

30 October 2020

Ms Christine Barron
Division Head
Market Conduct Division
The Treasury
Langton Crescent
Parkes ACT 2600

By email: businesscomms@treasury.gov.au

Dear Ms Barron

Making permanent reforms in respect of virtual meetings and electronic document execution

The Australian Finance Industry Association (AFIA) welcomes the opportunity to provide comments to Treasury on the exposure draft Corporations Amendment (Virtual Meetings and Electronic Communications) Bill 2020.

AFIA represents over 100 providers of consumer, commercial and wholesale finance in Australia including retail banks, finance companies and fintech's, which provide innovative consumer products and specialised finance to meet small to medium enterprises (SMEs) working capital, cashflow and investment needs. For more information about AFIA, please see **Attachment A**.

AFIA's role as an industry body is to drive industry leadership and represent members' views, facilitate self-regulation through industry codes, and to work with the Federal Government, financial regulators, and other stakeholders to promote a supportive environment for the financial services industry.

AFIA along with the Australian Banking Association, the Business Council of Australia, the Australian Institute of Company Directors, the Financial Services Council, the Council of Small Business Organisations, the Australian Property Institute, the Customer Owned Banking Association, the Real Estate Institute of NSW and Real Estate Institute of Australia have been working together to look at opportunities to modernise the country's approach to conducting essential business electronically.

OUR SUBMISSION

We note that while members have contributed to our submission, the position being put by AFIA may not reflect a particular member's organisationally-specific position on all of the issues. These will get captured through a submission from that organisation.

During the COVID-19 pandemic, the Commonwealth and State Governments enacted emergency regulations that have enabled essential business transactions to occur. We congratulate the Government and Treasury for taking a lead on these issues by making these changes permanent and note that it will be important to work with States and Territories to ensure the permanent reforms are delivered nationally on a consistent basis.

We strongly support the Federal Government's decision to provide regulatory relief from the Corporations Act during the COVID-19 pandemic, ensuring that essential business across the financial services industry could continue to occur. These changes were extremely welcome by the finance sector and were critical in supporting continued competition, innovation and customer choice, and the appropriate flow of credit.

The COVID-19 pandemic has fast-tracked technology plans and accelerated digitisation strategies for Australian consumers and businesses (including small businesses). This has not just enabled opportunities for continued trade through the crisis, but also promoted more efficient operations and a transformation in the supply chain and the way goods and services are offered, purchased, and used by Australians.

It is critical for legal, regulatory and business frameworks to underpin better outcomes for customers and the finance industry. We welcomed the Federal Government's recent announcement that it is investing almost \$800 million to enable businesses to take advantage of digital technologies to grow their businesses and create jobs.

Further, the Senate FinTech and RegTech Inquiry's interim report recommendations to:

- embed digital practices in corporations and financial services laws and
- accelerate fintech and digital identification initiatives

are all practical recommendations that are not only sensible improvements to existing frameworks but will also be very important to help stimulate our economic recovery.

It is critical that the proposed amendments to the Corporations Act reflect this as this will support continued competition, innovation and customer choice and the appropriate flow of credit to both individual consumers and small businesses.

RECOMMENDATION 1 – PROVIDE FURTHER CLARIFICATION ON THE ELECTRONIC EXECUTION OF DEEDS AND FOR OTHER DOCUMENTATION

We note that with the introduction of the temporary reforms, there has been uncertainty in relation to deeds. It is essential that permanent reforms resolve the legal uncertainty that questions whether an electronically created and signed deed is binding and enforceable. The financial services industry uses extensively security agreements and guarantees intended to have effect as deeds. Quick and prompt resolution of this issue will have a beneficial impact on a large percentage of customers, especially small businesses.

We recommend Treasury consider additional drafting to clarify this point and that deeds will be able to be accepted in electronic form and may be electronically signed.

Further, we recommend Treasury to consider making additional digital economy reforms to improve processes and create efficiencies for consumers to access finance. This would be best achieved by a general regulatory waiver of any requirement that means a lender must obtain an original document in 'hard' copy. Allowing a lender to obtain documents in digital format will improve (amongst other things) access to credit for small businesses, as many small business owners are time poor and may

not have easy access to 'hard' copy versions of documents that they may need to provide to lenders (including for regulatory compliance purposes).

RECOMMENDATION 2 – ENSURE PROPOSED AMENDMENTS ARE TECHNOLOGY NEUTRAL AND ARE DRAFTED IN SUCH A MANNER THAT THEY CAN ACCOMMODATE UPCOMING TECHNOLOGICAL ADVANCEMENTS

We note that the requirements in section 127 (3B)(c), appear to require a separate electronic communication, in addition to the use of electronic signatures, by the signer, which could be interpreted that the communication will need to have been sent to the organisation by the signer. This requirement seems to be less technology neutral than the temporary reforms and may cause practical implications, as the way an electronic service platform is set up may not send the document from the signer but from the platform itself. This potential ambiguity will cause confusion for organisations, as it will be unclear when using an electronic service platform if the organisation will be compliant.

To ensure there is minimal impact on the process for customers, we recommend that the section is amended to remove these ambiguities and that the proposed amendments are drafted in a manner that is sufficiently broad enough to accommodate different service platform operating models and upcoming technological advancements. The proposed amendments should be technology neutral and should not inadvertently create potential arbitrage based on system capabilities.

RECOMMENDATION 3 – TAKE EXTRA CARE WITH VIRTUAL MEETINGS TO ENSURE COMMUNICATION AND DOCUMENTS ARE ACCESSIBLE

In principle, we support the proposed amendments which permit companies to:

- Hold meetings other than in a specified place
- Allowing for virtual meetings to take place
- Facilitate innovation in how companies and business engage with shareholders and other stakeholders.

Allowing Directors' meetings, meetings of shareholders of a company and meetings of members of a registered scheme to be held using electronic means (provided that all persons have a reasonable opportunity to participate), will likely increase engagement and participation by shareholders and other stakeholder who are unable to attend physical meetings.

However, it will be important that the proposed amendments ensure communications and documents are still accessible, and that stakeholders will be made reasonably aware of the meeting process and requirements, and how they can participate in each meeting. Failure to do so may inadvertently disenfranchise those stakeholders who are not familiar with technology and may not be comfortable to access electronic voting platforms.

CONCLUDING COMMENTS

Treasury has a great opportunity to leverage how Australia consumers and businesses have pivoted during the COVID-19 pandemic and embraced more technological innovation by ensuring appropriate and balanced legislation and standards are now delivered. This will be critical to deliver on the policy intent of the Government's reforms and support competition, innovation and customer choice.

By adopting our recommendations, we believe that policy settings would be improved so we continue to:

- promote simple, convenient, innovative, and affordable credit to finance Australia's future, including maximising access to credit for customers able and willing to service their commitments and minimising the likelihood or incidence of customers entering unsuitable credit contracts
- foster competition and innovation in Australia's financial services industry, which enables our members to grow, expand and thrive as key participants in the lending market and other markets, and
- generate greater financial and economic participation by consumers and small businesses in Australia's financial system and economy, and social participation to create financial wellbeing. This is even more important in a post COVID-19 environment where the focus need

Should you wish to discuss our feedback further, or require additional information, please contact me or Chalisa Parekowhai, Associate Director Policy at chalisa@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 extending to the left.

Karl Turner
Executive Director, Policy & Risk Management

ANNEXURE A

The Australian Finance Industry Association (AFIA) is the voice of a diverse Australian finance sector. 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; and
- 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](#).