



Finance Brokers Association
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Manager
Consumer Credit Unit
Retail Investor Division
The Treasury
Langton Crescent
PARKES ACT 2600

Re: Existing exemption for retailers who engage in credit activities in relation to the sale of goods or services under the National Consumer Credit Protection Act 2009

By way of background the FBAA is deemed as the voice of finance broker professionals around Australia, with its Board of Directors all being or recently being long-term industry practitioners.

The author of this document, Mr Peter White, himself is now into his 34th year in the banking and finance industry as a practitioner, and has in the past controlled up to four (4) motor vehicle dealership FNI businesses at one time. For the past 3 years he has acted under a contracted full-time basis as the Association's CEO in addition to being the member-elect National President & Chairman of the Board of Directors for the last four (4) consecutive years with a minimum of 18 months still run under the current term of election. At the end of this current term in 18 months time Mr White would have served 6 years as the member-elect National President and Chairman of the Board of Directors, and has been a volunteer on the State and National Executive and as a Board Member of the Association since 2003.

Mr White has sat on but not limited to the Treasury's Industry Stakeholder Consulting Committee for the NCCP since its inception celebrating its 5th Anniversary at the February 2013 meeting in Sydney.

The FBAA has a technical membership base of approximately 2,600 corporate styled members which reach approximately 9,000 individual brokers nationally. Additionally the FBAA has an industry stakeholder base of approximately 16,000 individuals and encompasses our direct memberships.

Our membership base & reach plus our stakeholder base is made up of finance brokers from all facets of the industry including practitioners in home loans, commercial loans, motor finance, plant & equipment finance, credit cards/personal loan brokers, and includes lenders and aggregators etc as corporate members and or stakeholders we reach.

As noted in the relevant Discussion Paper:-

It sets out three options in relation to regulating vendor introducers:-

- a) Option 1 — maintaining the status quo, by retaining the existing exemption in the Credit Regulations for vendor introducers
- b) Option 2 — requiring vendor introducers to comply with the Credit Act; or
- c) Option 3 — modifying the application of the obligations in the Credit Act to vendor introducers, according to the functions they are performing, so that vendor introducers who are more actively involved in product selection and delivery would be subject to a higher level of regulation.

** Option 3 would result in vendor introducers operating under regulatory obligations as follows:

- a) vendor introducers who act as a broker would be required to hold an ACL or be appointed as a credit representative by an ACL holder;
- b) vendor introducers who act only on behalf of a single financier or under first or second choice arrangements would be subject to modified and limited regulation under the Credit Act; and
- c) vendor introducers who have a role in product selection but have a limited role in arranging finance would be subject to different modified regulation under the Credit Act.

The Discussion Paper estimates that currently in Australia the following numbers of vendor introducers are engaged in credit activities:

- a) between 12,000 and 12,300 retailers (with approximately 75,000 staff); and
- b) about 630 vehicle dealerships (with an estimated 30,000 persons engaging in credit activities).

*** Note the FBAA has estimated that there is approximately not less than 9,600 persons engaging as specialist motor finance loan writers. ***

In general terms there are significant differences in the structure of these businesses, with a different dynamic operating in relation to the role of POS finance. In the retail store context the retailer makes a profit from the sale or supply of goods or services, and the availability of credit maximises the volume of sales, and therefore the profitability of the business.

However, in relation to vehicle dealerships, cars can be sold at a loss or break-even price, with the dealership earning a profit on the transaction through the provision of finance and the sale of extra items (for example, servicing agreements, insurance and warranties). In other words, where no or minimal profit is generated from the sale of the vehicle the dealership will be under economic pressure to maximise the profit earned through commissions and other financial benefits payable in relation to the finance, and from the sale of items (other than the vehicle) financed through the credit contract.

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g) FNI reps are commonly remunerated by being paid a relatively low base salary plus commissions. They can operate in a way that is largely insulated from other aspects of the car dealership business.

*** note the author of this document (from the FBAA) strongly disagrees with the second sentence in the above extract from Page 5. It is my opinion and experience (noting I have physically and practically acted in the said role) that FNI Managers/Reps are and have always been an integral part of "closing the sale" in a dealership and never/ rarely insulated from the rest of the business. ***

FBAA's opinion and comments in addition to the two remarks in italics above, is that the most appropriate option that ensures consumer protection, commercial fairness, practical operational necessities, current commercial business protections, and market transparency is Option 3 in the presence of no other options available to consider.

The reasoning for this in addition to the above comments is in part due to:-

- a. Research undertaken by the FBAA of members and non-members shows that the broader currently broker regulated industry whom also conduct motor finance to varying degrees, believe strongly that all consumer FNI Reps should be fully regulated under the NCCP.
 - a. The FBAA doesn't prescribe to the full extent of these results as many industry participants still do not have a full and complete understanding of the parameters of 'First Choice' provisions, but in principle

we agree that First Choice provisions have a place in the structure if, and only if, they are adhered to by those impacted, which our research shows that many still do not understand the compliance differences between First Choice Exemptions vrs Broking and are either simply not understood or openly disregarded.

- b. The current status quo isn't working
- c. If the distinctions between First Choice and Broking are too difficult for FNI Reps to grasp and apply (which I do not believe is the case, but rather I believe there is a disregard for the Act as held), then we do support full compliance being applied to all regardless of First Choice provisionings and therefore Option 2 would be most appropriate model.

b. Additionally we support that regardless of which option is agreed to, that all FNI Reps should at least have undertaken Cert IV as a minimum education standard and they should be required to maintain compliance to the current obligations of ongoing education and CPD hours, as I do not believe the current level of training meets the greater needs of protecting consumer borrowers and having greater informed industry knowledge presenting a more professional industry sector. Plus they should be required hold relevant PI and EDR coverage and membership (ie. many general PI Policies in dealerships do not cover lending, and consumers need to have the right of EDR if needed to resolve disputes).

c. This is a large # volume sector for consumer lending and broking as noted herein due to the number of estimate sector participants and we must ensure, as we have as best as one can with general consumer finance brokers, that motor finance brokers are subject to the same compliance and responsible lending conduct obligations so to ensure consumer borrowers are not disadvantaged competitively and full disclosure is provided and informed decisions made by the borrower, and to ensure there is a level playing-field across all sector stakeholders/ participants.

d. Appropriate measures need to be in place to remove fraudulent practises from the sector and those caught in the practise thereof expelled from the industry. I highlight this issue as albeit we see this as normal best practise governances, but our research has highlighted this as a major issue and a repeated happening in that FNI Reps are caught out conducting fraudulent activities in credit and then turn up at another dealership and start writing business with the same lender/floor plan provider, or simply still allowed to practise. This must be stopped.

Therefore I summarise that as contained herein, Option 3 seems the most reasonable consideration suitable for all impacted areas of concerns, but, if the motor finance sector cannot and will not act according to the legislation and laws (which at the moment seems to be the case in a great number of dealerships albeit not all) then we would feel that there would be no alternative than to support Option 2.

Any further information or if you have any queries please do not hesitate to contact me.



Peter J White AFB CPF
CEO
National President and Chairman of the Board of Directors