



Commercial Asset Finance Brokers Association of Australia Limited

ABN 32 129 490 133

National Professional Body of the Equipment Finance Industry

12th May 2015

CONSUMER POLICY FRAMEWORK UNIT
Small Business Competition and Consumer Policy Division
The Treasury
Langton Crescent
Parkes ACT 2600
Email: AustralianConsumerLaw@treasury.gov.au

RE: Extending Unfair Contract Term Protections to Small Business - Legislation

The **Commercial Asset Finance Brokers Association of Australia Limited (CAFBA)** welcomes the opportunity to comment on the Treasury's draft legislation into extending existing Australian Consumer Law protections regarding unfair contracts to small business.

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 arrange in excess of \$8bil of new equipment finance for their clients annually. Our members and their clients are predominantly small businesses.

CAFBA would like to reiterate its position as outlined in the submission to the review on 1st August, 2014, in that the extension should be directed at the areas requiring attention, and exclude financial service products and contracts.

The Government has provided leeway to exempt certain industry sectors from the new protections. The Commonwealth Minister will have the power to exempt the application of the unfair contract term protections for small businesses, where an industry-specific legislation or regulation is deemed enforceable and equivalent. This ensures there is no duplication with protections contained in another law.

It is CAFBA's contention that there are adequate laws currently held by government in agencies such as ASIC to cover any problems that may arise in financial products or contracts. There is no reason to include finance contracts under the proposed legislation, as there is no systemic problem to warrant this.

CAFBA believes the discussion to extend consumer unfair contract extensions to small business emanated from problems encountered by small businesses entering into commercial retail tenancy leases with large corporations, and also franchisee contracts with franchisors.

It is our belief that this issue can be addressed in isolation, without including finance contracts, where existing remedies and laws exist to provide relief.

It is CAFBA's view that financial services contracts and credit contracts should be excluded from any proposed legislation, as outlined in Clause 130 of the Consultation Paper.

The commercial equipment finance industry is a professional industry with mature products, which should not be affected by any changes. Proposed changes such as this would have the effect of reviewing existing contracts such commercial hire purchase or chattel mortgages, with the compliance burden of review being an unnecessary impost, and the imposition of redrafted contracts adding to the cost of finance and also making access to finance more difficult.

The evidence of complaints does not warrant further legislation that may be costly to implement and further restrict business development, and access to finance for small business.

We appreciate the opportunity to provide comment in response to the draft legislation, and would welcome the opportunity to participate in any further discussions.

Yours faithfully,



Terry Moody
President



David Gandolfo
Vice-President