



Senate Standing Committee on Economics  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

3rd March, 2017

**RE: National Consumer Credit Protection Act 2009 - Point of Sale (POS) Vendor Introducer  
Exemption**

The **Commercial Asset Finance Brokers Association of Australia Limited (CAFBA)** welcomes the opportunity to comment on the inquiry into consumer protection in the banking, insurance and financial sector.

**CAFBA** is the peak national body of commercial equipment finance brokers, whose prime area of business is the distribution of commercial equipment finance facilities to their clients. **CAFBA** members are career professionals, with recent studies showing nearly 61% of new commercial equipment finance is sourced through finance brokers. Our members and their clients are predominantly small businesses, and operate in the commercial finance market. The total receivables in the Australian equipment finance market is approximately \$100 billion, so it is an important component of the Australian economy.

In its submission **CAFBA** would like to address a specific failure in current laws that does not provide protection for consumers. Of particular concern to **CAFBA** is the current exemption afforded car dealers when providing finance to consumers.

Prior to the commencement of the NCCP Act in 2010 the Government exempted POS vendor introducers who engage in credit activities at the point of sale from the requirements of the Act, including the credit licensing regime and the responsible lending obligations.

**CAFBA** members, who are professional equipment finance brokers are not exempt, and are bound by the Act when arranging finance for consumers, providing protection for consumers and sector-wide standards for brokers of consumer finance.

The outcome is brokers of consumer finance fall into 2 broad classes; those who are required to be licensed and those who are not, simply because they are vendor introducers. In our view, a broad-based vendor exemption for consumer finance introduced at point of sale is no longer tenable. It was intended to be an interim exemption for 12 months to allow the Government to consider the market and processes in greater detail. It is now approaching 7 years, with deep and distinct consumer and competitive disadvantages.

**CAFBA** represents more than 600 professional commercial finance brokers, who must meet professional standards for membership, which are stricter than those seeking to meet the requirements of an Australian Credit Licence. Many more are employed in these broking firms.



**CAFBA** members with licences must meet the NCCP Act and ASIC's requirements. CAFBA requires those who do not need to hold a licence because they don't arrange consumer finance to meet similar standards, covering education, continuing professional development, professional indemnity insurance and membership of an external dispute resolution scheme.

### **The Current Exemption & Effects**

The current exemption applies to POS vendor introducers on the basis of their status rather than according to their functions and avoids potential consumer detriment, allowing them to rely on the exemption even when they may have a significant role in product selection or otherwise performing a similar function to licensed finance brokers. This also creates a platform of unfair competition.

**CAFBA** members arranging consumer finance as licensees, must meet specified standards and comply with ongoing obligations as follows:

- Meeting general conduct standards, including acting fairly and honestly and managing any conflicts of interest so as not to disadvantage consumers;
- Maintaining their organisation's competence to engage in credit activities, including having responsible managers and adequately trained representatives;
- Maintaining adequate financial resources and risk management systems;
- Meeting responsible lending conduct obligations, including ascertaining and verifying a consumer's financial situation, and assessing whether the credit contract is suitable; and
- Belonging to an ASIC approved EDR scheme and lodging an annual compliance certificate with ASIC.

Those with a POS exemption:

- Are not required to meet any entry standards and ASIC is also unable to exclude vendor introducers from the credit market
- Can select, recommend or propose credit products without having to conduct an assessment as to whether the product is suitable for the consumer, or meets their financial requirements or objectives.
- Limit the ability of consumers to access remedies for the conduct of vendor introducers.

These characteristics are at odds with the requirements of finance brokers, such as many CAFBA members who are licensed to arrange consumer finance, complying with the Act and applying responsible lending practices. The alternative to licensing is for brokers to act under the licence of a broker or a credit provider / lessor by being appointed its credit representative.

The exemption therefore does not provide any means of adequately regulating or controlling the activities of POS vendor introducers who may cause loss or damage to consumers, despite their linked credit providers / lessors being responsible for their conduct. Further, the risk of harm is more likely where the POS vendor introducer has selected the financier on the basis of the commissions they will receive if finance is approved, where those commissions increase the cost of finance paid by the consumer.



The exemption also means that there is a lack of competitive neutrality between POS vendor introducers and other businesses, like licensed **CAFBA** members, which are performing similar functions.

### **CAFBA's Position**

It is **CAFBA's** position that where a vendor introducer is engaging in credit activities it should be required to:

1. hold an Australian Credit Licence; or
2. be appointed as a credit representative of a licensee;

This would put vendor introducers who act as credit intermediaries in the same position as **CAFBA** members and others engaged in the finance industry providing similar services.

We believe the adoption of consistent regulation across the industry is necessary, not only to create a level playing field, but also provide adequate consumer protection. For obvious reasons, consistency of credit legislation has been a key aim in the reform process for many years, and the removal of the current exemption will assist in achieving this.

### **Competition and Consumer Act – Adverse Competition Reality**

The Competitive and Consumer Act (C&C Act) promotes competition and fair trade markets to benefit consumers, businesses, and the community.

**CABFA** is of the strong view the current vendor introducer exemption to the NCCP Act is at odds with objectives of the C&C Act. Conduct by businesses in an Australian market is meant to be such that does not have a substantially adverse impact on competition or detriment to the broader consumer interest. The only occasions on which conduct should run counter to this is if the law believes it is the public interest to do so. The Australian Competition & Consumer Commission, the Australian Competition Tribunal and the courts are arbiters of the public interest.

We understand specific law, such the POS vendor introducer exemption, can override the essential tenets of the C&C Act. But, as we said earlier, continuation of that exemption cannot be sustained in the public interest. The anti-competitive effect of continuing the exemption is the significant financial and compliance investment by licensed brokers in meeting their licensing and responsible lending obligations and in maintaining them over the longer term.

By comparison, POS vendor introducers merely have to follow what their linked credit providers /lessors train them in and instruct them to do. There is no investment in POS standards, consumer protection or consumer disclosure. And, at its worst, the structural issues can result in significant disadvantage by consumers paying more for their finance than they may have otherwise, resulting in potentially significant financial benefit to the POS vendor introducer.



The anti-competitive consequences of the current POS vendor introducer exemption are very real to the consumer finance broker market. It is, to our mind, bad public and competition policy to have different regulatory models and outcomes for the same processes/services unless it is demonstrably in the public interest to do so. **CAFBA** does not see competition law public benefit in keeping the current POS vendor introducer exemption.

### **Conclusion**

**CAFBA** believes the current exemption provided to POS vendor introducers creates an unfair advantage to those who hold an Australian Credit Licence to engage in exactly the same credit activities. It also significantly weakens the protection consumers should receive from the law when they obtain finance through these distribution channels. We therefore request that current exemptions for POS vendor introducers, at least for motor vehicles, be removed from the NCCP Act.

Thank you for the opportunity to respond, and we would be pleased to make ourselves available for further discussion on this important issue.

Yours Faithfully

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President

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Vice President