



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

ABN 32 129 490 133

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

Unfair Contract Terms Consultation Paper  
Small Business;  
Competition and Consumer Policy Division  
The Treasury  
Langton Crescent  
Parkes ACT 2600

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**RE: Extending Unfair Contract Term Protections to Small Business**

The **Commercial Asset Finance Brokers Association of Australia Limited (CAFBA)** welcomes the opportunity to comment on the Treasury's review 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.

It is CAFBA's contention that any review should:

1. Direct the solution to the problem, which is predominantly commercial retail contracts and franchising arrangements.
2. Exclude Financial Products and Services Contracts, including Credit Contracts
3. Exempt small business to small business contracts.

The Consultation Paper states that "small businesses are vital to the economy in terms of employment, innovation and ultimately productivity and Australia's standard of living." A platform of the current government is to reduce red tape. It is CAFBA's view that the extension of consumer unfair contract laws will significantly increase red tape, whilst further inhibiting access to finance for small business, without providing any measurable benefit.

## CAFBA's Submission

### The Problem

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 disrupting the thousands of existing small business to small business contracts, that are entered into in the spirit of the arrangement and have little complaint.

The complaint statistics quoted in the Consultation Paper do not reflect that there is a trend of problems in small business contracts. Of the 894 complaints to ACCC from 1<sup>st</sup> January 2011 to 25<sup>th</sup> November 2013, 231 related to franchising. The total number of complaints over this period was 404,876 – which would make small business complaints 0.22%.

Therefore to impose further regulation on small businesses where there is no evidence to do so would be an impost that would be disruptive, costly and stifling to growth.

### The Solution

The Review should address its remedies where the problem exists, retail commercial contracts and franchising agreements.

Any other small business issues can be addressed under existing laws and government remedies.

1. Small Business Commissioners: The Offices of the Small Business Commissioners, both state and federal, can take a greater role in dispute resolution and mediation. There is to a degree a lack of awareness amongst small business of the roles of the commissioners and their accessibility. Whilst the profile of these offices is becoming more prevalent as they become more proactive, the Commissioner's role could be more widely advertised (eg flyers with BAS Statements).
2. ACCC: In June the Australian Competition and Consumer Commission launched 'Dispute Support', a new online dispute resolution information and referral tool for small businesses. The online tool aims to assist small business quickly and easily find the information they need to resolve a business dispute, and identify the most appropriate low-cost dispute resolution service. Dispute Support also provides information on understanding and managing disputes and tips to help avoid disputes in the future.

It is CAFBA's view that there are existing mechanisms in place to handle the very small number of disputes emanating from small business unfair contract terms.

## **Exclude Financial Services and Credit Contracts**

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.

Access to finance has already been acknowledged by many as being more difficult since the GFC, with many taskforces looking at ways of improving the access to finance for small business. Extending unfair contract terms to small business finance contracts would further restrict access to finance, as more red tape makes the small business finance sector less attractive for financiers to participate in; it adds further compliance, review of contract costs, and the potential for contracts to be lessened in their enforceability, which potentially increases the cost of credit.

There is no systemic failure in small business finance contracts to warrant intervention.

## **Exemption of Small Business to Small Business Contracts**

The complaint statistics outlined in the Consultation Paper do not warrant consumer unfair contract terms to be extended to small business.

Where no systemic problem exists the extension of these terms would cause considerable disruption and cost to small business. It would necessitate the review of every existing standard form contract template that is used in day to day operations that are relied upon to enter into normal business arrangements. This could lead to not only time costs, but unnecessary legal costs.

For the small number of small business to small business complaints that are recorded, there are existing remedies through small business commissioners and government agencies to provide adequate advice and dispute resolution to address the issues.

## **Conclusion**

It is CAFBA's view that the Review should adopt Option D.2 in attachment A of the Consultation Paper:

"Alternatively, the UCT provisions in the ASIC Act could remain, and be limited to, consumer contracts. A small business would therefore only be covered by the UCT provisions if they acquire consumer contract covered by the UCT provisions (for example a consume contract that is partly used for small business purposes)."

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

CAFBA's greatest concern is that any legislation that further inhibits access to finance for small business, as well as potentially adding to the cost of credit, where no current problem exists, is both unnecessary and unwarranted.

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

Yours Faithfully



David Gill  
Chief Executive Officer