

17 September 2021

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

Dear Jodie

TREASURY LAWS AMENDMENT (MEASURES FOR A LATER SITTING) BILL 2021: USE OF TECHNOLOGY FOR MEETINGS AND RELATED AMENDMENTS (PROPOSED CHANGES)

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

AFIA supports the proposed changes for the following reasons:

- they have proven to be effective during the COVID-19 global pandemic and will modernise the legal obligations for convening and holding meetings as well as the provision of associated information and documentation
- they will support economic recovery by accelerating deregulation and red tape reduction as well as ensure right-sized and fit for purpose regulation
- they will allow Australian financial institutions and corporates to remain globally competitive and bring us into line with other jurisdictions and global peers.

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

Measures have proven to be effective during the COVID-19 global pandemic

AFIA has previously acknowledged the Government for its quick response by enacting temporary relief provisions to the Corporations Act to allow essential transactions to occur electronically.

These temporary measures ensured the law did not impede financial services, business transactions, and economic activity during lockdowns and other COVID-related disruptions. Additionally, the measures allowed the law to keep pace with changing demands of customers, businesses, and financial institutions. bought on by the pandemic.

Specifically, the measures:

- meant that financial institutions could continue to offer financial products and services and their customers could continue to conduct their transactions, manage their finances, and operate their businesses
- allowed statutory processes and meetings to continue enabling corporates to operate, including directors to discharge fiduciary duties and shareholders to participate in meetings and receive documentation and dividend payments
- provided opportunities for fast-tracking digitisation and implementing innovative engagement models
- provided confidence to the community (in a time of uncertainty) and allowed business, trade and economic activity to continue until more formalised plans for economic recovery could be enacted.

Measures will support economic recovery by accelerating deregulation and ensuring right-sized regulation

AFIA notes and welcomes the further clarifications made to Division 1 of the Exposure Draft that make clear that:

- a person is not required to sign the same form or page of the document as any other person
- a person is not required to use the same method as any other person
- a document signed by a person does not need to include all the information recorded in the document.

While these statutory clarifications may seem minor in nature, these measures will fast-track digitisation in financial services and across our economy as well as support innovative engagement models.

AFIA believes the measures will significantly improve efficiency and reduce costs, which will ultimately benefit customers and shareholders and ensure right-sized and fit for purpose regulation.

Furthermore, making these temporary measures permanent will support the Australian Government's Modernising Business Communications agenda,² the work of the Deregulation Taskforce,³ and the Digital Economy Strategy⁴.

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

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

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

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

Deloitte⁵ outline that the COVID-19 global pandemic turbocharged digital adoption across products and demographic segments. Similarly, the Reserve Bank⁶ outline that the pandemic has accelerated the shift to electronic payments as consumers and retailers have sought to reduce their use of cash.

AFIA believes that success in any industry, and especially in financial services, stems from being agile in volatile and uncertain markets and creating competitive advantage through innovation.

It is essential for financial institutions and corporates to recognise, adopt and drive trends in technology that improve efficiency, compliance, and accessibility.

It is also essential for the legal and regulatory settings to keep pace with these changes in supply and demand.

In this context, we note:

1. recent commentary by ASIC regarding the importance for financial institutions to embrace technology across their businesses and for the legal framework (specifically, Chapter 7 of the Corporations Act) to be simplified and modernised⁷.
2. Australian Institute of Company Directors (AICD), Governance Institute of Australia, Law Council of Australia and the Australasian Investor Relations Association (ARIA) guidance published in April 2021⁸ which supports financial institutions and corporates to implement governance, internal controls, systems and policies and procedures to operationalise these changes.
3. approaches taken in counterparty jurisdictions, including the Consumer Credit Act⁹ amended in 2004 to permit electronic communications and the Electronic Signatures in Global and National Commerce Act that provided a general rule of validity for electronic records and signatures in 2000¹⁰.

RECOMMENDATIONS

Use of technology for meetings

AFIA support the protections under the law that shareholders and members are given a reasonable opportunity, as a whole, to ask questions or make comments on the management of a company. However, this may create an unnecessary compliance burden for smaller and not-for-profit organisations.

Therefore, we recommend that the legislation should be scalable and provide flexibility to allow organisations to provide the most appropriate method of communication with shareholders or members that reflects their organisational type, size, and meeting format. This should not mandate that both oral and written channels be provided in all instances.

⁵ [2021 banking industry outlook | Deloitte Insights](#)

⁶ [Trends in Payments, Clearing and Settlement Systems | Payments System Board Annual Report – 2020 | RBA](#)

⁷ <https://www.afr.com/companies/financial-services/we-love-litigation-say-new-asic-chiefs-20210831-p58nzn>

⁸ <https://aicd.companydirectors.com.au/advocacy/research/updated-joint-guidance-for-navigating-virtual-agms-electronic-signatures>

⁹ [Consumer Credit Act 1974 \(legislation.gov.uk\)](#)

¹⁰ [Electronic Signatures in Global and National Commerce Act](#)

In a similar vein, because the legislation covers a broad range of organisations (from smaller and not-for-profit organisations to companies limited by guarantee and larger listed organisations), we recommend that the legislation is scalable and does not impose minimum expectations that are overly prescriptive, unduly burdensome to comply with, and adapts as technology continues to evolve.

Electronic signing of documents

AFIA notes that section 110A entitled Technology Neutral Signing paragraphs (4)(a) indicates that: 'To avoid doubt, this section does not require:

- a. a person to sign the same form of the document as another person.'

However, the draft legislation does not define the meaning of 'same form of document', which is uncertain and ambiguous. For example, one director may wet sign a paper document and the other director may sign an electronic representation of that document.

Therefore, we recommend that this section is amended to say:

'To avoid doubt, this section does not require:

- a. a person to sign the same physical, digital, or other representation of a document as any other person so long as the operative sections of the versions contains the same text'.

AFIA welcomes the amendments relating to agents. However, we recommend that to enhance the benefit of the proposed amendments, further changes are made:

- section 126 should also authorise agents to deliver deeds
- section 126 should provide that the agent's signature to a deed does not need to be witnessed
- section 126 should extend to corporations that are appointed as agents by companies, not just individuals appointed as agents
- section 129 should include a new assumption that allows parties dealing with agents to assume their signatures comply with s110A. This amendment would bring the position for agents closer to the position applying in relation to signatures under s127(1), which have the benefit of the assumption in s129(5).

CLOSING COMMENTS

AFIA supports the proposed changes that make the temporary measures permanent in our Corporations law. These changes 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.

Ensuring these changes become permanent through the passing of this legislation 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, especially customers with disabilities
- 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 or Karl Turner, Executive Director, Policy & Risk Management at karl@afia.asn.au or 02 9231 5877.

Yours sincerely

A handwritten signature in black ink that reads "Diane Tate". The signature is written in a cursive, flowing style.

Diane Tate

Chief Executive Officer

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](#).