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Dear Christian

**Regulation of Point of Sale (POS) Vendor Introducers  
AFC Comment on Draft Regulatory Impact Statement ('RIS')**

The AFC appreciates the opportunity to provide its written comments of the draft RIS following Treasury's 20 October teleconference with its POS Working Group.

The AFC supports the modified regulation of POS vendor introducers applying where there exists a linked credit/lease between vendor introducer and financier.

The draft RIS examines 3 main options, namely to: (1) maintain the current POS exemption, (2) apply the National Credit Act ('NCA') without exemption to vendor introducers, or (3) modify the NCA in proposed ways.

Overall, AFC's response to each main option is as follows –

1. *Option 1* – Given that the Government only intended the current exemption to be interim, to maintain pre-NCA market structure and operations until a more considered policy could be developed, with that consideration now undertaken, not keeping the current exemption is understandable.
2. *Option 2* – For reasons we set out in our submissions made to Treasury during the development of the NCA and recognised in the draft RIS, applying licensing and other NCA obligations to vendor introducers is not a viable option.
3. *Option 3* – The AFC supports modification of the NCA, however, we do not agree with aspects of what is currently proposed in the draft RIS.

The AFC therefore focuses its response on Option 3. At a high level, we believe that the draft RIS lacks the clarity of the policy position paper developed for the 31 May meeting of the POS Group. There are two aspects we think contribute to that -

- Firstly, the draft RIS does not distinguish between motor dealer and retailer introducers. The Working Group viewed them as quite separate markets, with different conditions for consumers and industry.

- Secondly, the draft RIS speaks of vendor introducers in general terms, but its discussion of each in Parts 3.2 and 3.3 is specific about the type of vendor introducer to whom each Part would apply.

Based on discussions at Working Group meetings, we think Part 3.2 may be intended to apply to both motor dealer and retailer introducers, with Part 3.3 confined to retailer vendors. But the lines of demarcation are unclear; this has led us to provide specific responses which apply 3.2 to motor dealers and 3.3 to retailers. We believe this key issue needs to be discussed further so there is no doubt about the scope and application of what is proposed.

The AFC has prepared the attached table providing comments and recommendations on a number of aspects of Option 3 of the draft RIS. While we see merit in a number of proposals, there are areas of concern that we believe can be readily addressed.

The AFC wishes to arrange a meeting with you once Treasury has had a chance to consider our response to the draft RIS. You will be contacted during the second half of November to arrange that meeting.

In the meantime, if you wish to discuss this submission, please contact either AFCs' Executive Director, Ron Hardaker, on [ron@afc.asn.au](mailto:ron@afc.asn.au) or me on [steve@afc.asn.au](mailto:steve@afc.asn.au). We can both be contacted on telephone 02 9231 5877.

Yours sincerely



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## AFC Detailed Assessment

Issue	AFC Comment	AFC Recommendation
<p>Need for distinguish between vendor types</p>	<p>Early in the POS Working Group consultation, it was agreed by Group participants that motor dealer introducers and retailer introducers should be considered separately, in light of their differing market characteristics. Policy development continued on that basis until the draft RIS, which now does not distinguish between the two markets.</p> <p>The AFC is of the view the regulatory options proposed across Part 3 of the draft RIS are not workable or applicable in both markets. The impression gained from the option outlined at 3.2 of the draft RIS is that it is applicable to motor dealers. The options explored at 3.3 are clearly directed at the retailer market.</p> <p>The remainder of our assessment and comments on the draft RIS proceed on this demarcation.</p>	<p>Part 3.2 of the draft RIS should be expressed to apply to the motor dealer introducers. Motor dealer introducers should not be confined to motor vehicles, but also cover motor bikes, all terrain vehicles, caravans, trailers, aircraft, watercraft (e.g. boats, jet skis, outboard engines), etc. In effect, anything for the transport of people and/or goods that is powered by a motor, or anything pulled by such motorised transport.</p> <p>Part 3.3 of the draft RIS should be expressed to apply to all other vendor introducers, i.e. those who are not motor dealer introducers. These can be referred to as retailer introducers.</p> <p>As well as national retailers, this would also include vets, doctors, dentists, funeral homes, travel agents, tyre fitters, garden shed installers, etc.</p>
<p><b>3.2 – Motor Dealer Introducers</b></p>		
<p>Responsibility and relationship measures</p>	<p>AFC observes that, under the draft RIS –</p> <ul style="list-style-type: none"> <li>• an introducer dealer will not be regarded the agent of a consumer</li> <li>• the dealer will be the representative of the financier who provides finance to the</li> </ul>	<p>The AFC supports these measures.</p>

<p>Dealer introducing to more than one financier</p>	<p>consumer</p> <ul style="list-style-type: none"> <li>the financier who provides finance to the introduced consumer will be responsible for the conduct of its ‘representative’ dealer introducer</li> <li>all financiers to whom the dealer introducer is a linked supplier will be responsible to a consumer for the dealer’s conduct in relation to ‘credit activities’ should the consumer not enter into a credit contract with any of them.</li> </ul> <p>Also, we note the draft RIS does not propose to continue with earlier proposals involving the setting of a limit on the number of linked financiers a dealer introducer may have which had significant anti-competitive potential. AFC supports the approach of the draft RIS as it not appropriate to restrict this by regulation. It is something the market already deals with in managing risk. For that reason we do not believe it is necessary to mention first choice arrangements – we think confuses the underlying regulatory proposals.</p>	<p>The AFC supports the draft RIS not specifying the number of financiers to whom a dealer introducer may introduce consumers.</p>
<p>Supplier Representatives</p>	<p>The draft RIS for the first time proposes the concept of ‘supplier representatives’, applying criteria, processes and requirements akin to the appointment of ‘credit representatives’, except for mandating EDR membership for the dealer introducers and removing ASIC reporting requirements.</p> <p>The AFC is totally opposed to this development. It is no advance on the current position available and offers no consideration for the POS introducer market. It effectively means the credit representative regime applies, which is something industry has sought to avoid, and is really not necessary given the application of liability to linked financiers under both the NCC and the representative liability provisions of Part 2-4 of the National Credit Act.</p> <p>To apply the credit representative provisions (except for EDR membership) to POS dealer introducers would –</p> <ul style="list-style-type: none"> <li>Necessitate financiers obtaining cross-</li> </ul>	<p>The AFC opposes the concept of ‘supplier representatives’, appointment of whom (with limited exceptions) is consistent with credit representatives.</p> <p>The concept is unnecessary as the linked financier will be responsible under –</p> <ul style="list-style-type: none"> <li>Part 2-4 of the National Credit Act for consumer loss arising from the dealer’s conduct</li> <li>the NCC for the dealer introducer’s misrepresentation and proposed expanded conduct</li> <li>the NCC for the dealer’s</li> </ul>

	<p>consents from other financiers for the same dealer introducer</p> <ul style="list-style-type: none"> <li>• Involve repeated police checks on both the dealer introducers and their finance business managers</li> <li>• Require sub-authorisation arrangements to be put in place for the finance business managers employed by dealer introducers</li> </ul> <p>AFC concerns and criticisms with proposal are equally applicable to retailer introducers. Taking into account our estimate there are approximately 80,000 staff in retailers and motor dealers to whom this proposal would apply, it is disproportionately burdensome of all involved. To add to this is the constant turnover of staff.</p>	<p>misrepresentation and breach of contract relating to the sale of the vehicle, etc.</p>
<b>3.3 Retailer Introducers</b>		
Responsible Lending Conduct	<p>The AFC estimates the average retailer transaction in which finance is arranged is approximately \$1,424. The relatively small amount involved for everyday consumer transactions does not warrant detailed compliance disclosure beyond what the NCC requires.</p> <p>With the different features of credit and lease products, it can be readily ascertained which is suitable to a consumer's needs by reference to the consumer's objectives and requirements. Once ascertained, the price of the suitable product to the consumer flows from that product. Comparative pricing details between different products do not address a consumer's objectives and requirements.</p> <p>The only option in the draft RIS that fits the context of retail introducers is Option A. It would provide to consumers pithy and relevant information comparing the nature and features of the competing products. In our view, consumers are more likely absorb that information before proceeding with their financing transaction.</p> <p>The product nature/features comparison can be produced collaboratively by industry and</p>	<p>The AFC recommends and supports Option A. To provide an indication of what might be envisaged, we provide a sample product nature/features document to be given to retail consumers – refer attachment.</p>

	<p>ASIC, with the requirement that retail vendor introducers use the ASIC approved document.</p> <p>The AFC cannot support any of the other Options (B – E). It seems to be generally accepted by stakeholders and Treasury that Options D and E should not be pursued.</p> <p>Option B forces both financiers and retailers to manage significant and disproportionate compliance requirements in a time-constrained context. It also risks the perception of competitors colluding by sharing price-sensitive data in order to comply with detailed/tailored comparison disclosure.</p> <p>Option C places responsible lending assessment obligations (albeit reduced) on vendor introducer staff at the point of sale. This would involve significant resources for training of thousands of staff in an industry where there is significant turnover.</p> <p>With both Options B and C, there is no assessment or evidence about their usefulness or relevance to consumers in the POS sale context. The AFC cannot support these options.</p>	
Supplier Representatives	To the extent this concept is also applicable to retailer introducers, refer above comments in relation to motor dealer introducers.	Refer above recommendation not to proceed with supplier representative’s concept.
<b>NCCP Reg 23A</b>		
Future Status	This current exemption is specifically targeted at co-branded credit card arrangements in retail stores. The draft RIS does not consider this exemption. The Reg 23A exemption is currently in place because the entry into the linked continuing credit contract may not be related to an actual or proposed sales transaction by the vendor introducer. The AFC would expect the final policy position of the Government on the nature and extent of the POS regulatory environment for retailer introducers to incorporate consideration of this. There may or may not be a need to specifically	Address once the draft RIS becomes clearer.

	address co-branded, but, that cannot be addressed without resolution of the ambiguities identified in the draft RIS.	
<b>Unsolicited contact exclusion from Reg 23 POS exemption</b>		
Unsolicited Contact & Non-Standard Business Premises	<p>During the 20 October Treasury teleconference it was unclear what the future status or necessity for these exclusions from the current POS exemption (Reg 23) would be. With the significant developments made under the Australian Consumer Law dealing with unsolicited transactions, the AFC believes the continuation of these exclusions is no longer warranted.</p> <p>The NCC already contains automatic consumer rights where consumers exercise termination rights in respect of sales contracts. The NCC automatically cancels any associated financing contract.</p>	The AFC recommends these exclusions not be continued under the proposed POS regulatory regime.
<b>Scope</b>		
Scope potentially narrowed by drafting anomaly	<p>There is a drafting issue regarding regulation 23 which should be corrected. In regulation 23A it is clear that credit services are exempt in relation to both credit contracts and <i>proposed</i> credit contracts. In regulation 23 the language of "proposed" credit contracts and leases is used for activities in the nature of performing obligations or exercising rights, but in relation to credit services only "credit contracts" and "leases" is used. This potentially narrows the scope of the exemption for vendor introducers, on the face of it confining exemption to only situations where a contract actually arises. While this is understood to be a drafting anomaly, we think this opportunity should be taken to correct this.</p>	The AFC recommends the draft RIS makes it clear its exemptions and modifications apply in relation to both actual contracts and proposed contracts, whether credit or lease contracts.

# New customer – consumer only – AFC Sample

	<b>Credit card with interest free purchase</b>	<b>Lease</b>
<b>General description of the product</b>	<p>Credit cards allow you to borrow up to a maximum credit limit to buy goods or services from any retailer who accepts the credit card.</p> <p>Generally you only need to make minimum monthly repayments and keep the balance below the credit card limit for as long as the credit card remains active.</p> <p>You do not have to pay interest on an interest free purchase during its interest free period, but you still need to pay any minimum monthly payment, if there is one. At the end of the interest free period, if you have not fully repaid the amount of the interest free purchase then, interest will begin to apply to the balance outstanding.</p>	<p>Leases allow you to pay for the use of particular goods and associated services. There is no “credit limit” that allows extra goods to be added automatically during the term.</p> <p>Under a lease you make fixed monthly rental payments to use the goods and this continues for a fixed term. Sometimes a lease allows you to extend the term for another fixed period.</p>
<b>Fixed term</b>	<p>No</p> <p>There is no fixed term on a credit card however minimum repayments must be made until the balance is repaid. There is a fixed interest free term after which interest will be charged on amounts outstanding.</p>	<p>Yes</p> <p>Fixed rental payments must be made for a selected fixed term. The term will depend on the term selected by the customer.</p>
<b>Interest</b>	<p>Yes</p> <p>Interest is payable on amounts that are outstanding on the card. This will be payable after any fixed term interest free period has expired. The rate can be variable.</p>	<p>No</p> <p>No interest is payable on leases. Fixed payments are made for the term of the lease. The amount of the rental payments does not vary during the term of the lease.</p>
<b>Ownership of goods</b>	<p>Yes</p> <p>Goods purchased using a credit card will be owned by the credit card holder.</p>	<p>No</p> <p>There is no right or obligation to own the goods - ownership remains with the lessor unless they agree separately to sell you the goods. However, some lessors have other end of term options available, including extending the lease term.</p>
<b>Protection against theft and damage</b>	<p>No</p>	<p>Yes</p> <p>Some lease providers offer customers repair or replacement protection in the event that the leased goods are stolen or damaged in certain situations for the term of the lease.</p>
<b>Payment protection</b>	<p>Yes</p> <p>As an additional payment some credit providers may have insurance programs you can buy separately.</p>	<p>Yes</p> <p>Some lease providers provide customers with payment protection as part the rental agreement.</p>
<b>Loyalty program</b>	<p>Yes</p> <p>Some credit cards may have a loyalty program attached with points or other benefits accruing as the card is used.</p>	<p>Yes</p> <p>Some lease providers offer loyalty programs in the form of discounted products and services and other benefits</p>