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Data Economy Unit
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The Treasury
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26 February 2021

Dear Sir / Madam,

Modernising Business Communications, Improving the Technology Neutrality of Treasury Portfolio Laws.

DocuSign welcomes the opportunity to make a submission to the Treasury's consultation on Modernising Business Communications, Improving the Technology Neutrality of Treasury Portfolio Laws.

DocuSign

DocuSign is the world's largest agreement cloud platform that facilitates the secure electronic exchange of digital documents and signatures. We have been doing this for nearly two decades, and today have nearly 750,000 paying customers and hundreds of millions of people electronically signing within our platform every year and across 180 countries.

We have worked closely with governments around the world on innovative ways for them to use digital services, such as DocuSign eSignature, to efficiently operate and effectively serve their constituents.

For many years, we have been advising and advocating for the reform of electronic document execution in Australia to help further increase the clarity and certainty to which electronic signatures can be used.

The current situation where the Corporations Act 2001 (Cth) is viewed as not applying to the Electronic Transactions Act 1999 (Cth) and, as a result is viewed as not providing the necessary explicit support for signing documents electronically, injects unnecessary uncertainty into doing business in Australia. This challenge specifically places major and avoidable regulatory 'red-tape' on businesses, their employees, and consumers.



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The COVID-19 Pandemic has further brought this 'red-tape' into the spotlight and we congratulate the Treasury on quickly moving to introduce and extend emergency regulations that have ensured businesses can electronically execute documents.

As we have seen with the emergency regulations, businesses, their employees, and individuals have been able to:

- Execute electronic documents more securely and reliably.
- Sign electronic documents in minutes, rather than days and have such documents immediately sent back to each of the signers from a computer, tablet, or mobile device.
- Remove the need for manual tasks, such as meeting face to face, printing, scanning, posting, or couriering documents.
- Save significant cost on hard costs, such as paper, printing, photocopying, scanning, and storing documents. Such considerable paper reduction also has positive environmental impact.
- Complete electronic documents from anywhere, at any time and by anyone. This flexibility has been meaningful for people living in rural and remote areas, small businesses, and people with disabilities. In recent months, it has been vital for Australians having to electronically sign documents while working from home.
- Automatically store and generate a robust court admissible audit trail for every electronic document they have signed. This has ensured them more protections than what wet (signed in pen) signatures offer including a more secure transaction.

Consultation Questions

In the following section, DocuSign has provided answers to the discussion questions as they relate to the 'Signatures' category outlined in Treasury's consultation paper.

In summary, we believe that current Treasury laws, as they relate to the electronic execution of documents, create significant cost, productivity, and efficiency burdens on businesses and consumers.

1. Do the business communication requirements in Treasury laws create a burden on business?



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The permanent (pre-COVID) Treasury laws, as they relate to the electronic execution of documents, place a significant productivity and cost burden on businesses and consumers.

In most circumstances, particularly where a Deed is involved, Treasury laws require a business to execute a document using a wet (signed in pen) signature, in person verification of identity, and / or in person witnessing of the document.

The current Treasury laws create several pain points for business and consumers. Most notably:

- Cost – business and consumers are burdened with hard and manual costs associated with printing, paper, scanning, storage, postage, courier fees and or travel to meet face to face.
- Productivity / Efficiency – documents that typically take minutes to execute electronically often take days due to wet signatures having to be applied to paper documents. On top of these challenges, there are considerable rates of error with paper documents i.e., people signing incorrectly, not receiving documents etc.
- Accessibility – most documents that require a wet signature require people living in rural areas to meet face to face which most of the time involves extensive travel and associated costs. This is similar for people with special needs and those who speak a language other than English.
- Expectations – Due to the Emergency COVID-19 regulations, businesses (particularly lawyers) and consumers now are used to executing documents electronically and expect this to continue.
- Confusion – businesses and consumers are unsure what documents can and cannot be executed electronically.

a. If so, what categories of communication (as outlined in this paper) or legislative provisions are creating a burden and should be prioritised for reform?

The 'Signatures' category is creating significant burden on business and should be a priority for reform. Amending Treasury laws (Corporations Act 2001) and the Electronic Transactions Act 1999 (Cth), to allow and make clear how all documents can be executed electronically will have broad reaching and immediate positive productivity and cost impacts for businesses and consumers.



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We also note that Treasury has already spent considerable time consulting on required amendments to the Corporations Act 2001 to enable electronic execution of documents. The positive feedback received during consultations on the Exposure Draft (Corporations Amendment - Virtual Meetings and Electronic Communications - Bill 2020) and recent introduction into the Parliament of the Emergency Regulations through the Treasury Laws Amendment (2021 Measures No. 1) Bill 2021 – expiring 16 September 2021 - further strengthen the argument for this category being prioritised.

- b. Are there non-regulatory requirements that inhibit businesses, consumers, or regulators from using their preferred method of communication? If so, please provide examples.

Electronic execution of documents has become widely accepted (the 'new normal') for business and consumers, since the onset of the COVID-19 Pandemic.

In the past 12 months DocuSign has run more than 20 industry, small business, legal practice, and consumer consultations for thousands of individuals on the electronic execution of documents in Australia.

The feedback from all of these groups and individuals shows that non-regulatory requirements like processes, document workflows, or the availability of technology neutral platforms to execute documents are not seen as an issue. The fundamental issue that is standing in the way of businesses (particularly lawyers), and consumers using their preferred method of communication (electronic execution of a document) is confusion which leads to uncertainty, around electronically executing documents under relevant laws.

- 2. What is the cost of complying with the current regulations? Please provide a breakdown of costs and an indication of the frequency at which these communications occur.

The current laws are burdening business and consumers with considerable and unnecessary cost. Business, through the confusion and uncertainty created by current laws, face significant capital and operational expenses. Broadly, these expenses relate to costs such as paper, printing, photocopying, scanning, and storing documents. The unnecessary use of paper also has a considerable environmental impact.



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On top of this, they also encounter further manual costs as they have employees travelling to meet face to face, posting or couriering documents.

The cost of complying with the current regulations are reflected in physical costs, labor costs and missed opportunities associated with having to not only use and manage physical paper documents (including converting documents to and from electronic documents where desired), but also the business and legal resources required to attempt to reconcile unclear regulations and convert such regulations into actionable business processes and systems, should businesses and consumers desire to use electronic services wherever possible in facets of the economy especially where deeds are required.

- a. Would these costs be reduced if the law was technology neutral? Please provide a breakdown of any anticipated savings and any non-monetary benefits.

Yes, changing laws to enable the technology neutral electronic execution of documents would see enormous savings to businesses and consumers.

Globally, through analysis of our more than 750,000 paying customers, DocuSign has found that the average benefit of fully electronically executing a document is:

- \$45.00 per transaction – this includes the cost of paper, printing, postage and storage of the average document.
- An 80% improvement in turnaround time.
- Internal process becoming 90% more productive with employees not having to meet face to face to obtain a signature.
- That the rate of documents being 'not in good order' improves from 25% to 2.5%.

DocuSign have also established that documents not electronically executed (physical documents) are, on average, lost 5% of the time or misfiled 2% of the time.

Further, DocuSign data from the Australian financial services sector has shown that:

- 88% of financial agreements (contracts and new account registration) are still prepared using paper and other manual processes. The overwhelming reason for this is directly linked to financial institutions legal and risk teams not having enough certainty around current laws.



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- In the institutional banking space, laws that require banks to verify identity face to face involve numerous complex forms, create a poor client experience (particularly in regional and rural areas) and result in a bank, on average, spending 60 days to fully execute a customer's documentation. Major consequences of these financial services processes include project delays 49% of the time, unnecessary costs 43% of the time and a poor customer experience 41% of the time.

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3. Do you agree with the categories of communication outlined in the consultation paper?

Yes, DocuSign agrees that the categories outlined in the consultation paper are the right areas to be addressed in the immediate term through reform.

a. Are there other types of business communication that should be considered?

DocuSign believes that Treasury should also consider how the electronic execution of documents is utilised better within the Commonwealth Government, especially where documents or forms require a signature from an external party e.g., procurement, legal documents and the estimated 5000 PDF forms on Commonwealth Government websites that still require an individual to download the form, wet sign, scan and email or post it back to the relevant department or authority. Typically, the details in these forms then need to be re-keyed in core systems and physically stored as hardcopies or scanned documents as part of records management and at significant expense.

Further, there are high instances of individuals printing, scanning or filling out forms incorrectly (missing parts) resulting in forms needing to be sent back to the individual so they can begin the process again.

DocuSign has calculated that when the Commonwealth Government executes a document electronically, the average value benefit is \$57.22 per transaction. An analysis of 250 high use Commonwealth Government PDF forms (of the more than the 5000 mentioned above) has shown that these forms have an annual transaction volume of 12.5 million. The total benefit to the Commonwealth Government of enabling these forms, alone, to be electronically executed is more than \$715 million.

The Commonwealth Government has the ability to lead by example and commit to the electronic execution of all government forms and documents. This would show that the Commonwealth Government



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is taking another major step forward in its digital transformation and remove significant red tape so that business and consumer engagement with government is made cheaper and easier.

- b. Do you agree with the proposed principles outlined in the consultation paper or are there additional or alternative principles that should be considered?

Specific to the 'Signature' category and corresponding principals, DocuSign's overall position is that laws should allow for the electronic verification of a person's identity, allow for the delivery and receipt of an electronic document, allow for the full electronic execution including signing of the document and if necessary, allow for the electronic witnessing of signatures. Laws covering these areas should be technology neutral as there are numerous robust technologies currently available to address these areas.

We agree that all these areas should at least provide the same level of validity as a physical signature. However, it should be noted that the technologies available to address these areas go far further in providing assurances around signer identification and proof of signature than a physical signature.

Current technologies offer built in identification options through email addresses, social ID checks, SMS authentication, phone call authentication, federated ID / single sign on, video witness capabilities, 3rd party ID checks and document verification / 100 Point ID check (through e.g., Australia Post ID). They also address proof of signature / consent through electronic audit trails that capture every key event in the signing and consent process, unique ID's of the transaction, origination details, date and timestamps, immutability of evidence and tamper evident digital certificates.

In relation to the second principal, "where a signature is given to an individual or a business, that individual or business must consent to the use of that method to verify identity and receive agreement," we feel this needs careful consideration as this can be interpreted in several ways.

In DocuSign's experience, most businesses consider that a person who signs an electronic document is implicitly agreeing to sign electronically. After all, the technology available to sign electronically is now ubiquitous to most businesses and consumers. We have also found that some businesses adjust their "Terms and Conditions" to state that they reserve the right to use electronic methods to capture consent or signatures on documents.



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However, there are still businesses that require the signer to agree separately and explicitly to signing a document electronically. To capture this information, an additional step is inserted into the electronic execution process which DocuSign believes is unnecessary and creates a further burden on business and consumers.

c. What, if any, barriers would restrict implementation of the proposed principles?

Beyond ensuring clarity in the implementation and as set out above, we do not see any additional barriers to the implementation of the proposed principles.

4. How could stakeholders (such as consumers and investors) benefit or be disadvantaged from greater technology neutrality in Treasury laws? Please provide any relevant data, if available.

Technology neutrality in Treasury laws will allow businesses to select from numerous technology solutions that will not only meet regulatory requirements but also provide significant productivity and cost benefits.

DocuSign does not see any disadvantages in Treasury laws being made technology neutral.

5. Which of the options identified on page 3 do you consider would provide the biggest benefits while appropriately managing risk?

Option II. provides the biggest benefits to business and consumers.

DocuSign believes that changes to the Corporations Act 2001 and Electronic Transactions Act 1999 (Cth) that allow for the electronic execution of documents should be an immediate priority. This will alleviate the confusion that currently exists around electronic execution, give long term certainty to business and allow them to permanently change their systems and processes so they can derive productivity and cost benefits.

6. If technology neutral reforms are introduced, what should businesses do to manage the impact of these changes, to ensure that benefits are realised, and disadvantages overcome?



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Specific to 'Signatures', DocuSign believes most businesses are aware of the technologies available to electronically execute documents. This awareness has been further accelerated during the COVID-19 Pandemic. As previously highlighted, DocuSign has found that businesses are ready to move forward with permanently changing their systems and processes to enable electronic execution of documents. Unfortunately, the uncertainty around the temporary Emergency COVID-19 laws being made permanent has held businesses back from making these changes.

7. What transitional issues do you foresee for businesses, consumers, and regulators in moving to technology neutral communication methods?

As with any technology change, moving from traditional (paper-based) signing to electronic execution of documents will require businesses to evaluate the productivity and cost benefits.

a. What are the key implementation risks and their likelihood of occurring? How can we mitigate these risks? Please provide examples.

DocuSign's feedback is that most businesses are already moving in this direction due to the overwhelming associated benefits and familiarity with electronic execution technologies they have utilised during the COVID-19 Pandemic.

Businesses, in particular their legal teams, now want to ensure that Treasury laws are clear so that changes can be implemented based on a high level of legal certainty and permanency.

State and Territory Laws

While not explicitly referred to in Treasury's consultation paper, DocuSign feels that it is important to highlight that many of the document's stakeholders need to execute electronically like deeds, land transfers and mortgage documents fall under state laws.

The ability to electronically execute documents covered by state laws is governed by a mismatched mix of regulations that has resulted in large-scale confusion around the electronic execution of documents for years.



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Consumers, businesses, and particularly lawyers are confused by various governments encouraging digital transformation and the removal of red tape only to find that different laws in different states and territories raise issues that make it too difficult for them to execute documents electronically.

To address these issues, some state and territory jurisdictions introduced regulations during the COVID-19 Pandemic to ensure the electronic execution of documents.

These temporary state and territory regulations have been praised by businesses large and small, major business groups, consumer groups and law associations as they have shown first-hand how the electronic execution of documents saves significant cost and time.

There are countless examples of where the emergency regulations have ensured consumers have not been burdened with purchasing IT hardware like printers, scanners, and photocopiers to print documents for signing, have not had to unnecessarily pay for couriers to send documents, have not had to travel to sign a document and importantly have been able to execute documents in minutes rather than days.

With all the temporary state and territory regulations expiring on various dates in the near future, there is a need for the states and territories to amend their laws to ensure businesses and consumers can permanently electronically execute documents covered by their laws. Greater consistency through harmonisation of state laws will realise the full benefits of modernising business communications and consistent access for all Australians.

DocuSign encourages Treasury to address this as part of the overall modernising business communications initiative.

We encourage this issue to be raised with all state and territory treasurer's through the Council on Federal Financial Relations.

With the Commonwealth, state and territory jurisdictions all taking similar actions to align reforms businesses, their employees, consumers, and the Australian economy will realise the full benefits of the electronic execution of documents.




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We trust the above outline is useful in helping understand how the use of electronic execution of documents can safely and securely benefit all Australians.

We thank the Treasury for the opportunity to outline our views in this submission and look forward to seeing permanent reforms that modernise business communications across Australia.

Should you have any questions, we would be more than happy to further assist in this important and impactful endeavour.

Sincerely,

DocuSigned by:

D7342DCD34654CE...
Doug Luftman

Vice President & Deputy General Counsel Product, Innovation Services and Government Affairs
DocuSign, Inc.

Certificate Of Completion

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Subject: Please DocuSign: DocuSignSUBTREFEB21 CR DL.docx	
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Document Pages: 11	Signatures: 1
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Signer Events

Doug Luftman
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Security Level: Email, Account Authentication (None)

Signature

DocuSigned by:

D7342DCD34654CE...
Signature Adoption: Pre-selected Style
Using IP Address: 192.184.150.230

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Signed: 2/25/2021 9:35:08 AM

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Payment Events

Status

Timestamps