Australian
Finance
Industry
Association

19 August 2024

Department of Treasury
Langton Crescent
Parkes ACT 2600
creditreforms@treasury.gov.au

To whom it may concern,

EXTENDING THE SMALL BUSINESS RESPONSIBLE LENDING OBLIGATIONS EXEMPTION

The Australian Finance Industry Association (AFIA) is the only peak body representing the entire finance industry in Australia[1].

We represent over 150 members, including banks, finance companies, vehicle and equipment finance providers, car rental and fleet providers, and fintechs. We are the voice for advancing a world-class finance industry and our members are at the forefront of innovation in consumer and business finance in Australia. Our members finance Australia's future.

We collaborate with our members, governments, regulators and customer representatives to promote competition and innovation, deliver better customer outcomes and create a resilient, inclusive and sustainable future. We provide new policy, data and insights to support our advocacy in building a more prosperous Australia.

AFIA appreciates the opportunity to respond to Treasury's proposed extension of the small business responsible lending obligations exemption.[2]

COMMENTS

The *Treasury Laws Amendment Instrument 2024: Small Business Exemption (the Regulations)* amends the *National Consumer Credit Protection Regulations 2010* to extend the exemption from responsible lending obligations for small businesses for a further two years. The consumer credit laws do not generally apply to business and commercial lending. However, these laws do apply to mixed-purpose loans (e.g. where a small business or sole trader applies for a single loan to be used for both personal and commercial purposes) unless the 'predominant' purpose of the loan is business-related.

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[1] Australian Finance Industry Association (afia.asn.au)
[2] https://treasury.gov.au/consultation/c2024-558382

Furthermore, we note that the exemption made in April 2020 to support timely access to finance for small businesses during the COVID-19 global pandemic provided that certain mixed-purpose small business loans are exempt from the responsible lending obligations so long as there is a 'genuine' business purpose that is not minor or incidental. In effect, this replaced the 'predominant purpose test' with a 'genuine purpose test' for small businesses. In practice, the exemption means a mixed-purpose small business loan is not subject to the responsible lending obligations where the loan has a real business purpose that is not insignificant to the loan. We also note that the exemption was initially put in place for a period of six months but has since been extended three times, with it due to expire on 3 October 2024.

AFIA supports Treasury's proposed extension of the small business responsible lending obligations exemption. It is critically important, especially given the current economic challenges and financial pressures across the economy, that small businesses have access to easily available and appropriately offered credit.

With this in mind, we provide the following comments:

1. AFIA supports the exemption being extended until 3 October 2026. This will provide an additional two years of data to inform a future decision on the exemption, including the effectiveness for small business customers and business lenders, the particular use of terminology and definitions, and the impact on business lending markets, including efficiency, competition and innovation, and accessibility and customer choice.
2. AFIA believes the exemption aligns with our ongoing efforts to ensure accessible credit options for small businesses. We actively engaged with AFCA through its consultations on their approaches to responsible lending[3] and appropriate lending[4]. We are also proactively collaborating with our members to develop a new AFIA Finance Industry Code of Practice, which builds on our existing codes of practice and includes industry commitments covering both consumer and small business lending, with a consultation draft due to be published shortly.

Should you wish to discuss our submission or require additional information, please contact me via diane.tate@afia.asn.au or on 0421 441 777.

Yours sincerely

Diane Tate
Chief Executive Officer

[3] https://www.afca.org.au/news/latest-news/afca-issues-its-approach-to-responsible-lending
[4] https://www.afca.org.au/news/latest-news/afca-issues-its-approach-to-lending-to-small-business