

1 March 2021

Our ref: KB WD: MC

Data Economy Unit
Market Conduct Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: mbcomms@treasury.gov.au

Dear Taskforce

Modernising Business Communications – Improving the technology neutrality of Treasury Portfolio laws

Thank you for the opportunity to provide feedback on the Consultation Paper “Modernising Business Communications – Improving the technology neutrality of Treasury Portfolio laws” (**Consultation Paper**).

Queensland Law Society (**QLS**) is the peak professional body for the State’s legal practitioners. We represent and promote over 13,000 legal professionals.

Executive Summary

- QLS broadly supports the consultation objective of improving the technology neutrality of the Treasury portfolio laws.
- QLS also broadly supports the proposed principles for electronic signatures outlined in the Consultation Paper.
- However, any law reform must not disenfranchise or adversely affect vulnerable people.
- QLS also recommends that appropriate guidance and support is provided to business owners to mitigate against the risks of fraud.

Consultation with consumer groups regarding next stage of reforms

QLS broadly supports “Option II” in the Consultation paper, which is “agreeing principles in one or more forms of communication to guide legislative change.”

It is important that legislation remains current and does not prescribe technology-specific forms of communication, payment or other concepts (such as disclosure requirements) which can become outdated and irrelevant unless there are specific reasons as to why particular methods of communication are deemed necessary or appropriate.

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It is also important that any reforms are carefully considered to ensure that they do not adversely and disproportionately affect particular segments of our community.

The portfolio laws in the Consultation Paper affect investors and consumers from a wide range of backgrounds. It is important that any reforms do not disadvantage communications with these groups.

We are particularly mindful of the needs of older people, culturally and linguistically diverse communities and people living in remote, regional and Indigenous communities. If members of these groups are impacted by communications under the laws, these laws will need to be able to accommodate any difficulties with receiving communications in one form or another, for example, where there is limited or no access to the internet or a computer, or where physical mail may be delivered irregularly.

For these reasons, we support the intent of the reforms to be non-prescriptive, but it is important that there is still some consideration given to the ultimate audience or recipients of these communications to ensure that the mode selected is appropriate.

As the Government moves into the next phase of consultation, we recommend that Treasury ensures this consultation includes organisations such as the Council of the Ageing, Australian Council of Social Service, Indigenous advocacy and education groups such as the Indigenous Consumer Assistance Network and community legal centres and legal assistance services with a consumer law focus.

Suggested organisations include Caxton Legal Centre Consumer Law Service (Brisbane), the Consumer Action Law Centre (Victoria) and the Financial Rights Legal Centre (NSW). Community Legal Centres Australia will be able to provide recommendations for other community legal centres around Australia with this focus. The Consumer Protection Unit at Legal Aid Queensland also provides legal assistance to consumers with money and debt concerns. Financial Counselling Australia, the peak body for financial counsellors in Australia, may also be able to provide useful feedback in relation to the proposed reforms, based on their work with financial counsellors and people in financial difficulty.

Electronic signatures

QLS also broadly supports the proposed principles for electronic signatures outlined in the Consultation Paper, subject to the comments below.

QLS considers that many of the electronic execution reforms implemented in response to the COVID-19 pandemic should be retained. These reforms reflect modern business practice.

QLS supports the recent changes in Queensland facilitating the electronic signature of deeds, affidavits, statutory declarations and certain mortgages.¹ QLS also supports the proposed amendments to the *Corporations Act 2001* (Cth), as outlined in the recently introduced Treasury Laws Amendment (2021 Measures No. 1) Bill 2021, which extends the relief allowing companies

¹ COVID-19 Emergency Response Act 2020 and associated regulations available at legislation.qld.gov.au

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to use technology to hold meetings, distribute meeting related materials and validly execute documents.

For the legal profession, these reforms also enhance access to justice for clients by providing them with efficient options for executing documents and completing transactions.

Risks to business in e-commerce including verification of identity

Ensuring that the portfolio laws are technology-neutral will generally benefit small businesses, by giving them the flexibility needed to adopt processes best suited to their business needs and the diverse needs of their clients.

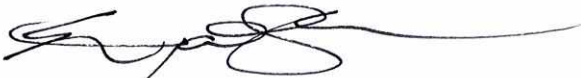
However, as identified in the Consultation Paper, one of the issues arising from increased use of technology is how verification of identity (VOI) should be undertaken.

Small businesses often have limited resources but are a potential target for fraud. If the intention of these reforms is to facilitate and encourage an increased use of technology by all businesses, it is critical that small businesses are aware of the risk of fraud if appropriate VOI is not carried out.

We recommend that Government provide support and guidance to business owners to make them aware of the risks involved in e-commerce, including taking appropriate steps to mitigate the risks of fraud in the electronic sphere. This should include publishing guidance to help a business identify an appropriately robust VOI process that they can use in their particular circumstances.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on (07) 3842 5930.

Yours faithfully



Elizabeth Shearer
President