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We would like to thank the Treasury Department for inviting us to comment on the Exposure Draft for Treasury Laws Amendment (Modernising Business Communications) Bill 2021 (**Bill**).

We welcome the changes that are proposed in the Bill, particularly Treasury's eagerness to move to technology neutrality. Technology neutrality is based on the premise of using the most appropriate form of technology (be it digital or analogue) to achieve a desired result. FinTech Australia has been a long-time advocate for the continued adoption of technology, where appropriate, to encourage and promote regulatory compliance, efficiency, sustainability and simpler and better ways to conduct business. The COVID-19 pandemic brought about the rapid acceleration of new technology and the adoption of existing technology, with the proposed Bill acknowledging that many temporary measures effected in the time should be made permanent.

FinTech Australia and its members broadly support and welcome the changes that are proposed by the Bill, particularly in relation to providing greater flexibility for businesses, individuals and regulators to communicate electronically. FinTech Australia and its members have provided their feedback on the key proposals that are made in the Bill.

The Bill proposes three key changes to the current regulatory landscape:

- Change 1 – changes to document and meeting requirements under the *Corporations Act 2001* (Cth) (**Corporations Act**)
- Change 2 – changes to documents under the National Credit Code and payments
- Change 3 – changes to existing publication requirements

FinTech Australia has considered each change in turn.

Change 1 - Changes to document and meeting requirements under the *Corporations Act*

Proposed Reform in the Bill (and amended/new section in Corporations Act)	FinTech Australia Feedback
All documents under the Corporations Act can be signed or executed electronically (s 110)	We welcome the expansion of this clause to allow for any document or deed signed or executed under the Corporations Act to be signed electronically in addition to physically. The previous provision (currently before Parliament) only allowed for the execution of certain documents in this manner. This expansion gives businesses more flexibility in operating their business and creates opportunity for new businesses to develop to provide services in relation to digital document delivery and execution.

Proposed Reform in the Bill (and amended/new section in Corporations Act)	FinTech Australia Feedback
<p>Certain documents can be sent and received in a technology neutral manner (s 110C)</p>	<p>We welcome businesses being able to send documents (those required to be sent under Chapters 2A to 2M, 5 to 5D, 6, 6C, 6D, 8, 8A, 9 and Schedule 2) electronically. This will include provision for an Annual Report to be provided electronically. We endorse this and consider this to be a long-overdue change which will better interactions and communications with consumers, company members, financial services business and companies.</p> <p>The changes specifically exclude sending documents to ASIC, the Registrar and the Takeover Panel from these requirements. We would urge that the Government devote resources to further developing the systems capability of regulators such as ASIC to enable businesses to provide faster and more efficient correspondence with key regulators. This also seems counterintuitive given many, but not all documents e.g. ASIC forms, applications and financials (just to name a few) are currently lodged with ASIC online.</p> <p>Invariably ASIC will accept documents in electronic form including when they are investigating a company or financial services business. Recipients of an ASIC notice to produce (under the <i>Australian Securities & Investments Commission Act</i>) will commonly supply the documents within the ambit of the notice in electronic form. However none of the proposed amendments extend to requiring ASIC to accept those documents in electronic form. Likewise, notices required to be lodged with ASIC under the <i>Australian Securities & Investments Commission Act</i> are not required to be accepted by ASIC in digital form.</p>
<p>Election to receive documents in a particular form (sections 110E, 110J, 110K)</p>	<p>We welcome the technology neutral approach and agree that members of companies, registered schemes and disclosing entities should be able to elect to receive documents by post or electronically.</p> <p>We believe that the requirement to provide a yearly notification to members to make an election is unnecessarily burdensome and the period should be extended to 3 years or otherwise upon request of the individual to the company, scheme or entity.</p>
<p>Relief from requirement to send documents to uncontactable members (s 110JA)</p>	<p>We welcome the relief from needing to send documents to uncontactable members. However, the conditions for satisfying the relief are difficult to meet. The requirement for the sender to have received notification that any attempt to send a document to an address has failed cannot easily be met. The requirement is that all available addresses are contacted including any postal as well as electronic address. It is not customary to receive notification that postal mail has not been delivered to the intended recipient for ordinary postal mail, unless the mail is filed as “return to sender”. Additionally, emails that are not delivered do not always result in an undelivered receipt, if an address is still active but no longer use. The only alternate way to communicate would be by phone or SMS, where the sender may not have this information. The current drafting implies that active notification of a failure to deliver is required prior to satisfying this condition.</p>
<p>Documents relating to takeovers (s 641, 648B 648C, 661B, 661D, 662B, 664C, 664E, 665B and 669A)</p>	<p>We welcome the changes to facilitate a technology neutral in providing required takeover documents.</p> <p>We particularly welcome the safeguards to prevent the misuse of personal information by bidders.</p>

Change 2 – Changes to documents under the National Credit Code and payments

Proposed Reform in the Bill (and amended/new section in relevant Act)	FinTech Australia Feedback
Removal of strict interpretation of “in writing” from Credit Code (s 196)	We welcome the expansion to allow credit providers and other Credit Act providers to send documents to a nominated address and the removal of the requirement to send to a postal address.
Nominations, changes of nomination and communications do not need to be made in writing (s 195)	We welcome the ability for consumers to provide nominations in a manner other than writing. This allows for the better use of technology to make notification changes and will allow credit providers to make use of their existing applications and web platforms to allow changes to nominated addresses.
Increased flexibility for providing consumer warnings in digital credit contracts (regulation 74(4))	Credit contracts were formerly able to be signed electronically, the changes prescribe more detail about the form of the warnings that must be included when signing an electronic form credit contract. The proposed drafting implies that the disclaimers must be within the body of the credit contract. We believe increasing flexibility further by allowing disclaimers to appear in pop-ups before signing would increase the likelihood of them being read and promote digital interactions with borrowers.

Change 3 – Changes to existing publication requirements

Proposed Reform in the Bill (and amended/new section in relevant Act)	FinTech Australia Feedback
Removal of requirement to publish notices in newspapers	<p>We generally welcome the removal of the need for regulators and other bodies to publish specific prescribed notices in a newspaper.</p> <p>We do caution that requiring publications in newspapers created a central body which could be used to view most published notices. The ability for these to now be published online, likely on the individual regulators or entities website means the loss of a central repository for notifications.</p>
Nominations, changes of nomination and communications do not need to be made in writing (s 195)	We welcome the ability for consumers to provide nominations in a manner other than writing. This allows for the better use of technology to make notification changes and will allow credit providers to make use of their existing applications and web platforms to allow changes to nominated addresses.

Fintech Australia hope that the proposed reforms being about a level of flexibility to doing business and in term may reduce the costs of doing business, allowing innovative Fintech businesses to continue to grow.

This document was created by FinTech Australia in consultation with its members, which consists of over 300 company representatives. FinTech Australia is the peak industry body for the Australian fintech Industry, representing over 300 fintech Startups, Hubs, Accelerators and Venture Capital Funds across the nation. FinTech Australia would like to recognise the support of Policy Partner – The Fold Legal for their guidance, and advice in relation to this submission.

We again thank you for providing our members with the opportunity to provide feedback to Treasury in relation to electronic execution of documents and the use of technology for meetings of members.

Yours sincerely

Simone Joyce

Simone Joyce
Chair, FinTech Australia

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Letter to Treasury on technology neutrality FINAL 081221 (1)

Final Audit Report

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