



Commercial Asset Finance Brokers Association of Australia Limited

ABN 32 129 490 133

National Professional Body of the Equipment Finance Industry

31st March 2014

Head of Secretariat
Financial System Inquiry
The Treasury
Langton Crescent
PARKES ACT 2600

RE: FINANCIAL SYSTEM INQUIRY

The **Commercial Asset Finance Brokers Association of Australia Limited (CAFBA)** welcomes the opportunity to provide this Submission to Treasury on the Financial System Inquiry.

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 who understand the funding process and recognise the products of the available lenders in the Equipment Finance Market for their predominantly small business clients.

The Terms of Reference for the Inquiry are broad; hence CAFBA would like to outline the issues that are affecting our industry, which can be discussed in more detail at the appropriate time.

Competition

Since the Global Financial Crisis (GFC) in 2008, there has been a severe contraction of available Equipment Finance Lenders in the Australian market. This has resulted not only in mergers and acquisitions, but also the withdrawal of foreign banks which specialised in this area. These foreign banks include ABN Amro and Societe Generale, who lent in excess of \$2 bil of new equipment finance per annum.

This shrinking of available lenders has been even more apparent with the mergers of Australian banks, all of which had a presence in the Equipment Finance market. These include

- St George Bank
- Bank of Melbourne
- Adelaide Bank
- Bankwest
- Colonial State Bank

This dwindling of competition has been occurring for a number of years, particularly with finance companies that were absorbed by their parent bank or acquired by a third party, such as

- AGC
 - Esanda
 - Custom Credit
 - Mercantile Credits
 - Alliance Finance
 - AEFC
 - Security Pacific
 - Partnership Pacific
 - BAC
 - Beneficial Finance
 - Trade Credits
- and many more.

A reduced number of lenders creates a greater reliance on the lenders remaining, and the ability for a borrower to spread lending exposure is diminished to the point where many who are otherwise creditworthy simply run out of places to borrow.

This is no more prevalent in the Equipment Finance space, where Australian businesses need equipment to grow or take on new projects. These new projects have the added benefit of creating employment, particularly for small business.

This is further compounded by the recent acquisition by Westpac Banking Corporation of Lloyds International Pty Ltd including Capital Finance Australia Limited and BOS International (Australia) Limited.

Personal Property Securities Act (PPSA)

When the PPSA commenced in January 2012, the broader industry did not fully understand its implications. While the finance industry understood the impact of the Act and the way to use the Personal Property Securities Register, other industry sectors did not. This was especially so in the equipment hire industry. The Act is complex and its reach extensive, with many non-mainstream financing arrangements caught, such as hiring equipment and retention of title sales.

Of particular concern is the fact hiring's of motor vehicles, watercraft and aircraft for as short of 90 days can be regarded as 'security agreements' under the Act and, unless properly registered, can result in the owner of the goods losing their rights if a hirer becomes insolvent. In other countries with similar laws (e.g. New Zealand and Canada), it is hiring's exceeding 1 year that have this result.

CAFBA has made many representations for this amendment, and are pleased to endorse the changes contained in the Personal Property Securities Amendment (Deregulatory Measures) Bill 2014, which will confirm this change.

National Consumer Credit Protection Act (NCCP)

On 1st July 2010 ASIC took over the regulation of consumer credit under the NCCP. Whilst the intention of the introduction of a national consumer code was well founded, the effect has been to create an over regulated environment with red tape that is making it burdensome and costly for small business to comply. Much of this is regulatory overreach, which can be trimmed whilst still ensuring it is not detrimental to consumers needing finance.

NCCP Phase 2 – Regulation of Small Business Credit

Draft legislation proposing that consumer regulation would be imposed on small business lending was released for consultation in December 2012, with submissions closing in March, 2013. However in February 2013 the responsible Minister in the previous government announced the legislative changes would be deferred. The current government has confirmed this decision, which is a sensible one in light of the regulatory burden and the stifling of economic growth it would cause, and it is worth highlighting some of the issues to ensure it is not again considered.

CAFBA continually requested that this legislation be rejected, as the effect to business and the economy should be carefully considered. The Government's own Regulatory Impact Statement (RIS) stated (Page 2, Para 1):

- It is difficult to quantify the cost to industry and the benefit to borrowers
- Not possible to state whether it has a net benefit in monetary terms
- It quite possibly could increase the cost of credit
- Credit may be more difficult to obtain
- There is a risk some lenders may exit the market

This legislation would affect 96% of businesses in Australia which are classified as small business under the draft legislation.

- Small business in Australia employs approx. 4.8 million people
- Small business contributes over one third of Australia's GDP
- Small business has over \$200 billion in outstanding loans

We therefore believe that introducing consumer regulations to sophisticated small businesses, which **could have the effect of increasing the cost and decreasing the access to loans**, to be completely unwarranted.

As it is drafted the legislation also has a number of unintended consequences that will affect lending and the economy:

- Hire Purchase for loans under \$5m will be abolished
- This financing will be forced to the chattel mortgage product – in NSW this will attract additional stamp duty costs
- There is no upper financing limit on leasing (this will potentially capture leasing deals to multi nationals in consumer type regulations)

The draft legislation also proposed that financiers and brokers of credit and leases to small business be required to hold a permit issued by ASIC – and so-called negative licensing. There is no rational justification for this, and would only add further unnecessary compliance and red tape. **CAFBA** is a self-regulating body, having professional standards for membership which are higher than current ASIC requirements for an Australian Credit Licence.

NCCP – Point of Sale Exemptions (POS)

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. It is **CAFBA's** view that 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 3 years, with deep and distinct consumer and competitive disadvantages to show for it.

Australian Prudential Regulation Authority (APRA)

APRA (APS 113) – this rule relates to small business borrowing exposures of \$1m or more, and how these are managed by financial institutions, which are required to manage these exposures in a much more intensive manner. This has caused reluctance by lenders to increase exposures over a \$1m, and should they do increase borrowing then the pricing is increased to cover additional regulatory compliance costs. The \$1m has not been increased for 5 years, and does not take into account the amortising nature of the borrowing. **CAFBA** contends that this limit should be increased to at least \$3m.

Australian Taxation Office

Since 2008 access to credit for small business has been difficult, due to the ramifications of the GFC and subsequent restrictions in lending by financial institutions. A further complication is the ATO's policy of entering into arrangements for small business tax debt. With the problems encountered from obtaining loans via traditional methods from lending institutions, small business borrowers saw the ATO arrangement as a quasi-loan, therefore preserving working capital. The effect however has been to completely restrict the business's ability to borrow further, as lending institutions will not approve credit to a business with a tax debt.

Privacy Reforms

With the changes to the Australian Privacy laws introduced on 12th March 2014 came with it a new raft of compliance and regulations that has tied business up in additional red tape for no measurable benefit. With much well-intended legislation comes the unintended red tape and burden to business. The new Privacy Consent Form is not consistent across financial institutions, with many having their own interpretation. This has the effect of limiting choice of brokers by putting unnecessary roadblocks in the way. Additionally there is much uncertainty to the operation of this in a practicable way eg scope to introduce a “master” privacy consent with a 12 month duration, to avoid the additional burden of having to sign a new document every time the borrower requires additional credit. **CAFBA** will continue dialogue with the relevant departments to pursue sensible amendments.

Financial Institutions Offshoring Processing

CAFBA is concerned that the offshoring of processing functions by Australian lending institutions will lead to not only a de-skilling of the Australian market but also impose unnecessary risks in terms of data storage and access to financial information.

Whilst this is rationalised in terms of cost cutting, the potential downside could far outweigh the short term monetary benefits. We believe greater scrutiny should be placed on the long term effects of offshoring processing personnel.

We encourage the above topics to be included in the Terms of Reference, and would be available to discuss further or welcome the opportunity to appear at any subsequent Senate hearing.

Yours Faithfully,

Commercial Asset Finance Brokers Association of Australia Limited


Terry Moody
President


David Gandolfo
Vice President