

9 September 2021

Market Conduct Division
The Treasury
Langton Crescent
Parkes ACT 2600

Sent by email: businesscomms@treasury.gov.au

**Using technology to hold meetings and sign and send documents
Draft exposure bill**

Thank you for the opportunity to provide a submission on the *Treasury Laws Amendment (Measures for Consultation) Bill 2021: Use of technology for meetings and related amendments* exposure draft legislation, the content of which will support companies and their officers to be able to permanently use technology to satisfy *Corporations Act 2001* (**the Corporations Act**) requirements (**the Proposed Legislation**).

The Proposed Legislation

ARCA welcomes the introduction of the Proposed Legislation. We strongly support the Government's reform of the Corporations Act which will make permanent a number of the temporary measures put in place to assist businesses during the COVID-19 pandemic.

We note that such temporary measures include those contained in the *Treasury Laws Amendment (2021 Measures No.1) Act 2021* (**the Temporary Legislation**) and we understand that the Proposed Legislation will make permanent changes to the Corporations Act so as to;

- enable the permanent use of technology in relation to the execution of documents (including deeds);
- allow companies and registered schemes to hold hybrid meetings and thereby give shareholders the ability to choose to attend meetings either in person or remotely; and,

- allow for the use of technology in the signing of meeting-related documents and the provision of those documents to members.

ARCA's submission

ARCA is the peak industry association for businesses using consumer information for risk and credit management. Our Members include banks, mutual ADIs, finance companies and fintech credit providers, as well as credit reporting bodies and, through our Associate Members, many other types of related businesses providing services to the industry. Collectively, ARCA's Members account for well over 95% of all consumer lending in Australia.

In addition to its role as industry association group, ARCA developed the business-to-business rules and data standards under which credit reporting information is exchanged between credit providers, comprising the Principles of Reciprocity and Data Exchange (**PRDE**) and the Australian Credit Reporting Data Standards.

Organisations are only bound by the PRDE if they agree to become a signatory and accept the principles contained in the PRDE. In order to become a signatory to the PRDE, organisations must sign the PRDE Deed Poll, which binds the organisation to exchange credit reporting information in accordance with the requirements of the PRDE.

ARCA's subsidiary, the Reciprocity and Data Exchange Authority (**RDEA**), is the PRDE Administrator Entity.

As the Administrator of the PRDE, the RDEA's functions include management of the day-to-day operation of the PRDE framework comprising paperwork (such as arranging for the execution of the PRDE Deed Poll by organisations), finances and the running of the PRDE compliance framework.

In providing this submission, ARCA draws heavily upon the experience of the RDEA as the PRDE Administrator Entity.

The benefits of the use of technology to sign and send documents (including deeds)

Based on ARCA's experience detailed above, our submission relates primarily to the provisions relating to the signing and sending of documents as contained within the '*Technology neutral signing*' provisions set out at Schedule 1, Part 1.2AA—*Signing and sending documents*, Division 1, sections 110 to 110B.

The explanatory memorandum to the Proposed Legislation (**the EM**), provides that;

"... the Bill allows certain documents to be signed in flexible and technology neutral manners. This allows for business communications to be conducted with greater ease and lower costs."

The experience of the RDEA in utilising technology to send, sign and receive documentation such as the PRDE Deed Poll, has been consistent with the statement set out above and has allowed for the RDEA's dealings with organisations to be conducted in a far more efficient, timely and transparent manner (when compared to relying on a 'wet ink' or a 'paper' method of communication or execution of documents).

In particular, we have noted that obtaining the electronic signatures of directors, company secretaries or witnesses to electronic versions of the PRDE Deed Poll (as opposed to obtaining 'wet ink signatures' on original 'paper' versions), has resulted in these documents being executed within a far quicker turn-around time and appears to require significantly less resources.

It has also been our experience that the benefits associated with the electronic execution and dispatch of documents such as the PRDE Deed Poll, apply to both large and small signatory organisations, and are particularly pronounced where the signatories of an organisation are located within differing offices or locations.

In terms of potential drawbacks associated with the use of technology in this context, the RDEA's predominant concern to date has been the legal uncertainty which was to arise after 31 March 2022, when the Temporary Legislation was to cease being in force.

In the absence of the Proposed Legislation (or legislation of similar effect), the RDEA may be unable to comply with the Corporations Act (including section 127) without reverting back to requiring 'wet ink signatures' on original 'paper' documents. In this regard, we note that in the absence of federal legislative provisions, the RDEA may be unable to rely on the recent legislative changes in Victoria (the jurisdiction of which applies to the PRDE Deed Poll) to provide for the simplified electronic execution and sending of documents, such as deeds¹.

Given the above, ARCA re-emphasises its support of the Proposed Legislation and its removal of the legal uncertainty which will otherwise exist post 31 March 2022.

Other benefits of the Proposed Legislation

ARCA wishes to also note the following provisions of the Proposed Legislation, which we consider will also be of assistance to organisations when seeking to utilise technology in connection with the signing of documents (including deeds):

- Introducing the ability for agents to make, vary, ratify or discharge contracts and execute documents (including deeds) on behalf of companies (Schedule 1, item 3, sections 126(1) and (4)):
- Amending the Corporations Act so that companies with a sole director and no company secretary can use the statutory document execution mechanisms contained within the legislation (Schedule 1, items 4 and 7, sections 127(1)(c) and 127(2)(c)):
- Allowing businesses to assume that a document has been duly and validly executed by a company, if the document appears to have been signed in accordance with section 127(1) of the Corporations Act, or if a company seal appears within the document, that it appears to have been fixed to the document in accordance with sections 127(2) and 127(2A) of the Corporations Act (Schedule 1, items 15 and 16, sections 129(5) and (6)): And,
- inserting within the Corporations Act a clear statement that the Proposed Legislation does not require a person to:
 - (i) sign the same form of the document as another person;

¹Refer to the *Electronic Transactions (Victoria) Act 2000*.

- (ii) sign the same page of the document as another person;
- (iii) use the same method to sign the document as another person; or
- (iv) require the document signed by a person to include all the information recorded in the document (Schedule 1, item 1, section 110A(4)).

If you have any questions about this submission, please feel free to contact me on 0414 446 240 or at mlaing@arca.asn.au, or Mary Vancea on 0403 137 435 or at mvancea@arca.asn.au.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'M. Laing', is positioned above the typed name.

Mike Laing
Chief Executive Officer
Australian Retail Credit Association