

10 December 2021

Jodi Keall
Director
Market Conduct Division
The Treasury
Langton Crescent
PARKES ACT 2600
mbcomms@treasury.gov.au

Dear Ms Keall

TREASURY LAWS AMENDMENT (MODERNISING BUSINESS COMMUNICATIONS) BILL 2021 (PROPOSED BILL)

The Australian Finance Industry Association (AFIA) appreciates the opportunity to provide a submission on these proposed changes.

AFIA is a leading advocate for the Australian financial services industry. We support¹ our members to finance Australia's future. We believe that our industry can best support Australia's economy by promoting choice in and access to consumer and business finance, driving competition and innovation in financial services, and supporting greater financial, and therefore social, participation across our community.

AFIA represents over 100 providers of consumer, commercial and wholesale finance across Australia. These banks, finance companies, and fleet and car rental providers, and fintechs provide traditional and more specialised finance to help businesses mobilise working capital, cashflow and investment. They are also at the forefront of financial innovation in consumer finance.

OUR SUBMISSION

Consistent with our submission dated 17 September 2021, AFIA supports the proposed bill for the following reasons. The amendments:

- to allow companies to sign and execute documents electronically or using wet-ink and companies to send meeting-related documents electronically or in hard copy have proven to be effective during the COVID-19 global pandemic. These changes will modernise the legal obligations for convening and holding meetings as well as the provision of associated information and documentation
- will support economic recovery by accelerating deregulation and red tape reduction as well as ensure right-sized and fit for purpose regulation

¹ [Australian Finance Industry Association \(afia.asn.au\)](http://www.afia.asn.au)

- will allow Australian financial institutions and corporates to remain globally competitive and bring us into line with other jurisdictions and global peers.

RECOMMENDATIONS

Publishing notices in newspapers

AFIA welcomes the modifications to the National Credit Code (NCC) 'publication in a newspaper' requirements.

However, we do not believe the requirement to publish a notice of change to an interest rate or a credit fee or charge (under section 64 and section 66 of the NCC) in a newspaper, so it meets the requirement of being 'public and reasonably prominent,' will result in the right audience being targeted.

The right audience for a notification of interest rate changes is primarily existing customers, not the general public. Therefore, we **recommend** that the proposed bill be amended so the requirement of being 'public and reasonably prominent' can be met by lenders disclosing interest rate changes on their websites and internet banking platforms.

Electronic consent reform

AFIA is supportive of the recent incremental improvements to the regulation of electronic communications under the NCC.

The NCC electronic consent (e-consent) regime was fit for purpose at the time of its introduction. However, we **recommend** that Treasury review this regime, given recent changes in lending practices and regulatory reform around 'digital lending' - for example, the introduction of 'electronic mortgages' and digital certificates of title.

Undertaking such a review will support the Australian Government's Modernising Business Communications agenda,² the work of the Deregulation Taskforce,³ and the Digital Economy Strategy⁴. More detail is included in Attachment B.

² [Modernising Business Communications | Treasury Ministers](#)

³ [Progressing Australia's Deregulation Agenda | Deregulation \(pmc.gov.au\)](#)

⁴ [Australia's Digital Economy \(pmc.gov.au\)](#)

CLOSING COMMENTS

The changes outlined in the proposed bill are practical and reflect an evolution of stronger governance, internal controls, processes and practices – all of which are important, particularly at this point in our economic recovery from the COVID-19 global pandemic.

Passing the proposed bill will deliver benefits to consumers, businesses, and shareholders through:

- ensuring faster and simpler customer interactions and application turnaround times
- improving accessibility options for all customers
- streamlining processes by embedding technology and promoting digitisation across financial services and our economy.

Should you wish to discuss our submission or require additional information, please contact me at karl@afia.asn.au or 02 9231 5877.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Karl Turner', with a long horizontal flourish above the name.

Karl Turner

Executive Director, Policy & Risk Management

ATTACHMENT A: AFIA BACKGROUND

The Australian Finance Industry Association (AFIA) is the voice of a diverse Australian finance industry.

AFIA represents over 100 providers of consumer, commercial and wholesale finance in Australia, which includes:

- major, regional and mutual/community owned banks
- providers of consumer finance, including home loans, personal loans, consumer leases, credit cards, buy now pay later services, and debt purchasers
- providers of land finance, including residential and commercial mortgages and bridging finance
- equipment financiers, including commercial equipment financing ranging from agri-equipment to small ticket equipment financing
- motor vehicle financiers, including consumer motor finance, novated motor finance, small business motor finance and heavy vehicle finance
- fleet leasing and car rental providers
- providers of commercial finance, including secured and unsecured loans and working capital finance to businesses, including small businesses.

AFIA's members range from ASX-listed public companies through to small businesses providing finance, which operate via a range of distribution channels, including through 'bricks and mortar' premises (physical branches and other outlets), via intermediaries (including finance brokers, dealerships, retail suppliers), and through online access or platforms (traditional financial institutions and fintechs).

AFIA's members collectively operate across all states and territories in Australia and provide finance to customers of all demographics from high to low-income earners and to commercial entities ranging from sole traders, partnerships and across the corporate sector in Australia.

AFIA's members provide a broad range of products and services across consumer and commercial finance, a snapshot of these include:

- Consumer: home loans, personal unsecured loans, revolving products (including credit cards and interest free products coupled with lines of credit), personal secured loans (secured by land or personal property); consumer leases of household assets (including household goods, electrical/IT devices or cars) and buy-now, pay later services.
- Commercial: land, asset or equipment finance (finance/operating lease, secured loan or hire-purchase agreement or novated leases); business finance and working capital solutions (secured loans, online unsecured loans; debtor and invoice finance; insurance premium funding; trade finance; overdrafts; commercial credit cards), together with more sophisticated and complex finance solutions.

For further information about AFIA, please see [here](#).

ATTACHMENT B: E-CONSENT REFORM

Background

The current NCC e-consent model has two potential limitations:

- arrangements can be confusing to customers, in particular those customers with credit and non-credit products with the same lender. For example, a customer with home loan and a deposit account (such as offset transaction account) will be subject to different regimes and different processes for customer communication options
- it is inefficient for product issuers, who may have to maintain multiple systems and processes to correctly collect, store, implement, and change customer preferences. Change management also becomes more complex which increases operational risk and risk of error.

Potential solution

Subject to further consideration around potential impacts on Items 52 and 53 of Schedule 1 of the Electronic Transactions Regulations 2020, the Corporations Act approach to e-consent could be mirrored for communications governed by the NCC.

As an example, the Corporations Act s1017B requires issuers of financial products to notify holders of those products of relevant 'changes and events'. Sub-section (3) allows such a notification to be given:

- in writing,
- electronically, or
- in a way specified by the regulations.

Corporations Regulation 7.9.75A states that a notification requirement under s1017B may be met by 'notifying the holder in any way agreed to by the holder'.

This approach could be applied to NCC sections 187 and 195, Regulation 28L, and associated and / or analogous provisions to allow notices or documents to either be sent to the address nominated by the customer or for the customer to be notified in any other way agreed with the customer. In line with the Corporations Act approach, if an electronic or any other notification method was agreed with the customer, this could only be changed by variation of that agreement.

ASIC's Regulatory Guide 221 (RG221) outlines that 'provisions enabling disclosure in any way agreed are a separate, additional option for delivery beyond the sending of disclosures to electronic addresses'.

RG221 then outlines best practice for obtaining customer agreement to a delivery method, as well as the scope of delivery options that could be agreed with a customer. RG221 supports the notion of innovation such as the development of fully digital products and services in the lending space.

Therefore, mirroring the Corporations Act could be a potential solution because it:

- permits issuers to adopt a consistent e-consent approach across their product lines
- provides flexibility, encourages competition and innovation but is scalable and proportionate as it is not binding on all lenders