



# Commercial Asset Finance Brokers Association of Australia Limited

ACN 129 490 133

**National Professional Body of the Equipment Finance Industry**

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**Committee Secretary  
Senate Standing Committee on Economics  
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Parliament House  
Canberra ACT 2600  
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## **National Consumer Credit Protection Bill 2009**

The **Commercial Asset Finance Brokers Association of Australia Ltd (CAFBA)** welcomes the opportunity to comment on the National Consumer Credit Protection Bill 2009.

**CAFBA** represents Finance Broking firms whose principal activity is securing **commercial** credit for the acquisition of an asset, (other than real property), for use in the customer's business or the business of a related body corporate. This market is referred to in this submission as the "Commercial Equipment Finance" market, and CAFBA is the only professional body in Australia specific to Commercial Equipment Finance brokers.

**CAFBA** is the result of a recent merger between the **Australian Asset Finance Association (AAFA)** and the **Australian Equipment Finance Association (AEFA)**. Since 1981 these two state-based bodies have comprised the significant Victorian and NSW based broking firms in the Commercial Equipment Finance industry. Now represented by **CAFBA**, member firms conduct the majority of their business in the fields of commercial equipment and vehicle financing (not UCCC loans). CAFBA now represents more than 150 member firms, comprising approximately 450 individual business writers. The combined annual volume of Equipment Finance transactions arranged by CAFBA members is approximately \$4.5 Billion per annum.

As part of the consultative process entered into by Consumer Credit Unit, Corporations and Financial Services Division of Treasury, CAFBA examined the exposure draft of National Consumer Credit Protection Bill 2009. CAFBA is a body representing Commercial (non consumer) asset finance brokers, and the draft legislation is directed towards consumer transactions and protection of consumers, and as this is not CAFBA's industry segment we offered no further comment on this document.

On the 25th June 2009 CAFBA received a press release from **Minister for Financial Services, Superannuation and Corporate Law, the Hon Chris Bowen MP**, detailing changes made to legislation that was about to be introduced into Parliament. These changes included the following:

**"Point-of-sale retailers** – retail outlets and intermediaries (for example, car dealerships or other point of sale retailers) that facilitate credit assistance to consumers will be exempt from these requirements, with a review of the issue of the appropriate regulatory oversight to occur within 12 months."

As CAFBA is made up of member firms who operate in the Commercial credit sector we would not usually comment on legislation that is directed towards Consumer products. However, as the original intention of this legislation was to create a level playing field across the credit industry by requiring **all** industry participants to meet required conduct obligations and standards, it is felt that the exemption of car dealerships from this legislation will in fact create an unlevel playing field for industry participants, and in fact provide less protection for the consumers of credit products provided through the car dealership distribution network.

Consistency of credit legislation has been a key aim in this reform process for many years. A review commissioned by **Consumer Affairs Victoria** in 2005 on the topic of credit reform stated:

"Consistency is not an objective for its own sake. Rather, it is necessary to reduce business costs, avoid compromising industry efficiency and improve the effectiveness and efficiency of regulation. It is important when regulation in one area affects other areas, such as when businesses subject to different regulatory regimes compete, or one business operates across regulatory regimes. Consistency also improves efficiency, because it eliminates unnecessary differences in regulation that might artificially advantage one type of service provider or encourage them to change their services to avoid regulation. Further, it makes consumer protection easier by reducing businesses' and consumers' confusion about the standards required, and it reduces the cost of administering regulation by reducing duplication. The problems caused by inconsistency are internationally recognised."

Much research has been done by State and Federal Government bodies on consumer credit provided by car dealerships.

The **ASIC** website provides a consumer information service via its FIDO pages. On the Money Tips for Young Adults fact sheet **ASIC** provides the following information:

**“Money Tips for Young Adults**

If you don't have the cash upfront to buy a car you might decide to get a car loan.

While you might bargain over the price of a car, it's also worth knowing that considerable savings can be made by shopping around for the cheapest possible car loan.

If you buy a car from a car yard, the car dealer might offer to arrange the finance for you. You don't have to get the loan through the car dealer and it's often cheaper to get a loan from somewhere else.

Banks, building societies, credit unions, and specialist lending and leasing companies also offer car loans.

Dealer finance may be more convenient in that you can sign up and drive away immediately. But you might end up paying thousands of dollars more than you need to or face restrictive terms and conditions on the loan you've signed up for.

So it's worth shopping around to see what's on offer.”

The website provided by **Consumer Affairs Victoria** advises the following in a fact sheet on sourcing finance via motor vehicle dealerships:

“Finance deals vary a lot, so spend time finding the best deal to suit you. Most car traders offer to arrange finance but it is often cheaper to obtain finance elsewhere; banks, credit unions and finance companies for example.”

A brochure provided on the **WA GOV** website entitled, Children and Youth Information Brochure, details:

“However, cars are often the cause of substantial youth debt. Here are some tips to help when buying a car: If finance is needed, shop around before going car hunting and establish just how much you are able to spend. When looking around a car yard, be clear with the salesperson that you “are not buying today”.

**The Office of Fair Trading in NSW** website advises the following:

A new vehicle can be quite expensive so ways of paying for the purchase need to be considered. Many dealerships will offer 'finance' (ie. a loan) to their customers, through a credit provider, but it is also worthwhile shopping around to get the best deal. Banks, credit unions, and other financial institutions all lend money and can be cheaper and more flexible than the car dealerships.

Many other organisations such as the **Royal Automobile Club of Victoria, Consumer Law Centre** and financial counselling services also caution against the use of consumer finance provided via motor vehicle dealerships, particularly for the more vulnerable sectors of society, eg the young and socially disadvantaged.

## **“Redfern Legal Centre**

Car salespeople take advantage of young, naive people by encouraging them to take out loans with associated lenders. The salespeople will often get commissions. The salespeople will often not disclose these commissions to the young borrowers. Even if they do, it is questionable whether this will make the young borrower do more than think twice. The young people are encouraged by subtle means such as the sales person acting in a friendly and conciliatory manner, and appearing to genuflect to the young person. Manipulative behaviour is compounded in its affect where the person being subjected to it is intellectually disabled. In one of the writer’s cases, the young man in fact had a mild intellectual disability. The disability was not obvious. His girlfriend told the writer about it, later.

The salesman’s office wall was covered with pictures of flashy sports cars. The young man had very recently left school, and got his first job. He said the salesman was “really nice” to him, and offered him a cigarette. The salesman spent a while telling our client about “options” and “extras” such as mag wheels, which could be added to the car “for almost no extra money” (which was more or less true, when considered on a weekly basis).

The young man lost his job, and could not keep up the repayments. The car was repossessed, and the lender pursued our client for the outstanding debt, which it was entitled to do on the face of the contract.”

## **Child & Family Services Ballarat Inc. Consumer Services – Robyn M. Osland – Financial Counsellor**

“Think very seriously before you obtain finance through a car dealer. The recommendation of financial counsellors is not to obtain finance through the car dealer in the first place.”

## **A CASESTUDY REPORT PREPARED BY CONSUMER LAW CENTRE VICTORIA FOR THE ROYAL AUTOMOBILE CLUB OF VICTORIA**

“These problems include misleading and deceptive conduct by motor car traders, unconscionable conduct and problems with car finance and insurance. All of these problems are exacerbated in the case of low-income consumers and other vulnerable consumers, such as young consumers, who tend to lack awareness of their contractual rights and obligations.

Young car buyers and other vulnerable consumers are often more willing to agree to a trader’s offer to arrange finance because they do not understand that trader arranged finance often comes at a much higher cost than might be obtained elsewhere. Sometimes the consumer will also be encouraged to enter into a situation of financial over commitment. In arranging finance, the trader generally receives a commission on the deposit. In our view, this creates a conflict of interest situation and can result in finance being recommended where it is clearly detrimental to the consumer.”

CAFBA believes an exemption provided to finance distributed through the car dealership point of sale network will create an unfair industry advantage to one sector of the market, and weaken the protection available to consumers who avail of finance through this distribution channel.

CAFBA does look forward to being an active participant in Phase Two of this project, with particular regard to Regulation of the provision of credit for small businesses.

Thank you for the opportunity to provide a submission in response to the National Consumer Credit Protection Bill 2009.

CAFBA would be very pleased to offer its expertise on issues relevant to the Commercial Equipment Finance industry. The current contacts for further discussion are:

President	David Gandolfo	Phone (03) 8420 9612
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Yours faithfully,


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