

9 December 2021

Manager
Market Analysis and Deregulation Unit
Market Conduct Division
Treasury
Langton Cres
Parkes ACT 2600

By email: mbcomms@treasury.gov.au

Dear Sir/Madam

Improving the technology neutrality of Treasury portfolio laws

Thank you for the opportunity to lodge a submission in the response to the exposure draft legislation and explanatory material in relation to improving the technology neutrality of Treasury portfolio laws.

ARITA has significant concerns regarding the proposed repeal of section 600G of Chapter 5 – External Administration of the *Corporations Act 2001* (Cth) (Act) and are strongly of the opinion that it should be retained.

As you may be aware, s600G has only recently been amended to facilitate the wholesale use of electronic signing and communications in external administrations. Having implemented the recent changes, they are working well and given the unique nature of external administrations we believe that the repeal of the section is unnecessary and will result in further regulatory burden for the profession, that has already experienced significant burden since the *Insolvency Law Reform Act 2016* and the small business reforms in 2020.

Having reviewed both the Exposure Draft legislation, Exposure Draft regulations, and the proposed reforms in the Corporations Amendment (Meetings and Documents) Bill 2021 (the Corporations Amendment Bill), we raise the below concerns regarding the use of electronic signing and communications in external administrations.

Signing and executing documents

We note that the proposed reforms in the Corporations Amendment Bill and Exposure Draft focus on:

- technology neutral signing of documents by agents acting with the company's express or implied authority and on behalf of the company in accordance with s126 of the Act or execution by directors in accordance with s127 of the Act, and
- technology neutral signing of documents relating to meetings of members or directors.

While the Exposure Draft expands the documents which may be signed electronically in s110(1), we are concerned that s110(2) does not specifically address the signing of documents by external administrators.

Meetings and sending documents

The Corporations Amendment Bill and Exposure Draft expand the documents covered by the technology neutral sending of documents to include a document that is required or permitted to be sent by the sender to the recipient under Chapter 5 or Schedule 2. We note, however, that the proposed amendments do not refer to instruments made for the purposes of a provision of Chapter 5 or Schedule 2 as currently referenced in s600G.

Many of the communications sent by external administrators are governed by the Corporations Regulations 2001 or Insolvency Practice Rules (Corporations) 2016 and we are concerned the proposed amendments do not effectively replace the existing and effective operation of s600G.

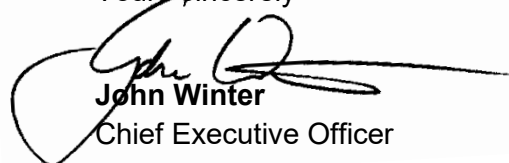
While proposed s110D(2) of the Corporations Amendment Bill mirrors s600G(4)(a) of the Act, we note that there does not appear to be an amendment that provides for a nominated electronic address, as defined in s9 of the Act, in relation to a recipient (refer s600G(4)(b)).

The removal of the ability of external administrators to use technology to execute documents and communicate with stakeholders (primarily creditors) will directly lead to increased costs in external administrations, impacting any return to creditors.

For completeness we note that ARITA did not make a submission in response to the Corporations Amendment Bill on the basis that the recent changes to s600G had appropriately facilitated the use of technology for external administrations.

As always, we look forward to continuing to work closely with Treasury and the Government generally to ensure the efficiency and effectiveness of Australia's insolvency system. Should you wish to discuss any aspect of this submission, please contact Ms Narelle Ferrier, Technical & Standards Director on 02 8004 4350.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Winter', is written over a white background. Below the signature, the name 'John Winter' and title 'Chief Executive Officer' are printed in a black, sans-serif font.

John Winter
Chief Executive Officer



About ARITA

The Australian Restructuring Insolvency and Turnaround Association (ARITA) represents professionals who specialise in the fields of restructuring, insolvency and turnaround.

We have more than 2,200 members and subscribers including accountants, lawyers and other professionals with an interest in insolvency and restructuring.

Around 80% of Registered Liquidators and Registered Trustees choose to be ARITA members.

ARITA's ambition is to lead and support appropriate and efficient means to expertly manage financial recovery.

We achieve this by providing innovative training and education, upholding world class ethical and professional standards, partnering with government and promoting the ideals of the profession to the public at large. In 2020, ARITA delivered 70 professional development sessions to over 8,200 attendees.

ARITA promotes best practice and provides a forum for debate on key issues facing the profession.

We also engage in thought leadership and public policy advocacy underpinned by our members' knowledge and experience. We represented the profession at 15 inquiries, hearings and public policy consultations during 2020.