

10 December 2021

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Dear Treasury

### **Treasury Laws Amendment (Modernising Business Communications) Bill 2021**

Thank you for the opportunity to provide a submission on the Exposure Draft *Treasury Laws Amendment (Modernising Business Communications) Bill 2021 (Exposure Draft)*.

The Australian Institute of Company Directors' (**AICD**) mission is to be the independent and trusted voice of governance, building the capability of a community of leaders for the benefit of society. The AICD's membership reflects the diversity of Australia's director community, with 47,000 members drawn from directors and leaders of not-for-profits, large and small businesses and the government sector.

The AICD strongly supports the Government's initiatives to modernise business communications by improving the technology neutrality of Treasury portfolio laws. The disruption caused by the COVID-19 crisis has highlighted the need to permanently modernise Australia's *Corporations Act 2001 (Cth) (Corporations Act)* requirements relating to document execution and communication requirements.

The AICD supports solutions that are principles-based, flexible and technology-neutral in order to future-proof the regulatory framework and enable minimum standards to be nimbler in adapting to future technologies and ways of working. The less time and expense spent on mechanical technical requirements, the more that can be spent on charting a path to a COVID-safe economic recovery.

We provide the following comments on those aspects of the Exposure Draft that are particularly relevant to AICD members.

#### **1. Electronic signatures and communications**

COVID-19 and the protracted lockdowns for many parts of Australia throughout 2020 and 2021 has caused significant challenges for individuals and entities in complying with physical signature and mail requirements.

The AICD strongly supports the permanent reform measures proposed under the *Corporations Amendment (Meetings and Documents) Bill 2021*, which currently remains before Parliament. Accordingly, we further welcome amendments proposed in the Exposure Draft to expand the scope of these reforms so that all documents under the Corporations Act can be signed and sent electronically, while retaining flexibility for paper-based options should that be the preference.

While these measures may seem minor in nature, they will improve efficiency and reduce costs. Australia needs to step away from incrementally adapting to developments in technology and innovation, towards an agile, updated and fit-for-purpose regulatory environment.

## 2. Documents which relate to takeovers

The AICD supports proposals to enable documents relating to takeover bids to be sent electronically between entities and members under Chapter 6 of the Corporations Act.

With electronic communication increasingly becoming the default method of communication for many organisations and their members, we support, in principle, amendments to section 641 of the Corporations Act to require a target entity to provide a bidder with the electronic addresses of its members.

However, it is critical that appropriate safeguards are in place to prevent the misuse of personal information by the bidder. To protect the integrity of electronic communications between entities and their members, it is important that bidder entities that are provided with personal contact information by a target ensure personal contact information received under section 641 is used only for purposes permitted under Chapter 6. Accordingly, the AICD supports the proposed introduction of a civil penalty provision for any misuse of personal information received under new section 641A.

Importantly, while the AICD is supportive, in principle, of amendments to enable a target entity to provide a bidder the electronic addresses of its members, we do not support broader, public disclosure of members' electronic address information – for example, on the register of members. We note that the public disclosure of members' nominated electronic address is not contemplated under the Exposure Draft. In our view, any such proposals would require separate substantive consultation given it would pose additional privacy, security and compliance challenges.

## 3. Lost members

The AICD strongly supports amendments in the Exposure Draft to provide entities relief from an obligation to send a member communications and documents where that entity knows that the member's postal and electronic addresses are incorrect.

We consider the proposed changes provide a workable balance between the need for entities to undertake due diligence to attempt to ascertain a current address for members and an appropriate limit on the extent to which entities must continue attempting to contact those members.

To support best efforts to ascertain the current address of a member, we further support the flexibility proposed in the Exposure Draft to enable entities to use all contact details and methods of communication for the member that are known to the sender, irrespective of the member's election to receive documents in a particular form.

## 4. ASIC forms

In the AICD's submission to the Deregulation Taskforce on modernising document execution earlier this year, we encouraged Government to engage with the Australian Securities and Investment Commission (**ASIC**) on options to enable the electronic lodgement of ASIC forms.

We understand there are limited digital options for ASIC forms currently available and in most cases, lodgement is required in hard copy with a wet ink signature. This caused considerable challenges with


remote working during COVID-19 for individuals and organisations, particularly where lodgement of these forms can often be time critical.

The AICD reiterates these comments and are pleased to see that Government will be considering further reforms to improve communications with regulators in the next phase of this project. We would welcome the opportunity for further engagement as those options evolve.

## 5. Next steps

We hope our submission will be of assistance to Treasury's consultation. If you would like to discuss any aspects further, please contact Laura Bacon, Senior Policy Adviser, at [lbacon@aicd.com.au](mailto:lbacon@aicd.com.au).

Yours sincerely,



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