have regard to the Consumer's financial circumstances and within a reasonable time the Consumer's request to vary the payment terms; and
 - (ii) if a hardship application is made, Members must suspend any action to recover any payments due under the lease agreement and, if it has not listed a default already, not list a credit default against the Consumer until:
 - (A) the Member informs the Consumer in writing whether or not it will vary the payment terms; and
 - (B) if the Member and the Consumer agree to vary the payment terms, the Consumer fails to meet the varied payment terms; and
 - (iii) encourage the Consumer to make payments the Consumer can afford pending the Member informing the Consumer of its decision; and
 - (iv) have a documented policy and procedure in place for receiving and assessing requests to vary contracts upon hardship grounds and must provide information about their hardship policy to a Consumer on request.
- (d) Members must act in a reasonable manner when assessing a Consumer's request to vary payment terms. Members must not ask the consumer to take any steps to resolve the financial hardship issue under the consumer lease by taking steps that will result in the consumer facing financial hardship in other aspects of their life (e.g. use superannuation money or borrow from other sources)
- (e) A Member who decides to vary the payment terms must give the Consumer a notice in writing setting out the particulars of the varied payment terms within twenty one calendar days or as required by Law.
- (f) As a general guide:
 - (i) Members must respond to its customer's request or hardship notice, within 21 days from receiving a hardship notice, whether and how they would change the agreement with the customer to resolve the hardship issue.

- (ii) Members may seek within that 21-day period further information from the customer in relation to the hardship notice or request. The customer must adhere to that request and provide the required information within 21 days of the request.
 - (iii) If the Member does not receive any information from the customer, the Member has 28 days from the time the information was requested to respond to the hardship notice.
 - (iv) If the customer responds to the Member's request for information then the Member has 21 days from when the information was received to respond to the hardship notice.
 - (v) the Member needs to be conscience of the customer's circumstances and whether these circumstances give rise to a need for greater flexibility in regards to the Member's expectations of customer's response. For example, the customer is sick and the response is delayed, it is appropriate to allow more time for the customer to respond to the information request.
 - (vi) The application of additional flexibility by the Member should not give rise to unreasonable delay in the process of assessing the hardship notice.
- (g) Members who decide not to vary the payment terms must give the consumer a notice in writing within twenty one calendar days of its decision and the notice must indicate:
- (i) its decision and the reasons for its decision; and
 - (ii) the Consumer's right to make a complaint to the Member's IDR and (if relevant) EDR schemes.

11 Interpretation

Interpretation

In this document, unless the context requires otherwise:

clause and sub-clause headings are for reference purposes only;

the singular includes the plural and vice versa;

words denoting any gender include all genders;

a reference to a person includes any other entity recognised by law and vice versa;

where a word or phrase is defined, its other grammatical forms have a corresponding meaning;

any reference to any agreement or document includes that agreement or document as amended at any time;

the use of the word includes or including is not to be taken as limiting the meaning of the words preceding it;

the expression at any time includes reference to past, present and future time and performing any action from time to time.