

SUBMISSION

**DRAFT REPORT OF THE NEW
CAR RETAILING INDUSTRY
MARKET STUDY**

**COMMERCIAL ASSET FINANCE
BROKERS ASSOCIATION OF AUSTRALIA**

2017

CAFBA

Commercial Asset Finance Brokers
Association of Australia

Australian Competition and Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

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Submission to the Draft report of the new car retailing industry market study

The Commercial Asset Finance Brokers Association of Australia Limited (CAFBA) is a strong voice for issues within the commercial finance sector. This submission was prepared in response to concerns of CAFBA members about finance provided by car dealerships in Australia.

CAFBA members have become increasingly alarmed by the negative impact that the Point of Sale (POS) exemption for vendor introducers in car dealerships is having on the quality of financial advice and options given to consumers. Many consumers buy new cars on finance and this is a significant investment, meaning that the financial services must be of a high standard.

Despite the quality of financial service provided by many commercial finance brokers, some new and unqualified operators have been able to fly 'under the radar' of regulatory bodies through exemptions. [In particular, CAFBA is concerned about the negative impact that the POS exemption for vendor introducers in the car sales industry is having on consumers.](#)

We are pleased that the Australian Competition and Consumer Commission Draft Report acknowledges that ability for car retailers to make significant profits through financing may create incentives for dealers to sell cars at low margins or even a loss to enable profits to be made from the sale of add-on products in aftermarkets.

The Draft Report should recommend that clearer and more transparent consumer protections and standards are provided to ensuring that the provision of commercial financial advice in car retailing is of a high standard. The current Australian regulatory environment affirms and strengthens the professionalism of CAFBA members and oversight must be consistent to all commercial finance providers.

CAFBA looks forward to continuing to work with the ACCC to resolve this challenge. Should you wish to discuss further we would be pleased to make ourselves available.

Yours sincerely,

David Gandolfo
President

Kathryn Bordonaro
Vice President

Background on CABFA

Commercial Asset Finance Brokers Association of Australia Limited (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. With over 700 members, in all states and territories, CAFBA is an important national voice in the Australian finance sector.

CAFBA members are career professionals, with recent studies showing nearly 67% (East & Partners 2017) of new commercial equipment finance is sourced through brokers. Our members and their clients are predominantly small to medium sized businesses and operate in the commercial finance market. The total receivables in the Australian equipment finance market are approximately \$100 billion, so it is an important component of the Australian economy.

CAFBA members know that providing Australian small businesses with access to finance is crucial to economic growth. Although brokers are commonly associated with home loans, CAFBA members work in a complex environment to provide a boutique service. Without the work of CAFBA's professional members, many Australian small business owners would struggle to navigate the complexities involved with commercial equipment finance.

CAFBA embodies the strengths of its members in a unified approach for dealing with financiers and legislators at a national level and regularly seeks the views of members. As an association, CAFBA provides the framework and support to professionally assist our members in their daily activities. This involves education and training, legislative and regulatory updates and forums where the members can interact and exchange ideas with their peers.

CAFBA prides itself on being self-regulating and maintains strict membership standards on probity, continuing professional development, industry experience, and reputation. It is a condition of CAFBA membership that commercial equipment finance brokers must belong to an ASIC-approved External Dispute Resolution Scheme.

CAFBA is a member of the Council for Small Business Australia and works collaboratively with the government, regulators, and business groups.

The Issue

CAFBA is pleased that the Draft Report highlights the role that finance plays in creating incentives for car dealerships to increase profits. Additionally, as the Draft Report notes on p.11 “buying a new car is one of the most significant financial decisions consumers make”. CAFBA believe that the incentive to improve profits, combined with the significance of the decision for the consumer, creates additional pressure on regulators to ensure that finance advice provided by car dealerships is of a high standard and is professional.

While insurance and financial products generally do fall under ASIC’s jurisdiction, it is important for the ACCC to have a greater focus on the implications that this has at the point of sale for car sales.

Prior to the commencement of the National Consumer Credit Protection Act in 2010, the previous Labor Government exempted point of sale (POS) vendor introducers from the requirements of the Act. The exemption thus applied to those who engage in credit activities at the point of sale. The specific exemptions included excluding those POS vendor introducers from the credit licensing regime and the responsible lending obligations. This exemption has remained in place for almost a decade and is an area of broken policy from the previous government that remains in need of repair.

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. This is something that CAFBA supports for the benefit of all, but in particular to ensure that consumers in Australia are protected.

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.

The negative consequences of this policy is that the exemption provides an opportunity for high risk commercial finance to be provided to consumers. It opens a window of opportunity for inexperienced individuals with limited training to provide low-quality advice to consumers. This is concerning

Impact on Professional Commercial Finance Brokers

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.

Impact on Consumers

Consumers rely on their financial provider to give them high quality advice when making any purchase. The variety of pressures placed on the staff of car retailers, combined with varying experience, or inexperience, in providing financial advice can negatively impact on consumer experiences.

How well-informed a consumer is about their car purchase and financial options should not depend on the practices of dealers involved. All dealers that are involved with providing finance options for car sales at the point of sale/ time of sale should be experienced professionals and be trained in providing advice specific to their customers needs.

As the Draft Report notes (p.34) “If finance is arranged through the dealer, this also adds to the time and information demands on the consumer at the point of sale”. This continues “By the time a consumer has navigated this process, it may be difficult for them to also absorb and understand information about consumer guarantees, manufacturer warranties and extended warranties” (p.36). Indeed, consumer fatigue can “lead to the purchase of an extended warranty product which, in many circumstances, is unlikely to add any additional protections to consumers’ existing rights under the consumer guarantees” (p.36).

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 is negatively impacting consumers and professional commercial finance brokers.

For consumers, it is important to highlight the negative impact that unprofessional financial service could have on purchases.

For professionals in the commercial finance sector, it creates an unfair advantage to those who hold an Australian Credit Licence to engage in exactly the same credit activities. The exemption also significantly weakens the protection consumers should receive from the law when they obtain finance through these distribution channels.

CAFBA therefore call on the ACCC to work with ASIC and the Government to implement policy that removes current exemptions for POS vendor introducers and ensures that car retailers are required to comply with regulation that ensures consumers receive professional financial services. As a priority, this must be done for motor vehicle sales. CAFBA is willing to work with the Government to ensure that this request is acted upon quickly.