

16 February 2021

Data Economy Unit
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Treasury
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BY EMAIL: mbcomms@treasury.gov.au

Dear Sir/Madam

Modernising Business Communications Reforms

Thank you for the opportunity to comment on the issues raised by the consultation paper entitled *Modernising Business Communications: Improving the Technology Neutrality of Treasury Portfolio Laws December 2020* (**Consultation Paper**) which is focused on how best to improve the technology neutrality of Treasury portfolio laws to ensure they do not restrict the use of current and future technologies.

We understand that the objectives of this consultation are to obtain feedback from stakeholders to assist Government to:

- (a) identify and categorise the types of business communications that would benefit from technology neutrality changes, including those technology neutrality changes that will lower current compliance costs;
- (b) develop principles to guide subsequent legislative change;
- (c) identify legislative change that may be required to give effect to these principles and improve the technology neutrality for each category of communication;
- (d) address sensitivities and risks associated with technology neutrality; and
- (e) prioritise reform implementation.

The Consultation Paper sets out a number of consultation questions and our general responses are set out in **Section 2** below.

1. Who we are

Built from the ground up by a team of deeply experienced and highly credentialed business banking professionals, Judo Bank is Australia's only bank dedicated to SMEs. Our relationship-based model and legacy-free platform uniquely positions us against the major banks – particularly in the current environment, where our service proposition to SMEs has never been more important.

Since Judo obtained its banking licence in April 2019, we have provided over \$2.5 billion of funding into the SME sector. We have invested heavily in attracting and recruiting the country's best relationship bankers, and currently have 70 frontline bankers (supported by a large team of analysts) across Australia.

We are well on our way to achieving our goal of being Australia's most trusted SME business bank.

2. General responses to Consultation Paper questions

Judo Bank is fully supportive of any improvements to technology neutrality across Commonwealth laws. Prioritising the modernisation of business communications to reduce business costs and environmental impact, and to better reflect the way Australians wish to engage and communicate digitally, can only be a positive development for Commonwealth, State and Territory agencies, the Australian business community, and the broader Australian economy and public.

Our general comments on the questions raised in the Consultation Paper are as follows:

- 2.1 Current business communication requirements in Treasury laws have failed to keep pace with technological change (a situation highlighted by the COVID-19 pandemic), rapidly evolving ESG criteria and issues of equity and accessibility and *do* represent a significant regulatory and financial burden on business. Legislative requirements mandating paper-based methods of communication (eg the seeking of retail customer consents or information, the provision of prescribed disclosures) or payment (eg via cheque or cash) should be prioritised for reform given the organisational, financial, regulatory and ESG costs of managing paper for businesses, and the impact on consumers and the community at large. Non-regulatory requirements currently inhibiting businesses, consumers, or regulators from using their preferred method of communication include government agencies (at all levels) not having consistent standards for the collection, holding, management and sharing of data about a consumer and/or business. While certain sectors (including banking under the Consumer Data Right reforms) are moving towards customer-centric standardisation, urgent reforms are needed across all levels of government in this respect.
- 2.2 While we agree with the five categories of business communication that are the focus of the Consultation Paper (broadly, stakeholder communications, communications with regulators, written signature requirements, recordkeeping requirements, the making of payments), other types of relevant business communication which should be considered include:
 - (a) communications *between* regulators and other government agencies (whether domestic or international), including in the promulgation or adoption of common standards for emerging or new technologies;
 - (b) making the conduct of legal proceedings, hearings, determinations, or other proceedings (whether or not involving a regulator) more technology-neutral; and
 - (c) improving access to data as between government agencies and for data consumers (whether retail, wholesale or institutional) generally,

as improvements in these areas are likely to increase fraud/crime detection or prevention, accessibility and/or innovation.

Further, while we agree with the five principles proposed in the Consultation Paper, discrepancies between the electronic transactions legislation at Commonwealth, State and Territory level, and the consequent difficulty in efficiently understanding the applicable exemptions under those Acts, may constitute a practical barrier to restricting implementation of the proposed principles. Treasury may wish to consider implementation of a uniform Electronic Transactions Act 'code' (citing, for example, efficiencies brought about by the national credit laws and *Corporations Act 2001* (Cth)).

- 2.3 Stakeholders (such as consumers and investors) may both benefit from, or be disadvantaged by, technology neutrality depending on factors such as their age, location, access to the internet and/or level of ability, sophistication, or technological capability.
- 2.4 Regarding the options identified on page 3 of the Consultation Paper, the option with the largest immediate and practical benefit may be the reduction or removal of exemptions to the *Electronic Transactions Act 1999* (Cth) for Treasury portfolio laws. However, as noted above, discrepancies between the electronic transactions legislation at Commonwealth, State and Territory level, and the difficulty in efficiently gaining a complete picture of applicable exemptions under them, may continue to act as a barrier to business generally. Further, before any exemptions are removed or reduced, industry should be consulted regarding which Treasury laws should be given the highest priority followed by careful analysis of those laws for any unintended consequences which may arise from such removal or reduction.
- 2.5 As technology-neutral reforms are introduced, near real-time updates should be provided by government agencies to the private sector regarding implementation deadlines in order for businesses to properly manage the impact of those changes for their customers, business partners, services providers and other stakeholders.
- 2.6 Some transitional issues we foresee for businesses, consumers and regulators in moving to technology-neutral communication methods include potential increases in electronic fraud crimes (eg fraudulent alteration of data, cyber security breaches), lack of common standards for electronic data interchange between government agencies, businesses, consumers and/or other organisations (such as the Courts) and accessibility issues for less technologically-advanced consumers, businesses or organisations. Key implementation risks could include greater vulnerabilities to cyber-attacks, data retention and business continuity issues arising out of greater reliance on internal or external (third party) IT systems or infrastructure, poor record keeping practices and consequent poor data accessibility. The likelihood of these risks resulting in harm (e.g. based on the level of cyber-crime during COVID-19) is real. Mitigation strategies could include:
 - (a) establishing common standards for data collection, holding, management, control and sharing of data; and

- (b) near real-time communications between government and the private sector (eg by way of risk dashboards highlighting incoming cyber risks or desirable regulatory changes, whether domestic or international).

We would be pleased to discuss any aspect of this submission with you. You can either contact me, or my colleague Rebecca Lim, Senior Legal Counsel (+61 417 296 185; rebecca.lim@judo.bank).

Regards



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