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Australian Payments Network (AusPayNet) welcomes the opportunity to respond to the Market Analysis and Deregulation Unit's consultation on *'Improving the technology neutrality of Treasury portfolio laws'* and the amendments now proposed in the Exposure Draft Legislation and Regulations. AusPayNet is supportive of Treasury's overall policy objective to modernise and make changes to support the digital economy and is grateful for the ongoing engagement.

AusPayNet Membership and Role

AusPayNet is the industry association and self-regulatory body for the Australian payments industry. We manage and develop procedures, policies and standards governing payments in Australia. Membership of AusPayNet is open to participants in, and operators of, Australian payments systems.

AusPayNet currently has over 140 members, including financial institutions, the Reserve Bank of Australia, merchants, operators of Australian payment systems, and other payments industry stakeholders.

Aligned with its vision of convenient and secure payments for all, AusPayNet's purpose is to enable competition and innovation, promote efficiency, and control and manage risk in the Australian payments system.

Introduction

AusPayNet recognises the Deregulation Agenda as a key part of the Australian Government's economic strategy and supports its aims of ensuring that regulatory settings remain fit for purpose. AusPayNet is also supportive of Treasury's aims to improve the technological neutrality of its portfolio laws to provide greater flexibility and reduce the costs of communications between businesses, regulators, and individuals. AusPayNet has made one previous submission in the wider context of this consultation¹ and also provided two submissions to the Deregulation Taskforce's consultation on *'Modernising Document Execution'*². AusPayNet

¹ Australian Payments Network Limited, Submission to Treasury Consultation *Modernising Business Communications: Improving the Technological Neutrality of Treasury Portfolio Laws*, 26 February 2021.

² Australian Payments Network Limited, Submission to Deregulation Taskforce consultation *'Modernising Document Execution'*, 8 October 2021; Submission to Deregulation Taskforce consultation, 23 July 2020.

is encouraged by the amendments which Treasury is proposing to make to improve the technological neutrality of its portfolio laws. In particular, we are supportive of those amendments which extend the provisions for electronic document execution to corporations and also those that seek to make payments to and from Government technology neutral.

We have focused our responses on the aspects of the proposed amendments as they apply to technology neutral execution of documents and payments.

Submission

Chapter 1 – Schedule 1 amendments to Part 1.2AA of the Corporations Act 2001 (Cth)

Technology neutral signing and execution of documents

AusPayNet is supportive of the proposed amendments to allow for digital alternatives to paper-based execution by persons signing on behalf of Companies. AusPayNet agrees with the principles for reform. The intended outcomes of reduced costs, technological neutrality and ease of engagement are likely to have a positive impact on, and benefits for, end users.

Similarly (and as noted above), AusPayNet recently lent its support to the proposal by the Deregulation Taskforce to make the temporary amendments for the electronic execution of statutory deeds and declarations made during the COVID-19 pandemic a permanent feature.

When considering the appropriate processes and/or technologies for the execution of such documents, the overriding principle should be ensuring that the person signing is in fact who they say they are. In this instance digital identification verification services could soon provide a viable and secure alternative to current in-person requirements. However, this needs to be supported by secure methods of digital signature. This includes considerations of authentication technologies such as biometrics.

AusPayNet is presently working on bringing industry participants together to further the development of digital identity frameworks and solutions for the Australian market which could in the future provide interoperable processes required to further facilitate the secure electronic execution of documents.

Chapter 2 – Credit and Payments

Technology Neutral Payments

AusPayNet is supportive of the proposed amendments to remove technologically prescriptive requirements relating to payments.

As noted in our previous submission, the mandating or encouragement of specific payment methods within legislation is out-of-step with Australian consumers and businesses, who have largely moved away from methods such as payment by cheque.

AusPayNet is of the view that technological neutrality provides greater flexibility for end-users to choose the payment method that best suits their needs, speeds up transaction times and positions Government to best take advantage of emerging digital technologies and Australia's advanced payments system.

The proposed changes are a positive step. AusPayNet would like to note the additional area of digital identity for consideration. We reiterate our position that the Taskforce should consider further amendments to section 11 of the Electronic Transactions Act to support the development of a digital identity ecosystem. The changes should:

- allow for the electronic provision of verified credentials (whether or not the credentials were originally contained in a physical document), rather than just the electronic provision of the physical document;
- allow for the electronic form of the document to be provided in a manner other than by electronic communication (for example, sighting a digital driver's licence); and or
- remove the requirement for it to be reasonable to expect that the information contained in the electronic form of the document would be readily accessible so as to be useable for subsequent reference.

We understand these are likely to be considered in the next phase of this consultation and look forward to the opportunity to see the proposed amendments to the Electronic Transactions Act and provide further input on this issue.

Conclusion

AusPayNet appreciates the opportunity to respond to the draft legislation and to contribute our insights from the perspective of the payments industry and the wider digital identity context. We welcome a streamlined and technology neutral regulatory environment and would also welcome the opportunity to engage further with the Taskforce on the issues raised in this submission.

Please contact Ms Siew Lee Seow, Head of Policy, (sseow@auspaynet.com.au) or Ms Daniela Fabiano, Legal Counsel, (dfabiano@auspaynet.com.au) if you have any further questions.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Andy White', with a horizontal line underneath.

Andy White
CEO, Australian Payments Network