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Senate Standing Committees on Economics  
PO Box 6100  
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Canberra ACT 2600

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By electronic upload and email: [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

Dear Committee

## **TREASURY LAWS AMENDMENT (MODERNISING BUSINESS COMMUNICATIONS AND OTHER MEASURES) BILL 2022**

The Mortgage & Finance Association of Australia (**MFAA**) appreciates the opportunity to provide a submission to the Economic Legislation Committee's inquiry into the Treasury Laws Amendment (Modernising Business Communications and Other Measures) Bill 2022 (**the Bill**). As context for this submission, the MFAA is Australia's peak industry body for the mortgage and finance broking industry. For more information on the MFAA please see **Attachment A**.

Our submission in relation to the Bill is limited to amendments related to the reference checking and information sharing protocol for mortgage intermediaries (**reference checking and information sharing protocol**).<sup>1</sup>

### **OUR SUBMISSION**

#### **A. Division 18 - Reference checking and information sharing protocol**

We note the aspects of the Bill as it relates to the reference checking and information sharing protocol was originally housed within the *Miscellaneous Amendments to Treasury Portfolio Laws Bill 2022*,<sup>2</sup> to which the MFAA made a submission.<sup>3</sup>

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<sup>1</sup> Draft Bill Schedule 4 Division 18.

<sup>2</sup> The Treasury consultation on the *Miscellaneous amendments to Treasury Portfolio Laws Bill 2022* can be found [here](#).

<sup>3</sup> The MFAA's submission on the *Miscellaneous amendments to Treasury Portfolio Laws Bill 2022* can be found [here](#).

By way of background, the reference checking and information sharing protocol was implemented Financial Services Royal Commission Recommendation 2.7. Recommendation 2.7 proposed that Australian credit licensees should be bound by information sharing and reporting obligations relating to mortgage brokers and was implemented by way of amendment<sup>4</sup> to the *National Consumer Credit Protection Act 2009*, with the protocol commencing on 1 October 2021.

The policy objective of the reference checking and information sharing protocol is to ensure there are robust controls in place within the mortgage broking industry to prevent those responsible for poor conduct from being able to move between organisations and industries and continue this behaviour. This policy objective aligns with our views as the peak industry body - that undertaking background and reference checking of prospective representatives is an essential element in the recruitment process.

We have, in our submissions and engagements with Treasury noted that for the reference checking and information sharing protocol to meet its intended policy objectives, the protocol should be extended to include aggregators that are not licensees of the mortgage broker (i.e. the prospective representative). An aggregator acts as an intermediary between lenders and brokers, providing a significant and important compliance gatekeeper function within the industry. This includes the training and monitoring of mortgage brokers. Brokers may either be credit representatives under an aggregator's license or hold their own license and instead have a commercial arrangement with an aggregator to provide compliance infrastructure, training, mentoring and education to the licensed broking business. In the latter case, the current Protocol does not allow the aggregator to conduct a reference check of the prospective representative. As noted in the Explanatory Memorandum to the draft Bill, "*contrary to the policy intention...aggregators who are also Australian credit licensees, may not have been required to comply with the Reference Checking and Information Sharing Protocol in certain circumstances under the previous legislative framework.*"<sup>5</sup>

The provisions within the draft Bill<sup>6</sup> meets the intended policy objective and as such we strongly support the proposed amendments. Noting the extension of time requested by the Committee to report on its review of the draft Bill, it is imperative that the draft Bill be passed through Parliament as soon as practicable so as to provide a good, cohesive reference checking and information sharing framework for the mortgage broking industry that is fit for purpose.

## **B. Other aspects of the Bill**

We support the proposed provisions relating to the implementation of the recommendations made by the ALRC Interim Report A<sup>7</sup> and the amendments to transfer ASIC legislative instruments into the primary law.<sup>8</sup> We consider these proposals sensible. We also support the proposed amendments to the Corporations Act to enable all documents to be signed or executed electronically.

We hold no concerns with other amendments proposed within the draft Bill.

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<sup>4</sup> In response to the Financial Services Royal Commission's recommendations, the Government passed the *Financial Sector (Hayne Royal Commission Response) Act 2020* amending the *Corporations Act 2001* and *National Consumer Credit Protection Act 2009* to give ASIC the power to establish a Reference Checking and Information Sharing Protocol for financial advisers and mortgage brokers. To give effect to the Protocol, ASIC created the ASIC Corporations and Credit (Reference Checking and Information Sharing Protocol) Instrument 2021/429 (**ASIC Protocol**).

<sup>5</sup> Explanatory Memorandum pg 83.

<sup>6</sup> Draft Bill Schedule 4 Division 18.

<sup>7</sup> Draft Bill Schedule 2.

<sup>8</sup> Draft Bill Schedule 3.

## CLOSING COMMENTS

We extend our thanks to the Committee for the opportunity to provide this submission. If you wish to discuss this submission or require further information, please contact me at

[REDACTED].

Yours sincerely

[REDACTED]

**Naveen Ahluwalia**

Head of Policy and Legal

Mortgage & Finance Association of Australia

## ATTACHMENT A

The MFAA is Australia's peak industry body for the mortgage and finance broking industry, with over 14,500 members. Our members include mortgage and finance brokers, aggregators, lenders, mortgage managers, mortgage insurers and other suppliers to the mortgage broking industry. Brokers play an important role in intermediated lending, providing access to credit and promoting choice in both consumer and business finance. Brokers now facilitate more than two thirds of all new residential home loans<sup>9</sup> and at least four in ten small business loans<sup>10</sup> in Australia.

The MFAA's role, as an industry association, is to provide leadership and to represent its members' views. We do this through engagement with governments, financial regulators and other key stakeholders on issues that are important to our members and their customers. This includes advocating for balanced legislation, policy and regulation and encouraging policies that drive competition and improve access to credit products and credit assistance for all Australians.

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<sup>9</sup> [MFAA Industry Intelligence Service Report 14<sup>th</sup> Edition](#) pg 4.

<sup>10</sup> Productivity Commission research paper [Small business access to finance: The evolving lending market](#) pg 44.