

NCCP Amendment (Supporting Economic (Recovery) Bill 2020

**Commercial & Asset Finance
Brokers Association of Australia**



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Association of Australia



Senate Standing Committees on Economics
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Consumer Credit Reforms

The Commercial & Asset Finance Brokers Association of Australia (CAFBA) welcomes the opportunity to provide our views to the Senate Economics Legislation Committee regarding the Consumer Credit Reforms relating to Responsible Lending Obligations (RLO), which has been referred to the Senate Economics Legislation Committee.

Background on CAFBA

The Commercial & Asset Finance Brokers Association of Australia (CAFBA) is the peak national body of commercial and equipment finance brokers, whose prime area of business is the distribution of commercial and equipment finance facilities to their clients. With over 1,000 members, in all states and territories, CAFBA is an important national voice in Australian finance.

CAFBA members are career professionals, with recent studies showing nearly 73% (East & Partners 2020) 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 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, minimum education standards, industry experience, and reputation. It is a condition of CAFBA membership that commercial finance brokers must belong to the Australian Financial Complaints Authority (AFCA).



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

Consumer Credit Reforms

Whilst some CAFBA members hold an Australian Credit Licence and provide services related to consumer lending, their prime source of business is derived from business finance. CAFBA is focussed on commercial broking so our aim is to ensure any amendments to the NCCP Act do not impact on business finance broking, or impact business finance lending.

It is our contention however that for some time RLO, designed for consumer lending, has morphed into business lending in a “one size fits all” approach by lenders, which has affected access to finance for small business.

CAFBA represents both commercial and asset finance brokers in Australia and so our activities, industry sector, and clients are vastly different from that of the personal finance, mortgage broking and NCCP regulated credit environment. This was acknowledged in the Recommendations of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry that consumer lending laws should not be applied to small business lending.

In respect to RLO obligations being applied to business lending, It is worth highlighting the many differences in making an assessment to lend to a consumer, as opposed to a small or medium business client, and the affect this may have.

Difference Between Personal and SME Lending

CAFBA would like to underscore to the Committee the difference between personal, home, and commercial finance lending.

CAFBA believes that the difference between household and domestic use and SME lending needs to be both emphasised and understood. CAFBA upholds the right of all consumers and every business to be protected from unjust practices and to have ready access to fair remedies; however, there is a clear distinction between the needs of consumers and businesses when seeking to borrow money, and Responsible Lending laws have not assisted this distinction, and in fact caused difficulties in obtaining finance for small business, due to the unnecessary application of responsible lending laws by lenders for small business.

In Australia, there are several key differences between personal finance, including mortgages, and SME finance, including business lending. It is important to understand the different prudential requirements and the rates at which businesses can secure loans.



Key points about the difference:

- While some terminology in commercial and consumer loans is similar there are differences. Both the purpose and customer profile of commercial loans is different. The assessment and outcome for the customer is also different. In particular, the ongoing relationship between the banker and the business customer should be entirely different. This difference means that the way regulators examine commercial finance must be different to consumer, and hence also the lending parameters.
- Small business finance is significantly more complex than a mortgage or other consumer loans and should be assessed accordingly.
- Due to the complexity of operating a business, commercial loans are more difficult to obtain than a consumer loan e.g. a mortgage;
- Small business finance requires more ongoing attention to business progress, cashflow management, issues in the market, fluctuations in demand and consumer sentiment, and other issues.
- Loans for small businesses may need to have a more custom approach than personal finance, requiring negotiated flexibility due to the nature of the business.
- Banks can find business finance far more challenging to process, particularly when engaging with some sectors within small business,
- Assets used in small business finance can be uncommon and therefore require specialist knowledge to assess the loan purpose.

Many businesses in Australia have expressed frustration at the complexity and barriers that they face when seeking a loan. Some of this is due to lenders applying consumer lending laws to commercial, which is inappropriate and an obstacle to good credit decisioning. It is essential that we allow small businesses the opportunity to invest, to expand their businesses.

The effect of this can be best exemplified by some examples forwarded to us by our members (with business names being redacted).

Example 1

Client has \$40m in commercial assets, with borrowings of \$10m. All positively geared and tenanted.

Client paid in cash a new investment property for \$2.5m and wanted to be reimbursed via investment home loan. Given the complex accounting structure and the flow of funds not hitting his personal taxable income, the residential lenders declined as it did not meet residential lending guidelines.

Despite clearly having the commercial acumen and assets to demonstrate he can take on this home loan, unfortunately the lending guidelines were not met.



Example 2

A tradesman was looking to buy an excavator. He has been in business for over 4 years and wanted a new machine. He did not have history with the financier the broker chose to use but they were well priced and offered a good solution for the client. Historically this application would have been submitted with his company financials, his asset and liability position and a privacy form. Over the last few years this has changed as some of the funders are overlaying the responsible lending laws for consumers into commercial lending. Given this the commercial broker needed to complete an extensive summary of his personal expenses, even though the asset is being used for business purposes.

The client could service the debt from his business cash-flow, but the funder decided not to proceed. They were concerned by his personal income versus expenses/debt. This occurred because the tradesman had paid himself a lower wage to leave funds in the business, and this combined with a rigid view on personal expenses from the funder meant the financing was declined by the lender. If responsible lending had not crept into business lending under normal circumstances the loan would have been approved.

Other examples can be provided on request.

Summary

It is CAFBA's view that the proposed changes should not affect commercial brokers, and the explanatory notes are clear that it only affects regulated consumer transactions, however the removal of RLO should also have a positive effect on commercial lending and provide better access to credit for small business.

In essence the legislation replaces responsible lending with Best Interests Duty, which is extended to all consumer transactions, and CAFBA sees this as a positive step for best customer outcomes.

We therefore have considered the draft and welcome the removal of responsible lending obligations on consumer brokers and replacing with Best Interests Duty.

CAFBA also appreciates the clarity in the draft legislation that this only applies to consumer finance, and the recognition that business finance is not part of this legislation.

Should representatives from the Treasury, Finance or other government departments wish to discuss further we would be pleased to make ourselves available.



Yours sincerely,

[Redacted signature block]

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