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By email

Dear Sir,

Modernising Business Communications – Improving the Technology Neutrality of Treasury Portfolio Laws

Who we are

Governance Institute of Australia is a national membership association, advocating for our network of 40,000 governance and risk management professionals from the listed, unlisted and not-for-profit sectors.

As the only Australian provider of chartered governance accreditation, we offer a range of short courses, certificates and postgraduate study. Our mission is to drive better governance in all organisations, which will in turn create a stronger, better society.

Our members have primary responsibility for developing and implementing governance frameworks in public listed, unlisted and private companies, as well as not-for-profit organisations and the public sector. They have a thorough working knowledge of the operations of the markets and the needs of investors. We regularly contribute to the formation of public policy through our interactions with Treasury, ASIC, APRA, ACCC, ASX, ACNC and the ATO.

Governance Institute's members have advocated for some time about the need to bring the Corporations Act into the 21st century. Many of them experienced significant difficulties as the organisations in which they work continued to operate during COVID-19 with outdated legislation.

The COVID-19 pandemic impacted companies' ability to conduct business in an increasingly digital age. In many locations, restrictions made it impossible to hold a meeting where shareholders or directors were physically present in the same venue. Executing documents when people are working remotely was another challenge as was the uncertainty about the legality of companies executing documents electronically under the Corporations Act. Governance Institute's members spent considerable time in 2020 considering these issues and Governance Institute obtained advice from counsel on a number of these questions.¹ The Treasurer's Determinations in 2020 enabling electronic execution of documents and communication with

¹ See [Statement on electronic storage and execution of documents and electronic meetings](#), Governance Institute of Australia, 24 September 2020.

shareholders and electronic meetings on a temporary basis provided much needed assistance.² Governance Institute continues to strongly advocate that these changes be made permanent.³

Governance Institute's members note the introduction of the Treasury Laws Amendment (2021 Measures No.1) Bill, (Bill) in February 2021. The Bill proposes extending the provisions allowing virtual meetings and electronic execution of documents and electronic communication until 16 September 2021. The Government has indicated it intends to introduce legislation to make the changes in relation to electronic execution of documents and electronic communication permanent. If these proposals become law, they will assist in improving the technology neutrality of the Corporations Act, but many areas remain where change is needed.

Governance Institute's members welcome Government's commitment to ensuring that Australian consumers and businesses can benefit from new technologies and support the improvements to the technology neutrality of Treasury portfolio laws outlined in the Consultation Paper (Consultation Paper). For these reasons they support Option II outlined at page 3 of the Consultation Paper and consider that Option I, maintaining the status quo, is no longer viable.

Governance Institute members participated in a consultation meeting with representatives of the Modernising Business Communications Task Force (Task Force) on 18 December 2020. Our members would be pleased to assist with any future meetings or consultations.

Preliminary comments

- As the last twelve months have demonstrated, technological progress and the uptake of new technology by businesses and consumers is advancing rapidly. There are likely to be technological solutions and ways of doing things not yet in existence, but which will exist within a relatively short time which may again change the way businesses and consumers operate and behave as radically as the changes experienced during 2020. It is therefore critical that legislation be technology and mode neutral to enable businesses and consumers to respond to rapid technological change.
- As noted in the Consultation Paper, Principles should guide legislative change. The legislative process takes time, and it would be unfortunate if overly prescriptive legislation meant that businesses and consumers were to find themselves hampered by outdated legislation within a short space of time.
- Increased efficiency should be one of the aims of the Project – any proposed changes should not involve applying technological solutions to entrench inefficient, manual processes.
- Governance Institute is an active participant in the Modernising Business Registers Project (MBR) through our membership of the Business Advisory Committee. It will be important for the Task Force and the MBR Project Team to interact closely to ensure the Projects are aligned.
- To deliver the Project effectively the various agencies within the Treasury portfolio will need to be actively involved and engaged in the modernisation program. Similarly, some of the current barriers to improving the technology neutrality of Treasury portfolio laws are the result of the interaction between Commonwealth and state legislation – securing cooperation from the various states will be key to delivering the Project effectively.
- The Modernising Business Communications Project presupposes the increased use of technology by businesses and consumers. This will bring with it an increased potential for

² On 5 May 2020, the Treasurer made the Corporations (Coronavirus Economic Response) Determination (No. 1) 2020 that modified the Corporations Act and various other rules and regulations to facilitate the continuation of business in circumstances relating to COVID-19. On 21 September 2020 this Determination was repealed and replaced in substantially the same form by the (Coronavirus Economic Response) Determination (No. 3) 2020 (Determination). The Determination will be automatically repealed on 22 March 2021

³ See Submission [Corporations Amendment \(Virtual Meetings and Electronic Communications\) Bill 2020](#), Governance Institute of Australia, 30 October 2020.

cyber-crime and cyber security incidents. Early consultation with the Australian Cyber Security Centre would be advantageous.

- Governance Institute's members support 'digital by default' provided this means governments are encouraged to provide digital options wherever possible while considering implementation issues, potential risks and costs, and without imposing digital-only on key stakeholders who need non-digital options.

Our submission does not address all the consultation questions but concentrates on those areas of interest and relevance to our members. Our detailed responses to the Consultation Questions are set out in the **Attachment**.

If you wish to discuss any of the issues raised in this letter, please contact me or Catherine Maxwell.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'M Motto', written in a cursive style.

Megan Motto
CEO

Attachment

Responses to consultation questions

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

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?

Depending on the sector in which they work, our members interact with a wide range of legislation, however most of them interact with the Corporations Act daily. From their experience, all the identified aspects of business communication impose a burden on business. More detail is set out below.

Written communications, communicating and interacting with regulators, record keeping and property

Form/Document/Issue	Comment
Written communications	
'Lost' shareholders	Sections 214 and 315 of the Corporations Act require companies/schemes to send materials such as financial reports and directors' reports to shareholders and members. Where companies do not have a current address by virtue of ASIC Class Order 2016/187 they must continue to send these materials at least once per year for six years before they may treat them as 'uncontactable'. ⁴ This is despite the fact that mail is returned year after year with a range of messages indicating the person is no longer at the address.
Communicating and interacting with regulators	
ASIC Form 492 – Request for Correction	<p>Form 492 is used to make corrections, not a company change, to a company's details on the ASIC database such as a director's name, date or place of birth, members' details, share capital, beneficial holding etc. In some members' experience this form can only be lodged <u>electronically</u> to make a correction to a form lodged previously if that form was lodged <u>electronically</u>. Other members report that this Form can only be lodged electronically if the original lodgement was by an ASIC agent. This is also the case for corrections to registration details lodged via ASIC Form 201 (Application to register a company).⁵ Most historical company details (pre-2002) and details lodged via a Form 201 must be corrected with an original signature signed by an officeholder and lodged in hard copy via mail.</p> <p>As banks and regulators have made their processes around legal names and identification checks more robust this has raised</p>

⁴ See our [Submission](#) Corporations Amendment (Virtual Meetings and Electronic Communication) Bill 2020.

⁵ Since October 2019 this Form can only be lodged online.

Form/Document/Issue	Comment
	ongoing issues for officeholders who are recorded on ASIC's database with names other than their legal names or where there were errors with their name, date or place of birth. To correct a simple error on the ASIC database can take over two weeks while the Form is signed as an original and mailed to ASIC for processing. Given the implementation of the Director ID this rectification process to correct directors' details on the ASIC database is likely to become a significant issue.
ASIC Forms 991/992 – Location of books on computer	<p>ASIC Form 991 - <i>Location of books on computer</i> Under section 1301 of the Corporations Act a company needs to lodge this Form in respect to books and records kept otherwise than in writing. Form 991 advises ASIC if registers are being stored on a computer and Form 992 is lodged when a company has advised ASIC books are stored on a computer, but the location of the computer has changed. The Form must be signed with an original signature and lodged in hard copy within seven days.</p> <p>These Forms and the section from which they derive their authority pre-date cloud based modern document storage. Many companies now keep their registers online. The section also refers to physical inspection of books which is now rare. These Forms cannot be lodged online.</p>
ASIC Form 909 - Notification of office at which register is kept. (lodged in hard copy)	<p>Form 909 relates to hard copy registers and the location they are kept. The Form must be signed with an original signature and lodged in hard copy within seven days. Our members note that:</p> <ul style="list-style-type: none"> • Not all companies maintain hard copy registers • Physical inspections of registers are now rare • Where a company maintains both a hard copy register and records in the cloud, there is confusion about the correct form to lodge. <p>There is no ability to lodge these forms online.</p>
ASIC Form 362 – Appointment of registered agent	This Form must still be signed as an original. Given that many companies appoint an agent for administrative convenience this requirement creates a burden and should be able to be signed electronically.
ASIC Forms 402, 418, 405/6 - Foreign Company Registrations in Australia	All current forms relating to foreign companies registered with ASIC require hard copy lodgements and original certifications. In addition, lengthy processing times create a burden for business.
ASIC forms required to be lodged in hard copy - including Forms 492, 106, 488, 206, 315,318, 342, CF08 and share capital related Forms 07Z, 208, 210, 211, 2205, 2260, 280 and 281 and registered schemes Forms 491, 5101 and 5111	<p>Many ASIC forms still require hard copy lodgement. Our members consider all Forms should be able to be lodged online and signed electronically.</p> <p>For example, Form 280 Notification of share buy-back details used for a selective buy-back of shares requires multiple hard copy lodgements and a minimum of 14 days' notice period to cancel shares. The process is the same for a small proprietary company. Similarly, Form 315 Notification of resignation, cessation or removal of auditor must still be lodged in hard copy.</p>

Form/Document/Issue	Comment
	All hard copy ASIC lodgements are time-consuming, inefficient and impose a regulatory burden on officeholders, agents, auditors, and liquidators than if the forms were able to be signed and lodged electronically.
ASIC Annual Renewal fees	Our members advise that in many cases late notices are mailed to companies after late fees have already been incurred. This creates additional costs to businesses, but also leads to inefficiencies. The problem has also been exacerbated during COVID-19 due to longer delays in mailing times. These processes could be replaced by electronic solutions, for example, electronic messages to officeholders or agents with a link enabling payment. Our members also report that ASIC writes to officeholders individually in hard copy about late fees which causes additional confusion.
Communications FROM regulators	<p>This area was not addressed in the Consultation Paper but is an area where outdated, inefficient, manual practices impose a burden on business. ASIC, for example, still sends various letters and notifications via hard copy mail to applicants, officeholders, a company's registered office address and to appointed ASIC registered agents. Examples include:</p> <ul style="list-style-type: none"> • Notices of proposed deregistration / Notices company has been struck off • Confirmation of change to company's annual review date – following the lodgement of a Form 488 (also in hard copy) • Late payment notices - as noted above. • Corporate Key letters • Annual Company Statements - when no agent is appointed for a company or an officeholder has not registered for Online Services. <p>This creates a significant volume of mail at company registered offices as well as delays. There is also a need to scan these documents so that they can be stored electronically.</p> <p>Our members consider communications from ASIC should be sent electronically to an officeholder's online services portal, an agent's nominated electronic address or the applicant's nominated electronic address.</p> <p>There are also multiple portals established by ASIC for interacting with companies which can be confusing and time consuming for entities with multiple lodgement requirements. For example, there are different portals for ASIC registered agents, Industry Funding lodgements and AFSL-related lodgements which all require the establishment of separate user access management processes.</p> <p>Our members also advise that companies invest time and money into systems that capture, keep and digitise corporate records, for example, BGL's Corporate Affairs System (CAS) or Diligent's Blueprint and that for many companies these records go back over many years. When moving to online communication with regulators regulatory requests/communications should be able to be incorporated into systems companies use rather than requiring them to use regulatory portals which only relate to a small part of a company's record keeping. Our members report that, for example,</p>

Form/Document/Issue	Comment
	the ASIC Edge portal does not work with CAS and as a result there are inefficiencies created to get the records into CAS. These inefficiencies may be increased if there are multiple Treasury portfolio regulators using different portals to communicate with companies.
Identity verification for regulatory and other purposes	Verification of identity for a range of regulatory purposes causes a wide variety of issues. For example, a member reports that their organisation was trying to provide proof to a UK bank of an Australian resident director's residence. The services of a notary, who was required to use a particular form of wording, were required. This is a clear situation where a single universally accepted way of verifying identity such as a MyGov ID identity would overcome a number of hurdles. Another example involves a requirement for an organisation's staff members to verify their identity for the purposes of a 'Blue Card' (a requirement of Child Protection legislation in Queensland) so they could attend a mobilisation at a school in Townsville. The process was extremely lengthy and complicated. Again, a single universally accepted method of proving identity such as a MyGov ID identity would overcome many hurdles.
Corporate Records	
Execution of Consents to Act, Notices of resignation, Share Certificates, Minutes, Notices, Constitutions, Share Transfer Forms, Applications for Shares, Change of Auditor etc	While the Treasurer's Determination enabled companies to execute documents under section 127 of the Corporations Act, there remain many documents which are usually executed by individuals in hard copy because it is unclear whether executing these documents electronically is permitted under the Corporations Act. ⁶ This is one of the reasons Governance Institute sought counsel's advice on this question. ⁷ While that advice indicates, for example, that companies may use electronic signatures on minutes where this has been authorised, other situations are less clear. Our members consider that the position should be settled authoritatively by clear legislation. ⁸
Maintaining electronic records - Consents to Act, Notices of resignation, Share Certificates, Minutes, Notices, Constitutions, Share Transfer Forms, Applications for Shares, Change of	It would also be helpful for it to be settled authoritatively by clear legislation that these sorts of corporate records can be maintained electronically. One potential hurdle is that the differing rules in the various state Evidence Acts would require harmonisation to address this issue.

⁶ The proposals in the Treasury Laws Amendment (2021 Measures No.1) Bill 2021 deal with execution of deeds and execution of documents under s 127 electronically but still do not address many of the other documents companies execute for the purposes of the Corporations Act. These proposals are intended to sunset on 16 September 2021 and the Government has indicated it intends to consult on legislation to make these changes permanent prior to that date.

⁷ Op cit page 2.

⁸ The Treasury Laws Amendment (2021 Measures No.1) Bill 2021 also proposes that minutes may be signed electronically. These proposals are intended to sunset on 16 September 2021. Again the Government has indicated it intends to consult on legislation to make these changes permanent prior to that date.

Form/Document/Issue	Comment
Auditor, Statutory company registers, minutes and board papers etc	

Payments

Form/Document/Issue	Comment
Dividends	<p>Where a company pays or credits a shareholder with a dividend or a non-share dividend, the company must also send a dividend statement or distribution statement. From a company's perspective this has several implications. Typically, these statements are sent annually or bi-annually. Our members suggest that an electronic alert about dividend statements might be an option particularly where an investor is an Australian resident and has supplied their Tax File Number (TFN). There is an additional complication in some cases where companies have written to shareholders asking for bank account details to directly credit dividends to a bank account, in that some shareholders are reluctant to provide the information because they are concerned about the possibility of a scam.</p> <p>Our members note that this information is already sent directly to the Australian Tax Office (ATO) and in their experience, shareholders usually declare dividends in their tax returns but may not actually receive the funds. One listed company estimates that they hold approximately 600,000 TFNs but that approximately 30,000 shareholders do not receive dividends because the company does not have bank account details. Where possible some companies send dividend notices at the same time as other communications to reduce the cost of postage.</p> <p>Deceased estates are also noted as a growing problem with the aging population given that as one large, listed company with a large retail shareholder base advises the average age on its register is 78. Some estate executors find the administration process overwhelming and simply abandon the assets leading to the further complication of companies having to deal with unclaimed moneys – see below.</p> <p>One possible solution may be to connect people with unclaimed dividends by means of an alert linked to the tax system, given that in many cases companies hold TFNs for individual shareholders and provide a direct feed of this information to the ATO.</p>
Unclaimed moneys	<p>The amount of unclaimed moneys, lost shares, bank accounts and life insurance, is estimated at \$1.1 billion.⁹ Unclaimed moneys are problematic because each state has different rules, websites, searches and claiming processes. For organisations, the applicable</p>

⁹ See ASIC moneysmart [website](#).

Form/Document/Issue	Comment
	<p>rule depends on where they are registered. Many states try to encourage claimants to electronic forms, but these then need to be verified and lodged. The ASIC Form, for example, is approximately eight pages long. There are six or seven different websites to search and depending on the state, forms must be lodged with either the relevant Office of State Revenue or ASIC. Our members report that ASIC has developed a good search function, good processes and a knowledgeable and efficient team, but that the process is nonetheless cumbersome and confusing. With the growing number of deceased estates this will become an increasing problem. This is an example of a situation where the intersection of various pieces of state and Commonwealth legislation and outdated manual processes create a burden and cost for businesses and consumers.</p>

Case Study - Capital returns

... We have half a million shareholders and if we didn't have bank account details we would have to find a way to make a payment (cheques are the only way) otherwise it becomes part of the unclaimed funds. This is generally driven by constitutions of [the] company. We tried to be proactive and ask for bank account details ahead of a return of capital, but shareholders were scared it was a phishing attack... We have approximately 240,000 people on our reinvestment plan and while people are getting comfortable to a point, they are still worried about fraud... We only had 20 people request a cheque, but 10 years ago it would've been 20,000 ...we still have cheques from a merger ten years ago .. [fraud with cheques is less of a problem] because people put them in the drawer and forget about them...

Large, listed company - large retail shareholder base

Written signatures

Document/Issue	Comment
<p>'Wet ink' signatures for deeds</p>	<p>Our members report one of the most difficult issues is the interpretation of the varying pieces of legislation governing execution of documents. For example, a member was involved in a transaction with a large Western Australian based company which refused to accept a document executed electronically under section 127 of the Corporations Act. An additional complication was that the directors executing the document were in different locations and did not execute the document simultaneously. They note that not all states have adopted the Uniform Evidence Act and the company in question would not accept electronic execution of the relevant document absent a 'chain of command' supported by affidavit.</p> <p>Our members observe that one barrier to widespread adoption of electronic execution is the question – what evidence am I going to need to produce in a difficult situation such as litigation? They note that in many cases legal advisers and judges still require hard copies</p>

Document/Issue	Comment
	of documents with 'wet signatures'. The rules of at least one state court also still require hard copy documents and wet signatures.
Execution under section 127 of the Corporations Act	Our members note that section 127(1) was originally designed to enable companies to execute documents without a common seal. In practice common seals are now rarely used - this aspect of the section is overdue for review. ¹⁰
Execution of documents by trustees	Our members note this is an area of difficulty because the various states have different rules. In some states electronic execution of documents is permitted but not electronic filing, in other states the position is reversed. This is an example of a situation where inconsistent legislation across the states creates a burden for business and consumers and a barrier to increasing the technology neutrality of Treasury portfolio laws.

Property

Document/Issue	Comment
Registrable land dealings	Despite the temporary relief provided by the Treasurer to allow for electronic signatures on deeds, members report that various state Land Titles offices will not accept electronic registration of agreements relating to land dealings. This causes considerable burden for companies regularly involved in property dealings for example, property leases and acquisition or disposal of land.

Case Study – Retail leases

... We enter into approximately 1500 retail leases per annum which even with the temporary relief measures in place we execute with wet ink signatures due to land titles office requirements. The time and costs involved in managing hard copy procedures for printing, scanning, execution, filing and archiving of original documents is significant. We have a person employed specifically to manage document execution, of which approximately 15 hours per week is spent managing hard copy documents. This doesn't include the time spent (and cost) by executives every week signing documents in wet ink or the cost of archiving the originals in offsite secure facilities.)...

Large, listed property company

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

Ingrained behaviours and outdated systems and processes are probably the greatest barriers inhibiting businesses, consumers, and regulators from using their preferred method of communication. Examples include the reluctance of some judges and legal advisers noted above

¹⁰ The Treasury Laws Amendment (2021 Measures No.1) Bill 2021 retains the reference to common seals.

to accept documents executed electronically. Given the inconsistencies previously noted across various states there needs to be a clear uniform position about electronic execution of documents to enable the successful implementation of the modernisation program. Education will also be important in bringing about behavioural change. We have however seen Australian businesses, consumers of all ages and regulators adopt new technologies and new ways of doing things over the last year on a scale that would have been unimaginable two years ago. For this reason, the modernisation program is timely.

As noted above regulators such as ASIC still rely on companies filing hard copy forms by mail because of inherent limitations in their systems. While the Modernising Business Registers (MBR) Project will assist in bringing these registers up to date by ensuring the electronic provision of registry information, as noted above there are many types of information companies provide to ASIC which are not captured by the MBR Project. In addition, the processes by which this information reaches ASIC also need modernisation. We encourage Government to maintain its investment and momentum in updating and modernising all aspects of the provision of information to ASIC and other regulators.

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

The Case Study below outlines the cost of sending out Dividend Statements every six months for a large, listed company with a significant retail shareholder base.

Case Study – Dividend Statements - AMP

AMP still issues around 430,000 statements by post every 6 months (our register is 710,000). Together with postage and production, we incur costs of around \$500,000 every six months. The addition of the notice of annual meeting by post adds cost due to the size of the document. We mail the statement and AGM documentation together as a cost saving initiative. Many companies do not do this. We would also like to see the ability to use text message alerts to notify shareholders of payments, and they could then access their online account for details. With all the data provided to the ATO for online tax, the need for a physical statement is less important now as data pre-populates when e-tax is used.

- 3. Do you agree with the categories of communication outlined in the consultation paper?**
- a. Are there other types of business communication that should be considered?**
- b. Do you agree with the proposed principles outlined in the consultation paper or are there additional or alternative principles that should be considered?**
- c. What, if any, barriers would restrict implementation of the proposed principles?**

Our members consider that given the enormity of the task of modernising business communications across Treasury portfolio laws the categories of communication outlined in the Consultation Paper are appropriate. They also have the following comments on the Principles outlined in the Consultation Paper.

Principles - Written communications with stakeholders

... adopt technology neutrality in how businesses meet legal requirements to provide written information to their customers, shareholders and other stakeholders unless policy objectives are best achieved by limiting technology choice.

Where a default method is not specified in the law, it is intended that any technology may be used to communicate in writing provided that:

- *the sender is assured the recipient can access the information; and*
- *the information can be stored by the sender and receiver in a way that it can be readily accessed and reusable for subsequent reference.*

Our members support these Principles.

Principles - Communicating with Regulators

As a starting point the Government proposes that regulators and their clients should be able to interact in a manner that provides the regulator with the maximum ability to use the information to assist them in their regulatory responsibilities as well as providing regulated entities with a streamlined process to meet their responsibilities.

Considering the difficulties in communicating with Regulators outlined in our Response to Question 1 above our members consider these Principles are appropriate. We have no specific comment on the Principles outlined for hearings, other than that regulators should provide options the way hearings are conducted, provided these options provide for procedural fairness and afford natural justice.

Signatures

As a starting point, the Government proposes adopting an overarching principle that technology may be used to verify a person's identity and receive their agreement, provided that the electronic method used provides at least the same level of validity as a physical signature.

Following the precedent of section 10 of the Electronic Transactions Act 1999, the proposed principles are:

- *ensuring that the electronic method of signature provides, at least, an equally reliable indication of the person's identity and their intention in respect of the document; and*
- *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.*

Our members consider these Principles are appropriate.

Record keeping requirements

As a starting point, the Government proposes that written records are able to be stored by any means as long as:

- *The information is readily accessible, in a format that can be easily reused; and,*
- *Where the integrity of the information can be maintained over a relevant period.*

Our members support the proposal to remove the current exemptions to the Electronic Transactions Act (ETA) in place of certain provisions of Treasury laws, so that the ETA applies to those laws. They agree with the assessment that the ETA provides a well-established and robust model for a technology neutral approach to recording and retaining information.

Payment methods

As a starting point, the Government proposes that, the law should only prescribe or restrict the means by which a payment is made where this achieves a policy outcome.

More generally, a technology neutral approach to legislation would require that legislative provisions do not mandate any particular payment method (e.g. payment by cheque, bank order or cash). However, there are circumstances where it may be appropriate for legislation to still govern how certain payment methods are executed or regulated.

Our members support these 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.

Our members consider that it will be important when moving to provide digital options wherever possible to consider implementation issues carefully, potential risks and costs, and without imposing digital-only on key stakeholders who need non-digital options. While many consumers were able to move to digital during the COVID-19 pandemic it was clear, that for many consumers the digital divide was a reality – ‘The ability to get online is not the same for all Australians and the online shift has left vulnerable cohorts exposed.’¹¹ When modernising business communications it will be vital to ensure that vulnerable cohorts are not left behind.

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

Our members support Option II outlined at page 3 of the Paper and consider that Option I, maintaining the status quo, is no longer a viable policy option.

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?*
7. *What transitional issues do you foresee for businesses, consumers and regulators in moving to technology neutral communication methods?*
- b. *What are the key implementation risks and their likelihood of occurring? How can we mitigate these risks? Please provide examples.*

As companies increasingly move to electronic storage of key documents secure, up to date systems will be essential. It will be important for companies to ensure systems are maintained in a way that the records are secure and available in the future. Our members report instances where systems used to store corporate records become redundant and are no longer supported which means the information is no longer accessible. Companies will need to implement appropriate information policies and procedures for the retention of records to ensure compliance.

Our members also consider that there will be transitional issues in moving to technology neutral communications however these can be minimised by clear communications to businesses and consumers. For example, those consumers who wish to maintain paper-based communications should be able to opt into communications in this format. This approach was adopted some years ago in relation to the provision of annual reports to shareholders and has been remarkably successful. For example, a large, listed company with approximately 730,000 shareholders now only sends approximately 4,500 annual reports.

One challenge our members have identified with the adoption of new technology is accommodating consumers who are unskilled and/or challenged by technology. With increased awareness of cyber security as an issue and the greater sophistication of online scams, shareholders and others using technology are now suspicious of emails from ASIC and companies. This will be a hurdle.

Our members also consider businesses will need to document the benefits of modernising business communications – the most obvious being more efficient processes, time and costs saved. Individual businesses will also need to consider any disadvantages and risks to enable them to implement a ‘risk managed’ approach and make continuous improvements.

¹¹ See [Riding The Digital Wave Report on COVID-19 Trends and Forward Work Program](#), Australian Broadband Advisory Council, November 2020.