

# Regulation Impact Statement

Modernising Business  
Communications -

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Improving the Technology

Neutrality of Treasury

Portfolio Laws

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## Background

In 2019, the Government established its Deregulation Taskforce to ensure that regulation is designed and applied in the most efficient and timely way, with the lowest cost to business.<sup>1</sup>

The importance of appropriate regulation was heightened by the COVID-19 pandemic, which highlighted the need for business to be able to adapt and respond quickly to a changing business environment. The importance of technology to the continued functioning of the Australian economy was also brought to the fore.

The Government has made progress on this front by putting in place temporary measures, including those under the *Corporations Act 2001* (Corporations Act), to provide for virtual meetings and electronic execution of documents, to ensure businesses could continue to operate and meet their regulatory obligations through the COVID-19 pandemic.

The Government also committed to examining options to modernise business communications across the Commonwealth and working with the states to reduce the ongoing costs of doing business and provide business with more time and resources to focus on investment and creating jobs.<sup>2</sup>

Reforms to modernise business communication support a business-led private sector recovery from the COVID-19 pandemic and contributes to the Government's goal of positioning Australia as a leading digital economy by 2030 by enabling businesses to increase their uptake and use of digital technologies.

### 1.0 What is the policy problem you are trying to solve?

Rapid digital and technological advances continue to be a feature of the business and consumer environment. While digital technologies continue to evolve, changing the way the world works and communicates, it is apparent that regulations have not always kept pace.

Reviews by the Government, business and other stakeholders have long called for improved technology neutrality in selected pieces of Treasury portfolio legislation. Technology neutrality in this context means legislation that refrains from prescribing specific methods for its implementation. For example, to ensure it does not mandate that information must be provided in hardcopy, or paper-based form, only that the information must be provided.

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<sup>1</sup> [Delivering Deregulat...~https://ministers.pmc.gov.au/morton/2019/delivering-deregulation-australian-business](https://ministers.pmc.gov.au/morton/2019/delivering-deregulation-australian-business)

<sup>2</sup> [Cutting red tape by ...~https://ministers.pmc.gov.au/morton/2020/cutting-red-tape-modernising-business-communications-and-improving-occupational-mobility](https://ministers.pmc.gov.au/morton/2020/cutting-red-tape-modernising-business-communications-and-improving-occupational-mobility)

The growth of digital technologies, including usage of the internet and ICT software, provides alternate communication channels that are often cheaper, faster and more convenient for both the sender and receiver. An increasing number of Australians are engaging with digital technologies; in the six months to June 2020, 99% of Australian adults accessed the internet, likely driven in part by the COVID-19 epidemic.<sup>3</sup>

### **Previous and current inquiries into the problem**

The Financial System Inquiry (FSI) in 2014 noted that some legislation prescribes the use of certain forms of technology. In its Final Report, the FSI recommended that the Government:<sup>4</sup>

- identify, in consultation with the financial sector, and amend priority areas of regulation to be technology neutral;
- embed consideration of the principle of technology neutrality into development processes for future regulation; and
- ensure regulation allows individuals to select alternative methods to access services to maintain fair treatment for all consumer segments (Recommendation 39).

The FSI stated that ‘technology-neutral regulation enables any mode of technology to be used and tends to be competitively neutral.’ It goes on to note that ‘[t]he principle of technology neutrality should be incorporated into government policy-making guides, and processes for developing future regulation. The guidance should allow for technology-specific regulation on an exceptions basis.’<sup>5</sup>

The FSI panel found that a technology neutral approach provides for greater adoption of innovative developments, improves risk management by regulators, can also reduce compliance costs and improve the stability and longevity of regulation. The panel drew attention to stakeholder feedback that identified a range of priority areas that could be made more technology neutral such as customer consent and authorisation, payments and cheques, external administration processes, conveyancing and identity verification.

In its 2015 response to the FSI, the Government committed to amend priority areas of legislation and regulation to be technology neutral, by embedding the principle of

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<sup>3</sup> ‘Trends in online behaviour and technology usage, ACMA consumer survey 2020,’ Australian Communications and Media Authority, September 2020:

<sup>4</sup> Financial System Inquiry Final Report at [www.treasury.gov.au](http://www.treasury.gov.au), p. 269

<sup>5</sup> [Financial System Inquiry Final Report \(treasury.gov.au\)](https://www.treasury.gov.au/financial-system-inquiry-final-report), p270

technology neutrality into future legislation and regulation making.<sup>6</sup> The Government also agreed:

- to consult with the financial sector on priority areas of existing legislation and regulation that present regulatory impediments to innovation, before commencing work on any amendments;<sup>7</sup> and
- that regulatory impediments to innovative product disclosure should be removed.<sup>8</sup>

In 2019, the Senate Select Committee on Financial Technology and Regulatory Technology (the Committee) re-emphasised the importance of technology neutrality in laws. In its Interim Report, the Committee noted that a number of parties advised additional measures could be taken to help modernise the Corporations Act and make it more technology-friendly, above and beyond making temporary changes to virtual meetings and electronic document execution permanent. The Interim Report contained the following relevant recommendations:<sup>9</sup>

- The Corporations Act be amended to enable companies to communicate with shareholders electronically by default, with shareholders retaining the right to request paper-based communications on an opt-in basis.
- The Corporations Act and other relevant legislation and regulations be amended in order to allow for the electronic signature and execution of legal documents.
- Relevant regulations be amended in order to enable the witnessing of official documents via videoconferencing or other secure technological means.

### **Current state**

The growing divergence between the Government's legislative framework and changes in the business operating environment as a result of technological advances has been evident for some time. Prescriptive legislation that locks businesses into outdated technology is unnecessarily burdensome, creating red tape that makes communication time-consuming and costly.

This is of particular importance to the Treasury portfolio because it contains the main legislation governing business operations in a number of critical sectors including banking, credit, insurance and superannuation. Legislation such as the Corporations Act contains provisions that prescribe outdated methods of business communication such as wet signatures, posting of hardcopy documents and traditional meetings where all parties attend in person.

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<sup>6</sup> Government response to the Financial System Inquiry at [www.treasury.gov.au](http://www.treasury.gov.au), p18.

<sup>7</sup> Ibid

<sup>8</sup> Government response to the Financial System Inquiry at [www.treasury.gov.au](http://www.treasury.gov.au), p19.

<sup>9</sup> Select Committee on Financial Technology and Regulatory Technology, p.vii

This Regulation Impact Statement (RIS) focusses on a select number of priority regulations in the Treasury portfolio and excludes tax laws recognising the unique challenges and complexities involved in examining this area of law.

Legislation such as the *Electronic Transactions Act 1999* (ETA) has been introduced to allow regulatory frameworks to recognise the importance of technology to the future economic prosperity of Australia, facilitate the use of technology, promote business and community confidence in the use of technology and enable business and the community to use technology when communicating, including with the Government.<sup>10</sup>

There are however, 19 exemptions to the operation of the ETA in Treasury portfolio legislation including the *Corporations Act 2001*, *Superannuation Industry (Supervision) Act 1993* (SIS Act), *Australian Securities and Investments Commission Act 2001* (ASIC Act), *Banking Act 1959*, *Cheques Act 1985*, *Competition and Consumer Act 2010*, *Insurance Act 1973*, *Life Insurance Act 1995* and *National Consumer Credit Protection Act 2009* (NCCP Act).<sup>11</sup>

Under the Corporations Act for example, exemptions apply to the validity of electronic transactions,<sup>12</sup> requirements relating to writing, signatures, production of documents and retention of documents,<sup>13</sup> the time and place of dispatch,<sup>14</sup> receipt of electronic communication,<sup>15</sup> and the attribution of electronic communications.<sup>16</sup> ETA exemptions, in part, prevent the Corporations Act from being technology neutral.

Five categories of business communication where the lack of technology neutrality is particularly burdensome are:

- written communication between stakeholders;
- communicating with regulators;
- signatures and witnessing;
- record keeping; and
- payment methods.

The policy problems related to each are set out below.

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<sup>10</sup> See s3 of the *Electronic Transactions Act 1999*

<sup>11</sup> See Schedule 1 to the *Electronic Transactions Regulations 2000*

<sup>12</sup> See s8 of the *Electronic Transactions Act 1999*

<sup>13</sup> See Part 2, Division 2 of the *Electronic Transactions Act 1999*

<sup>14</sup> See s14 of the *Electronic Transactions Act 1999*

<sup>15</sup> See s14A of the *Electronic Transactions Act 1999*

<sup>16</sup> See s15 of the *Electronic Transactions Act 1999*

## 1.1 Written communication with stakeholders

Legislation often requires parties to communicate ‘in writing’, using physically printed documents. The requirement is omnipresent, occurring for example, in more than 550 provisions in the Corporations Act and in more than 60 provisions in the NCCP Act. Methods of transmitting documents are sometimes prescribed requiring sending, for example, by post.<sup>17</sup> Australia Post has decreased its city letter deliveries to every second day and increased delivery times for other items to five days for cities and seven days for rural areas.<sup>18</sup> Together with the declining use of facsimile machines, this has led to these prescribed methods of business communication no longer being the most reliable, efficient or cost effective method.

As an example, the Corporations Act requires, in the event of a takeover bid, that a bidder must ensure they complete the dispatch of their offer in a three-day window between commencing dispatch and its completion. Companies involved in this process can have significant share registries with thousands of shareholders. Takeover documentation can also be quite voluminous, meaning that this requirement is not only hard to achieve using post, but in comparison, electronic transmission of documents by email or links to document repositories can be almost instantaneous and would produce significant cost savings.

Treasury portfolio legislation also requires businesses, regulators and individuals to publish notices in newspapers for various reasons. For example, under the Corporations Act no-liability companies must advertise in daily newspapers circulating in each state and territory before selling shares for failure to meet a call.<sup>19</sup> Similarly, registered Australian bodies must advertise before distributing property when ceasing to carry on business,<sup>20</sup> and before registering the transfer of a security, the owner may have to advertise in a newspaper if directed by the business.<sup>21</sup>

Using newspapers as a method for public notification is less useful than it was at the time when these regulations were originally introduced. Provisions that require public notices in newspapers may no longer be reaching the intended audience and achieving the intended purpose.

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<sup>17</sup> See for example [s648C](#) of the *Corporations Act 2001* on the manner of sending documents to holders of securities

<sup>18</sup> Australia Post, <https://auspost.com.au/service-updates/current-updates/temporary-changes-to-letter-delivery>

<sup>19</sup> See *s254Q (3) and (4) of the Corporations Act*

<sup>20</sup> See *s601CC (14)(a) and s601CL (15)(a)* for foreign companies

<sup>21</sup> See *s1070D(6)*

Businesses and regulators often need to supplement their notices in newspapers with more contemporary methods of communication to reach their intended audience – illustrating the unnecessary burden and cost on business that these requirements can produce.

## **1.2 Communicating with regulators**

Treasury portfolio legislation may require businesses to provide written information to regulators. Regulators in scope for the purposes of this RIS include the Australian Securities and Investments Commission (ASIC), the Australian Prudential Regulation Authority (APRA) and the Australian Competition and Consumer Commission (ACCC).

Legislation can also require regulators to provide information to business and others in relation to licensing and registration, breach reporting, investigations and application for regulatory relief. Information can be required to provide an administrative and evidentiary basis for decision-making by regulators and to assist the regulator in conducting regulatory activities.

As regulators receive large volumes of information, it is often necessary to prescribe the format in which it is received. There are some instances where legislation prescribes the form in which information is provided, for example, in hard copy and even at times, prescribe specific layout of the form. This means that regulators can experience situations where they cannot use technology to receive information and they cannot amend the contents of a form or assist with pre-filling forms without a change to the legislation or legislative instrument.

This approach has been addressed successfully in some cases by allowing regulators such as the Australian Taxation Office to specify the means by which it receives information and allowing business to comply at the lowest cost.

## **1.3 Signatures and witnessing**

The purpose of signature and witnessing requirements is to identify the person signing and to confirm their intention to agree to terms in the document. These requirements are often met by the person signing a paper document in the presence of a qualified witness. For example, superannuation funds require binding death benefit nomination forms to be signed in the presence of two witnesses, by a member seeking to nominate a legal representative or dependant to receive benefits from their superannuation fund in the event of their death.<sup>22</sup>

Recent events such as the bushfires in 2019-20 and the COVID-19 pandemic have restricted the ability for business and regulators to continue operating using traditional methods such

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<sup>22</sup> See regulation 6.17A(6)(b) of the *Superannuation Industry (Supervision) Regulations 1994*



as physical signatures and witnessing and have highlighted opportunities for more efficient methods of identifying individuals and confirming agreement.

Secure digital methods of verifying identity and a person's intention to sign are readily available and used extensively in business and in Government, providing the same or higher levels of assurance as current signature and witnessing requirements.

In 2020, the Government provided temporary relief to businesses as part of the COVID-19 economic response to allow the electronic execution of documents without a physical signature in the presence of a witness.<sup>23</sup> However, there are other instances in Treasury portfolio legislation which do not allow electronic signature and witnessing to occur which were not addressed through the current temporary reforms.

The relief provided under the Corporations Act temporary measures and the application of the ETA to specific Acts and provisions within selected Treasury portfolio legislation creates a regulatory environment where treatment or acceptance of electronic signatures is applied inconsistently. There is a need to review and modify legislation to ensure there is sufficient flexibility to allow electronic signatures to be used where appropriate.

#### **1.4 Record-keeping requirements**

Selected Treasury portfolio legislation may require a business to record or retain information "in writing" for a specified period of time.<sup>24</sup> The purpose of requiring information to be retained in a specified format for a period of time is to ensure that information can be accessed in the future for regulatory and evidentiary purposes and for records to be available for scrutiny when required.

For example, s12 of the ETA provides that record-keeping requirements are met where information is kept in electronic form however, the Corporations Act, and the SIS Act are exempt from the operation of the ETA.

A technology neutral approach to achieving these goals would ensure that this purpose is achieved while providing flexibility regarding the manner in which information is retained. This would allow for innovative developments in record keeping to be employed where appropriate.

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<sup>23</sup> See s127 of the *Corporations Act 2001* and the *Corporations (Coronavirus Economic Response) Determination (No. 1) 2020*; and the *Corporations (Coronavirus Economic Response) Determination (No. 3) 2020*

<sup>24</sup> See for example s286 of the *Corporations Act 2001* which requires companies to keep written financial records for a period of seven years

Outdated record-keeping requirements are particularly problematic as businesses conduct more of their operations on digital systems. Digital records can provide many benefits over paper records such as cheaper storage with greater accessibility and provides greater ease of retrieval and analysis of information (for both the company and regulators). Requiring businesses that operate digitally to print documents and store them at a physical location creates an unnecessary burden.

For example, under the SIS Act, self-managed super fund (SMSF) trustees must keep physical copies of trustee minutes, date records of all trustee changes and trustee consents, copies of all member or beneficiary reports and written records of decisions about the storage of collectable and personal use assets under SIS Act and associated Regulations for at least 10 years.<sup>25</sup> Given there are over 580,000 SMSFs in Australia,<sup>26</sup> this is a sizeable burden.

## 1.5 Payment methods

Stakeholders have expressed concerns that Treasury portfolio legislation requires them to use and accept outdated, expensive payment methods. For example, the Corporations Act provides that a company must give holders of shares notice of the place for payment of calls on shares and the notice must be sent by post.<sup>27</sup>

Payment methods have changed significantly in recent decades. Technological improvements coupled with the globalisation of trade and commerce have driven a dramatic shift toward faster, more cost effective digital forms of payment. In an increasingly globalised economy, Australian businesses need to be able to harness these new technologies, which also assist in business cash flow, in order to remain competitive.

In Australia, this shift has been evidenced by an increase in monthly debit card transactions from 150 million per month in 2011, to approximately 600 million per month in 2019. At the same time, use of cash is declining, with the proportion of payments made using cash falling from nearly 75% in 2007 to approximately 30% in 2019.<sup>28</sup>

In Australia, the use of cheques has been in steep decline over the past 20 years, in terms of number of cheques written and the value. Today, only around 0.2% of payments are made

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<sup>25</sup> See SIS Act sections 103, 104, 104A, 105 35AB, 35C and Superannuation Industry (Supervision) Regulations 1994 section 13, 18AA.

<sup>26</sup> ATO SMSF Quarterly Statistical Report – Sept 2020: [Self-Managed Superan...~https://data.gov.au/data/dataset/self-managed-superannuation-funds](https://data.gov.au/data/dataset/self-managed-superannuation-funds)

<sup>27</sup> See s254P of the *Corporations Act* 2001

<sup>28</sup> Delaney L, N McClure and R Finlay (2020), 'Cash Use in Australia: Results from the 2019 Consumer Payments Survey', RBA Bulletin, June. Available at <<https://www.rba.gov.au/publications/bulletin/2020/jun/cash-use-in-australia-results-from-the-2019-consumer-payments-survey.html>>.

with cheques.<sup>29</sup> The value of cheque payments was more than 40 per cent lower in April 2020 than in the preceding twelve months, with cheque usage falling to historically low levels.

Estimates in 2014 suggest that cheques were around six times more costly per transaction than card payments. This figure is expected to continue to increase due to the rise of more accessible and efficient payment methods. As the number of cheques being processed declines, the cost per transaction for cheque increases.

As such, there is a need to ensure there is sufficient flexibility for electronic payment methods to be offered and used where appropriate.

## 2.0 Why is government action needed?

The Government is committed to reducing red tape and to ensuring that legislation is fit-for-purpose and has the lightest touch possible. Improving the technology neutrality of Treasury portfolio legislation would positively impact a significant portion of the regulated population including businesses of all sizes and would have broad-ranging positive impacts across industry sectors such as banking, insurance, superannuation and credit.

To be competitive in operation and cost structure, business must be free to adopt emerging technology neutral methods of communication with other businesses, regulators and individuals. Government action is required to remove legislative and regulatory blockers to business adopting emerging technologies.

Overly burdensome regulation imposes unnecessary and often substantial costs on Australian business, removing their focus from investment and jobs growth. Provisions within Treasury portfolio legislation constrain businesses by forcing them to continue using outdated methods of communication, creating time delays and higher business costs. In addition, some of these provisions are no longer meeting the original policy intent and are limiting the flexibility of businesses, regulators and individuals to adopt technology neutral communication methods that are better suited to them.

Without reforms to Treasury portfolio legislation, the regulatory burden on Australian businesses would increase, reducing Australia's global competitiveness. Given the Treasury portfolio contains approximately 25% of all Commonwealth legislation, improving the technology neutrality in Treasury portfolio legislation would have a significant positive impact on how business operates in Australia.

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<sup>29</sup> Caddy J, L Delaney and C Fisher (2020), 'Consumer Payment Behaviour in Australia: Evidence from the 2019 Consumer Payments Survey', RBA Research Discussion Paper 2020-06. Available at <<https://www.rba.gov.au/publications/rdp/2020/2020-06/full.html>>.

Stakeholders also advised that a priority for implementation is consistency across legislation where possible, which is why a principles-based approach is being proposed, as it would provide the greatest level of consistency possible across Treasury portfolio legislation.

### **3.0 What policy options are you considering?**

Without legislative reform, businesses would be unable to harness more productive and efficient ways of communicating when restricted to more traditional methods of communication by legislation.

The Government has considered three options for improving the technology neutrality of Treasury portfolio legislation:

- Option 1: Maintain the status quo.
- Option 2: Take an incremental approach by building on the reforms to virtual meetings and electronic execution of documents provided through the temporary relief under the Corporations Act.
- Option 3: Adopt a principles-based approach to the reform of one or more categories of business communication.

There are likely to be cases where there is a strong policy basis for restricting the choice of communication methods. For instance, regulators may need the ability to obtain information in a particular format to perform their functions and powers.

Similarly, there may be legislative and regulatory requirements that are geared towards protecting the more vulnerable members of society. While a priority of this program of work is on improving the technology neutrality of Treasury portfolio legislation, this would need to be carefully balanced with other policy priorities such as continuing high levels of protection for individuals and society as a whole.

#### **Option 1: Maintain the status quo**

Option 1 involves business, regulators and individuals continuing to comply with Treasury portfolio legislation that prescribes methods of business communication that are outdated, inefficient and unnecessarily costly. Option 1 would not meet the Government's objectives of reducing red tape and modernising business communication as a COVID-19 recovery priority.

In pursuing Option 1, the Government would fail to meet its commitments to:

- Reduce business costs and better reflecting the way Australians want to engage and communicate digitally by modernising business communications in Treasury portfolio legislation.
- Provide business with greater flexibility to determine the manner in which they engage with other businesses, regulators and individuals.

- Work with business across all levels of government to co-design and implement better, fit-for-purpose regulation.

The burden currently placed on business and other regulated parties would continue to grow, making it increasingly more difficult for businesses to remain competitive in the global marketplace. Reliance on paper-based communications with stakeholders and regulators would continue and additional stakeholders would be unable to benefit from savings reforms would provide, such as those in relation to the temporary reforms under the Corporations Act for virtual meetings and electronic document execution.

Regulators would also need to continue to use their powers to enact instruments to modify the primary legislation to provide relief to businesses. This in turn, makes it increasingly more difficult for businesses to understand their regulatory obligations, costing time and money as they have to consult multiple sources of information.

Businesses would not be required to accept or implement any new or additional obligations if Option 1 is chosen as the preferred option. Similarly, consumers would not be required to use electronic communications in place of paper, as they would retain the ability to fulfil any preferences for paper-based communications.

**Option 2: Take an incremental approach by building on the reforms to virtual meetings and electronic execution of documents provided through the temporary relief under the Corporations Act.**

Option 2 involves taking an incremental approach to technology neutral reforms by building on the temporary relief under the Corporations Act. Option 2 would include reforms to allow:

- proprietary companies with a sole director and no company secretary to execute documents electronically, and
- non-meeting materials to be sent to shareholders electronically, under the same regulatory requirements as the temporary relief.

These reforms build on the temporary relief measures, providing greater consistency in the legislative requirements across the regulated population. The documents provided at a meeting, and therefore covered by the temporary relief, can vary.

The current rules provide that a document, if provided as part of meeting papers, can be sent electronically. However, if documents are required to be sent outside of a meeting, they must be sent in paper form. For example, papers relating to members' resolutions must be sent to members for voting and signature, with a business reply paid envelope supplied for return to the company or registry. The turn-around time for voting on members' resolution by mail can take several weeks and is extended significantly where shareholders live overseas, as is common for companies with a large retail shareholder base. Delays can disadvantage both the company and its shareholders.

Providing legislative certainty for proprietary companies with a sole director but no company secretary to execute electronic documents in the same manner as companies with one or more directors and a company secretary would improve consistency in the regulation of electronic execution of documents by companies.

This approach is aligned with the Government's temporary reforms and would allow bedding down of permanent reforms provided under the temporary relief measures and provide the ability to monitor and evaluate the engagement with the regulatory changes prior to proceeding with additional reforms to technology neutrality.

Although pursuing Option 2 would improve consistency across regulations affecting companies and produce savings, the limited nature of these reforms would mean that the Government would miss the broader opportunity to meet its commitments to:

- reduce business costs and better reflect the way Australians want to engage and communicate digitally;
- provide business with greater flexibility to determine the manner in which they engage with other businesses, regulators and individuals; and
- work with business across all levels of government to co-design and implement better, fit-for-purpose regulation.

Option 2 would not impose any new and additional obligations on businesses if they were to offer shareholders the ability to receive non-meeting materials electronically under the same regulatory requirements as the temporary relief. Option 2 does not mandate the acceptance and implementation of such electronic communications to the exclusion of paper communications; it simply provides an additional option for the distribution of non-meeting materials to shareholders.

### **Option 3: Adopt a principles-based approach to the reform of one or more categories of business communication in Treasury portfolio legislation**

Option 3 involves adopting a principles-based approach to reforms in three of the five categories of business communication within Treasury portfolio legislation. Reforms would be progressed through a series of sequenced legislation packages.

Legislation Package 1, the subject of this RIS, would progress valued early actions of low complexity and low levels of interaction with other Treasury portfolio laws. Further legislation packages would be accompanied by separate regulatory impact analysis.

Option 3 would include the reforms considered in Option 2 but would undertake further reforms to modernising business communications in the Treasury portfolio.

#### *A principles-based approach*

Option 3 involves applying a principles-based approach to the Legislation Package. The proposed principles have benefited from public consultation undertaken in 2020-2021.

A principles-based approach to legislative reform would provide greater consistency across Treasury portfolio legislation and would also allow for pain-points to be prioritised in accordance with stakeholder views drawn from the consultation process.

The consistency achieved under Option 3 would make legislative requirements easier for businesses to understand, while also simplifying compliance requirements for business, regulators and individuals. Option 3 involves removing barriers to businesses and consumers both having their preferences fulfilled for the types of communication that best suit their circumstances.

For example, the Australian Shareholders Association submission on the *Corporations Amendment (Virtual Meetings and Electronic Communications) Bill 2020* noted that currently all the major share registries offer a form of opt-in for company communication, whether that be an opt-in for hard copy/paper communications, or opt-in for electronic communications. The ASA suggested an opt-in system to receive printed communications, and that such a system would not add extra procedures or costs. It would in fact reduce the number of posted communications and the cost of their delivery, including to shareholders may prefer email communications but have not yet made such election.<sup>30</sup>

Legislation Package 1 would make early progress towards addressing the Government's objective to reduce regulatory burden and facilitate the use of technology.

These early measures are ready to be progressed now due to:

- a lower degree of complexity and interaction with various other laws;
- stakeholders identifying the actions as higher priority pain points; and
- groundwork already being undertaken through existing work by Treasury.

#### *Guiding policy principles*

The proposed policy principles to guide legislative change were outlined in Treasury's consultation paper (released 18 December 2020) and have benefitted from feedback received during the consultation process. The proposed principles out contained in the table below:

#### **Written Communication with Stakeholders**

Where a default method is not specified in the law, Treasury laws should allow written communication to be undertaken in any form, provided that the:

- Sender is reasonably satisfied that the recipient can access the information; and
- Information can be stored by the sender and the receiver in a way that allows it to be readily accessed and reusable for subsequent reference.

In some circumstances, it will be appropriate for the law to:

- Allow a party to specify a preferred form of communication; or
- Require that parties consent to a specific form of communication.

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<sup>30</sup> [20201106Submission to Treasury re making online AGMs permanent ED.pdf \(australianshareholders.com.au\)](#)

Where a company communicates with its shareholders, consent is not required for electronic communication. Members can specify a preferred form of alternative communication.

### **Communicating with Regulators**

Regulators should be able to request information from clients that provides the regulator with the maximum ability to use the information to assist them in their regulatory responsibilities as well as providing clients with a streamlined process to meet their responsibilities.

Regulators should be able to conduct hearings without the requirement for parties to be physically present, provided:

- Hearings are conducted with procedural fairness;
- The ability of the parties to obtain information, present evidence and be represented, is not impaired;
- The confidentiality of private proceedings is assured;
- Public hearings are conducted in a manner that allows public access; and,
- There is a place and time for the hearing for the purposes of determining jurisdictional questions.

### **Signatures and witnessing**

Technology may be used to identify a person and indicate their agreement, in place of a physical signature and witnessing, provided the method used is:

- As reliable as appropriate for the purpose for which the electronic communication was generated;
- Is proven to have fulfilled the functions of identifying the person and indicating their intention in respect of the information communicated; and,
- The business or individual to whom the signature is required to be given consents to the use of that method.

### **Record keeping**

Written records can be stored by any means as long as:

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

### **Payment Methods**

Payment methods should only be prescribed by law where necessary to achieve a policy outcome.

These principles incorporate feedback received during the consultation process, noting that overall the feedback received was supportive of the principles and a principles-based approach. The 'written communication with stakeholders' principle was amended to account for specific requirements regarding communicating with shareholders, in order to match the temporary reforms put in place under the Corporations Act.

In other circumstances, it is proposed that consumers would need to express their preference for electronic communications. Some stakeholders would prefer not to be required to seek consent. This would be a matter for consideration as part of any review of the ETA, as this proposal seeks to achieve consistency with the ETA – recognising the benefits that stakeholders such as the Insurance



Council of Australia and the Australian Banking Association raised during consultation regarding achieving consistency in laws.

The Australian Banking Association supported the principles and encouraged Treasury to go further and introduce processes by which Treasury portfolio agencies share a consistent and coordinated approach to data collection. This issue is outside of the scope of this proposal.

### Legislation Package 1

Legislation Package 1 reforms would address a number of priority pain points raised by businesses and comprise amendments that are considered to be ‘implementation-ready’.

The following reforms comprise Legislation Package 1:

No.	Proposed reform
1.	<p>Remove requirements for the publication of selected notices to be in newspapers.</p> <p>This reform would provide businesses and regulators greater flexibility to publish notices using the most appropriate medium. Regulatory guidance would be provided on what is the most appropriate medium and how regulated parties can satisfy publishing requirements. It is anticipated that mediums such as websites and social media would be used for publishing notices while the option to publish in newspapers would still be available, should regulated parties choose to do so.</p> <p>Businesses and regulators may also choose to notify their customer or client directly. For example a bank may choose to publish an interest rate change on their website and also directly notify their customers through their primary method of communication as per the current requirements.</p> <p>There are some notices where it may remain more appropriate to have a dedicated centralised repository and publishing mechanism; such notices would not be considered in this Package.</p> <p>Option 3 contemplates how those circumstances would be addressed.</p>
2	<p>Amend the <i>Corporations Act 2001</i> and related legislation to allow non-meeting materials to be sent to shareholders electronically (building on changes that allow meeting materials to be sent electronically).</p> <p>This reform would adopt the same principles used in the temporary <i>Corporations Act 2001</i> reforms relating to the sending of meeting materials electronically.</p>
3.	<p>Amend the <i>Corporations Act 2001</i> and related legislation to allow takeover notices to be sent to shareholders electronically (building on changes that allow meeting materials to be sent electronically).</p> <p>This reform would adopt the same principles used in the temporary <i>Corporations Act 2001</i> reforms relating to the sending of meeting materials electronically.</p>
4.	<p>Amend the requirement for companies to contact lost shareholders in writing as per the <i>Corporations Act 2001</i> and <i>ASIC Instrument 2016/187</i>.</p> <p>It is proposed that where a company has been unable to contact a shareholder multiple times using the shareholder’s preferred method of communication, the company can then use an alternate method of communication. If the alternate method of communication also fails, they can stop sending the shareholder notices. For example, if a shareholder’s preferred method of</p>

	<p>communication is paper-based and the company sends multiple notices via post which are returned, they can attempt to contact the shareholder via an alternate method (for example, email, text message, phone). If the use of alternative methods of communication also fails, the company would no longer be required to send notices to the shareholder.</p> <p>If a shareholder who has been deemed 'lost' notifies the company of their new residential address or email address the company would be required to send notices to the shareholder again using the shareholders' preferred contact method.</p> <p>This proposal benefits companies as they would no longer be required to send member notices to addresses they know the person is no longer residing at for six years. Shareholders benefit by this reform as they are more likely to receive notices relating their shareholdings as companies would be able to nominate and use multiple methods of communication, if available.</p>
5.	<p>Amend the <i>National Consumer Credit Protection Act 2009</i>, National Credit Code and related legislation to streamline communications with consumers, including, but not limited to:</p> <ul style="list-style-type: none"> <li>• consider where changes are required to ensure customers can provide verbal consent to receive electronic communications; <ul style="list-style-type: none"> <li>– This proposed measure aims to provide credit consumers with greater flexibility in advising businesses on whether they consent receive electronic communications.</li> <li>– Credit consumers would still be able to use written methods to update their address while also providing an additional option of being able to consent verbally if preferred.</li> </ul> </li> <li>• allow changes of address over the phone – for example, in situations where a consumer has called their bank to make other transactions or inquiries, and where it would be convenient to also update address information; <ul style="list-style-type: none"> <li>– This proposed measure would allow credit consumers to update their address verbally. This would make it easier for consumers to update their address, such as when they call a bank to undertake other business and would improve the likelihood of them receiving notices.</li> <li>– Credit consumers would still be able to use written methods to update their address.</li> </ul> </li> <li>• remove prescriptive detail in the format of consumer warnings to accommodate digital product disclosure statements; and <ul style="list-style-type: none"> <li>– At present, prescriptive detail providing consumer warnings needs to be provided inside a black box on the form to ensure that it is brought to the consumer's attention. Stakeholders have advised that this prescriptive format restricts them from fully utilising technology for these documents.</li> <li>– Under this reform, the warning would still need to be brought to the specific attention of consumer to ensure they are aware of risks but would be outcome-based, changing the language to ensure ease for both written and electronic documents. This reform does not propose to not change the wording associated with the warning.</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>– This reform would make it easier for credit providers to digitise warnings, lowering their costs while ensuring adequate protection for consumers is retained.</li> <li>• the nominated address for customers can be changed verbally. <ul style="list-style-type: none"> <li>– The nominated address is the consumers preferred contact address for communication such as email or residential address.</li> <li>– This proposal would allow consumers to update it verbally, making it easier for consumers to receive their notices. Credit consumers would still be able to use written methods to update their preferred address, be it physical or electronic, for receiving communication.</li> </ul> </li> </ul> <p>Any reforms would be subject to appropriate security and privacy protections for consumers.</p>
6.	<p>Amend the <i>Corporations Act 2001</i> and related legislation to allow proprietary companies with a sole director and no company secretary to execute documents.</p> <ul style="list-style-type: none"> <li>– This proposal would ensure proprietary companies with a sole director and no company secretary can execute documents electronically, using the same principles provided for companies under the temporary reforms.</li> <li>– This small class of companies would have benefitted from the temporary relief when it was granted, had they been captured under a relevant provision of the Corporations Act.</li> </ul>
7.	<p>Amend Treasury portfolio legislation to improve technology neutrality for signature and witnessing requirements, provided the method used is consistent with the proposed principles, particularly:</p> <ul style="list-style-type: none"> <li>• fulfilling the functions of identifying the person; and</li> <li>• indicating their intention in respect of the information communicated. <ul style="list-style-type: none"> <li>– This reform would adopt the same principles used in the <i>Electronic Transaction Act 1999</i> and temporary <i>Corporations Act 2001</i> measures relating to the electronic execution of documents, providing consistency across legislation where possible.</li> <li>– Originally, signatures were used to verify a person’s identity and their intention to be bound to the terms in the document. Electronic signatures are appropriate in circumstances where they can satisfy both of these requirements to the same or a greater extent.</li> </ul> </li> </ul>
8.	<p>Amend Treasury portfolio legislation to improve technology neutrality for payments where there are only non-electronic payment options in a particular form or place.</p> <ul style="list-style-type: none"> <li>– This reform would provide consumers with an electronic payment option where the law currently prescribes non-electronic methods only. This reform would give consumers greater choice in how they do business or satisfy regulatory obligations.</li> </ul>

## 4.0 What is the likely net benefit for each option?

With more than 2.8 million registered companies in Australia in 2020, the benefits of enabling more modern forms of business communication would be felt broadly across the economy.<sup>31</sup>

### **Option 1: Maintain the status quo**

As this option would maintain the status quo, and therefore require no regulatory or legislative changes: there are no new regulatory costs associated with this option. This option would result in a continuation of current requirements, meaning that businesses would continue to operate as usual and would not have to change any ways of working.

While this option maintains the current corporate governance standards in the law, it does not achieve the Government's objectives of promoting the effective use of technology to deliver upon those standards.

Accordingly, companies would continue to incur existing costs associated with these mechanisms, even when there is cheaper technology available, and would have limited additional incentives to improve that technology and its usage.

This option also results in businesses missing out on more timely communication with consumers and regulators due to the higher costs of transacting in paper-based formats. It also has the potential to make permanent a situation where some businesses benefit from being able executing documents electronically, while others cannot.

Given the Government's commitment to finalising permanent changes to allow electronic signing and sending of documents prior to the expiry of the temporary arrangements under the Corporations Act on 15 September 2021, maintaining the status quo would not allow more companies to be able to execute documents electronically. This would hamper the full benefits of the reform given greater efficiencies can be achieved when both parties to an agreement can execute electronically, should they wish to do so.

Feedback arising from the public consultation process demonstrated that this option is not preferred by stakeholders, nor would it provide for greater consistency and flexibility across Treasury portfolio legislation.

### **Option 2: Take an incremental approach by building on the reforms to virtual meetings and electronic execution of documents provided through the temporary relief under the Corporations Act.**

In response to the pandemic, the Government put in place temporary reforms to the Corporations Act to allow for virtual meetings and electronic document execution.

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<sup>31</sup> ASIC, <https://asic.gov.au/regulatory-resources/find-a-document/statistics/company-registration-statistics/2020-company-registration-statistics/#total>

The temporary relief changes allows companies to convene annual general meetings under the Corporations Act entirely online rather than face-to-face. The changes also give businesses certainty that when company officers sign a document electronically, the document has been validly executed.

The feedback that the Government has received from industry is that the temporary relief changes helped them continue to operate through the coronavirus crisis.

Feedback has suggested that building on the reforms provided through the temporary relief under the Corporations Act would provide a regulatory benefit to businesses and other stakeholders. The benefits extend to both businesses and regulators, through reduced costs, as well as consumers and investors who benefit from more timely interaction with businesses and greater flexibility in the method of communication through which the interaction occurs.

There are two proposed reforms under this option: allowing non-meeting materials under the Corporations Act to be provided electronically and providing electronic execution of documents by proprietary companies with a sole director and no company secretary.

#### Non-meeting materials

Allowing non-meeting materials under the Corporations Act to be provided electronically would provide consistency in the regulation of meeting and non-meeting documentation. Building on these reforms and allowing non-meeting materials to be sent electronically, would lead to significant benefits being realised.

The benefits of this option are reliant on the uptake of electronic communication by shareholders as the ability to opt-in to hardcopy documentation would remain. It is important to retain this ability to ensure that shareholders are able to receive communications in their preferred format. The benefits of this option are also reliant on shareholders providing their email addresses to public companies.

An estimated 53% of 6.6 million shareholders have not elected to receive notices from public companies electronically. If we assume (conservatively) that companies send on average four non-meeting notices to shareholders each year, the estimated regulatory savings from this reform is \$27.7 million per year.

*Methodology used to estimate regulatory savings for non-meeting materials – Option 2*

Regulatory savings come from public companies shifting from printing and posting non-meeting notices to sending documents electronically.

Based on the range of industry estimates provided through consultation, the following assumptions were made to determine the regulatory savings of allowing legal requirements in respect of non-meeting notices to be met using technology:

- Public companies would be able to email approximately four non-meeting materials to around 53% of the approximately 6.6 million shareholders per year who have not elected to receive notices electronically.
- The number of mailings is a conservative estimate. It should be noted that the volume of correspondence can differ depending on the operation of the business and the documents that are combined with meeting materials or combined for postage.
- 2% of shareholders are assumed to wish to continue receiving hardcopy notices.
- Printing and postal costs per letter are estimated at \$2.
- Average electronic communication costs per thousand were estimated at \$450.

Electronic execution of documents by proprietary companies with a sole director and no company secretary

There are an estimated 70,000 active proprietary companies with a sole director and no company secretary<sup>32</sup> that would benefit from being able to electronically execute documents under the Corporations Act. This measure would reduce regulatory burden and increase the benefits of the temporary reforms for those businesses already able to do so and are engaging with this type of proprietary company. Companies would still be able to use physical signatures, should they choose to do so. While this small class of companies would have benefitted from the temporary relief when it was granted, they were not captured under a relevant provision of the Corporations Act. There was no deliberate policy decision made to include or exclude this category of company at that time.

Businesses would be able to reduce costs related to the need to travel to sign and witness documents physically along with the costs of transporting documents to recipients. Should social distancing and other health measures remain as a result of the COVID-19 pandemic, or if another disruptive event occurs, the benefits of this reform are likely to be higher as the increased need to communicate electronically would remain. The increased uptake of IT since COVID-19 also increases the likelihood that businesses would maximise their investment.

A possible risk of this option is that a person may execute a document without appropriate the authority. However, this risk applies whether the document is executed electronically or physically and as such the document would not be valid. Furthermore, electronically

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<sup>32</sup> ASIC and ABS data to define approximate number of actively trading companies.

executed documents are more likely to be easily traceable providing an easier method to determine whether the document was validly executed.

The estimated average regulatory saving as a result of allowing electronic document execution for companies with a sole director and no company secretary is estimated at \$8.6 million per year.

*Methodology used to estimate regulatory savings for sole directors with no company secretary – Option 2*

To determine the costs associated with executing a document in person, the following assumptions have been incorporated into the methodology:

- There are an estimated 70,000 active companies with a sole director and no company secretary in Australia. Assumes 50 per cent of directors have already provided for electronic execution in their constitution and do so already.
- On average, 50 per cent of businesses travel to execute one document every fortnight.
- If the director is working from home or in disparate locations, the director is required to commute one hour to execute a document.
- OBPR work-related labour cost of \$73.05 per hour.
- Time cost of printing and other mailroom activities involved in sending a letter is approximately \$6.62.
- Printing and postal costs per actual letter are respectively \$1.50 and \$2.20.

As for electronic document execution, the following assumptions have been incorporated into the methodology:

- Sophisticated web-based signing services are an optional extra which are not required by companies that wish to electronically execute documents
- 50 per cent of directors would be working from home and therefore are required to travel to execute documents.
- It takes three minutes to send an electronic document.
- 50% prefer to execute in hard copy.
- 1 deed is executed each year.

Overall, Option 2 results in an average saving of **\$36.4 million per year**.

*Regulatory burden estimate table*

<b>Average annual regulatory costs (relative to status quo)</b>				
Change in costs (\$ million)	Business	Community organisations	Individual	Total change in cost
Total, by sector	-\$36.4	0	0	-\$36.4

### **Option 3: Adopt a principles-based approach to the reform of one or more categories of business communication in Treasury portfolio legislation**

Option 3 is a more substantial reform program, which incorporates the reforms in Option 2, but seeks to commence a multi-year program of work applying consistent principles to improve the technology neutrality across Treasury portfolio legislation.

In addition to the benefits discussed in Option 2, requirements for businesses and regulators to publish in newspapers would be made technology neutral. Benefits would arise in a reduced cost to businesses and regulators for publishing in newspapers, which for interest rate changes under the NCCP Act alone are estimated at \$1 million a year.<sup>33</sup> Regulators and businesses are already engaging in providing notifications through other means to ensure they are reaching their target audience.

Public companies would benefit from a reduced obligation to send notices to lost members for six years. This not only provides benefits for the company in terms of printing and postage costs, but also to the residents of addresses from receiving repeated mail for people who do not reside at the address. Takeover notices would also be able to be sent electronically, providing benefits for both the companies involved in the takeover bid and their shareholders.

Consumers and credit providers under the NCCP Act and associated legislation would benefit from increased ease in being able to amend residential addresses and communicate electronically. This is important for both the customer and credit provider, as the customer is obligated to provide the credit provider with any change of address and a credit provider is required to issue notices to the customer's last known residential address.

Expanding the range of documents to be executed electronically would have significant benefits for the regulated population. It is difficult to quantify the benefits of these changes due to the significant number of provisions across multiple pieces of legislation. Legislation requiring a signature generally require the signee to physically sign documents as a statement of both their identity and agreement to the terms outlined in the document.

There are provisions in Treasury laws that still require a physical signature and do not allow for the use of electronic means of identification and verification of agreement. The proposal is to modernise signature requirements to allow technology to 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 and where providing for electronic execution supports the policy intent.

An initial search of these provisions across Treasury legislation returned over 200 individual provisions that relate to signatures and witnessing requirements. Signature provisions govern interactions between a wide spectrum of stakeholders, including businesses, consumers and government agencies. Reliable parameters to quantify the regulatory

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<sup>33</sup> Cost modelling by Accenture.



benefits for each affected stakeholder under each provision are difficult to ascertain, as this would involve an inquiry on the specific costs on each individual party for each relevant provision with a range of different variables and circumstances.

The savings estimated from the temporary reforms to the Corporations Act currently in place, were around \$435 million per year, and provide an indication of the significant savings that can be achieved through this type of reform.<sup>34</sup> A large driver of savings in this area is the reduced cost relating to travel to sign documents in wet signatures, as well as the need to have multiple parties present at the same time, where relevant.

As discussed above, a risk to expanding electronic execution for this option is that a person may execute a document without appropriate authority. However, this risk has potential to be realised when using either wet or physical signatures. Again, electronically executed documents are more likely to be easily traceable providing an easier process to determine whether the document was validly executed.

Analysis to date has identified very few provisions mandating payments with no electronic options in primary legislation. These provisions do not have an identified regulatory burden due to being redundant. The Reserve Bank of Australia estimated in 2014 that cheques are the most resource intensive of the payment methods at a cost of over \$5, significantly higher than cash at 0.70 cents and debit and credit cards at 0.94 cents and \$1.34 respectively.<sup>35</sup>

Stakeholders were supportive of the proposed measures for Legislation Package 1 as outlined in the table below.

*Stakeholder feedback on Legislation Package 1*

No.	Current state	Future state	Stakeholder view	Comment
1.	Treasury portfolio legislation requires notices to be published in newspapers. For example, the <i>Corporations Act 2001</i> , the <i>National Consumer Credit Protection Act 2009</i> and the <i>Competition and Consumer Act 2010</i> .	Treasury portfolio legislation would be amended to allow notices, if still required, to be published by the most appropriate method. For example, on websites, in social media, in electronic distribution lists, and/or in newspapers.	Stakeholders are supportive of this reform. The National Australia Bank advised that publishing notifications in newspapers is no longer the most effective way of providing transparency to the general public on pricing changes to banking products and that online	Regulatory obligations to publish notices would remain where relevant. Regulated parties would not be restricted from publishing in newspapers, should they wish to do so.

<sup>34</sup> [Corporations Amendment \(Virtual Meetings and Electronic Communications\) Bill 2020 - Exposure Draft Explanatory Materials \(treasury.gov.au\)](#)

<sup>35</sup> [The Evolution of Payment Costs in Australia \(rba.gov.au\)](#), p17.

			<p>notifications were now a more effective, timely method.</p> <p>The Financial Services Council argued that newspaper advertising requirements in relation to death claims are expenses incurred by the deceased's dependants at a time that is both inappropriate and burdensome while providing limited to no benefits.</p>	<p>If needed, more detailed regulatory guidance would be provided to ensure that regulated parties are aware of their obligations.</p>
2.	<p>Companies are required to post notices and materials to shareholders in hard-copy (other than those related to meetings).</p>	<p>Amend the Corporations Act to allow electronic distribution of notices and materials to members. The option for shareholders to receive notices and materials in paper would be maintained.</p>	<p>Stakeholders are supportive of this reform. National Australia Bank advised that electronic communication provides a number of benefits for shareholders, including providing for engagement with shareholders on a timelier and more frequent basis.</p>	<p>Reduction in cost for business. Increase in the timeliness and accuracy of receipt of notices and materials for shareholders.</p>
3.	<p>Takeover notices under Chapters 6 and 6A of the Corporations Act must be distributed in hardcopy.</p>	<p>Allow all takeover documentation to be sent electronically, where shareholders have previously elected to receive notices by email under other sections of the Corporations Act.</p>	<p>Stakeholders are supportive of this reform. Link Group advised that email offers much more reliable delivery to the investor, including tracking of the rate of emails that do not bounce, that are opened and whose content is accessed.</p>	<p>Reduction in cost to business in takeover process. Increase in the timeliness of takeover processes for business and shareholders.</p>
4.	<p>Businesses are required to send notices to the last known address of a 'lost' member for six years under the Corporations Act</p>	<p>Amend legislation to reduce the number of times notices must be sent. Add the requirement to attempt contact by another method of</p>	<p>Stakeholders are supportive of this reform. The Governance Institute of Australia advised that despite mail being returned year</p>	<p>Reduction in cost for business. Cease aggravating residents by repeatedly</p>

	<i>and ASIC Instrument 2016/187.</i>	communication, if available, before ceasing notifications.	after year with a range of messages with a range of messages indicating the person is no longer at the address, they are still required to send notices to the address.	sending unwanted mail.
5.	Credit providers are required to communicate in writing with customers under the NCCP, the <i>National Credit Code and the National Consumer Credit Protection Regulations 2010.</i>	Ensure customers can provide verbal consent to receive electronic communications; change address by phone; remove the requirement for certain disclosures to be in contained in boxes (reg 74 of <i>National Consumer Credit Protection Regulations 2010</i> ); allow the nominated address of customers to be changed verbally.	Stakeholders are supportive of this reform. A banking peak body advised that if a customer has not notified their change of address in writing, credit licensees can be required to send documents to a known wrong address.	Reduction in cost to business and removal of a pain point for customers.  The requisite warnings would not change and would still be required in the future state.
6.	Proprietary companies with a sole director and no nominated company secretary are excluded from electronic execution of document rules in s127 of the Corporations Act. This class of company is denied the benefit of changes to facilitate the electronic execution of documents.	Allowing proprietary companies with a sole director and no company secretary access to the document execution rules in s.127 of the Corporations Act.	Stakeholders are supportive of this reform. This amendment rectifies an anomaly in the legislation that currently only allows a director of a proprietary company to execute a document if they also have a company secretary. A large legal firm noted that the inability for sole directors without a company secretary to sign electronically under s127 stops it and the counterparties from the benefits of electronic execution. This change would ensure the document execution rules from the COVID-19 are also	This regulatory change would facilitate electronic document execution for a small class of companies.

			provided for this small class of companies.	
7.	A substantial number of provisions across Treasury portfolio legislation require signatures to be hand written and witnessed. Requirements are not uniform. Many provisions require wet signatures, some do not. In addition, many Treasury portfolio Acts are exempt from the operation of the <i>Electronic Transactions Act 1999</i> .	Treasury would amend portfolio legislation to improve technology neutrality for signature and witnessing requirements, creating uniform application to the proposed principles.	Stakeholders are supportive of this reform. The Australian Institute of Company Directors noted that they support making electronic signatures permanent for a broader range of legal and company documents across all Treasury portfolio laws, including permitting all documents and deeds to be created and signed in electronic form by organisations and individuals.	These change would allow signature requirements to be uniform, fulfilled with greater ease, thus reducing costs to business.
8.	Treasury portfolio legislation can restrict payment methods forcing people to use or accept cheques, money orders or cash.	Treasury would develop legislation that provides more flexibility in the choice of payment methods across Treasury portfolio legislation.	Stakeholders are supportive of this reform. The Australian Banking Association advised that it considers that a program of payment neutrality reforms encompassing the identified pieces of legislation should be prioritised by Treasury.	Would increase payment flexibility for business and customers.

*Methodology used to estimate regulatory burden of early reforms – Legislative Package 1 of Option 3*

**No. Reform**

**1. Publishing notices in newspapers**

Regulatory savings come from removing the cost of newspaper advertising and placing notices on websites and in social media as part of business-as-usual.

- Based on the range of industry estimates provided through consultation, the following assumptions were made to determine the regulatory savings of removing the requirement for notices to be published in newspapers:
- The estimated cost of publishing an advertisement in a national newspaper is \$4,500 per day.
- The cost of a public notice in a newspaper is estimated at \$200.

	<ul style="list-style-type: none"> <li>• In the future state, businesses can place notices on their website or on a public register and/or advertise across social media depending on what is appropriate and required under the legislation.</li> <li>• In each case, newspaper publishing requirements would be triggered by different events. For example, the National Consumer Credit Protection Act 2009 requires credit providers to publish changes to interest rates, fees and charges in national newspapers. <ul style="list-style-type: none"> <li>– Two newspaper notifications per bank.</li> <li>– 112 credit agencies publicly listed under the National Credit Code (ASIC), 75% (84) are assumed to notify consumers through newspaper notifications.</li> <li>– 235 instances per year.</li> </ul> </li> </ul> <p>The overall estimated regulatory saving for this option is approximately \$1 million per year (over 10 years).</p>
<p>2. Non-meeting materials</p>	
	<p>Regulatory savings come from public companies shifting from printing and posting non-meeting notices to sending documents electronically.</p> <p>Based on the range of industry estimates provided through consultation, the following assumptions were made to determine the regulatory savings of allowing legal requirements in respect of non-meeting notices to be met using technology:</p> <ul style="list-style-type: none"> <li>• Public companies mail in hardcopy at least four non-meeting materials annually to around 53% of the approximately 6.6 million shareholders who have not elected to receive notices electronically. The volume of correspondence can differ depending on the operation of the business and the documents that are combined with meeting materials or combined for postage.</li> <li>• Post implementation of Legislation Package 1, 2% of shareholders are assumed to continue their preference of receiving non-meeting materials in hard copy.</li> <li>• Printing and postal costs per correspondence are estimated at \$2.</li> <li>• Average electronic communication costs per thousand were estimated at \$450.</li> </ul> <p>The estimated regulatory savings from this reform are estimated at approximately \$27.7 million per year.</p>
<p>3. Takeover notices</p>	
	<ul style="list-style-type: none"> <li>• The process of sending bidder and target statements and shareholder voting is conducted in paper where shareholders have not elected to receive communication electronically. Regulatory savings arise from distributing takeover statements to all shareholders electronically.</li> <li>• There was an average of 26 takeovers a year over the last three years.</li> <li>• Assumed average of 5,693 shareholders in each company.</li> </ul>

	<ul style="list-style-type: none"> <li>• The manual process requires design, printing and mailing costs for bidder and target documents and postal return of shareholder votes.</li> <li>• Bidders and targets send bid statements to shareholders.</li> <li>• Offers are can be extended and bid prices increased three or more times during a takeover cycle.</li> <li>• The design of bidder and target statements costs \$280.</li> <li>• The cost of printing and posting target and bidders statements of up to 180 pages is \$10 per shareholder.</li> <li>• The cost of printing and posting letter sized documents for extended offers and bid price increases is \$3 per shareholder.</li> <li>• Savings arise from delivering documents by email saves on printing, mailing and manual tabulation of shareholder returns</li> <li>• The cost of processing direct electronic acceptances from shareholders is \$2.50 per shareholder.</li> <li>• Average electronic communication costs per thousand were estimated at \$450.</li> </ul> <p>The overall estimated regulatory saving for this option is approximately \$6.2 million per year (over 10 years).</p>
4.	<p><i>ASIC Instrument 2016/187 – send annual reports for 6 years to lost members</i></p>
	<p>Regulatory savings arise from ceasing to send annual reports to lost shareholders after 2 years and two further attempts to contact the shareholder.</p> <ul style="list-style-type: none"> <li>• There are approximately 6.6 million shareholders in Australia.</li> <li>• Of those shareholders, approximately four percent of shareholders are considered lost.</li> <li>• The average cost of printing and posting a package of large documents is \$6.62.</li> <li>• The average cost of sending documents electronically is \$1.22.</li> <li>• The average cost of attempting to contact shareholders twice to confirm address is \$4.88.</li> </ul> <p>The overall estimated regulatory saving for this option is approximately \$2.8 million per year (over 10 years).</p>
5.	<p><i>National Consumer Credit Protection Act 2009, Regulations 2010 and National Credit Code</i></p>
	<p>5.1 Ensure credit customers can provide verbal consent to receive electronic communications.</p>
	<p>Regulatory savings arise from not having to print and post written communications to credit customers.</p> <ul style="list-style-type: none"> <li>• There are approximately 13,600,000 credit card and charge accounts in Australia.</li> <li>• Assumes approximately 50% of credit customers already receive electronic communication and 10% per year are changed.</li> <li>• Assumes 75% of customers bank online and process changes through internet or mobile banking, with the remaining 25% visiting branch or using the phone.</li> </ul>

	<ul style="list-style-type: none"> <li>Assumes the average cost of manually processing a written request to change method of communication is \$6.09.</li> <li>Assumes average cost of processing a phone request to change method of communication is \$2.44.</li> </ul> <p>The overall estimated regulatory saving for this option is approximately \$0.7 million per year (over 10 years).</p>
<p>5.2 Allow for change of address and change of nominated address over the phone.</p>	
	<p>Regulatory savings arise from businesses being able to send communications to the correct address in the first instance and avoiding the expense of handling returned mail and ‘lost’ customers.</p> <p>For the purposes of this estimate of benefits, it is assumed that in instances where customers are changing address by phone, this would replace online methods. We assume that a similar amount of time is taken by the customer in both circumstances and therefore no time savings are attributed in this costing.</p> <ul style="list-style-type: none"> <li>There are 13,600,000 credit card and charge card accounts in Australia.</li> <li>Of those, it is assumed that approximately 1 million customers may wish to change their address each year.</li> <li>The time taken for consumers to complete change of address forms on the internet and over the phone are very similar; the benefit to consumers relates instead to ensuring they don’t miss out on relevant information. The benefit to consumers of having access to correct information is not quantified due to unavailable data.</li> <li>The cost of processing written change of address requests is approximately \$6.09.</li> <li>The cost of processing a change of address request over the phone is \$2.44.</li> </ul> <p>The overall estimated regulatory saving for this option is approximately \$1 million per year (over 10 years).</p>
<p>5.3 Remove black boxes around warnings from written credit documents and place warnings elsewhere in documents to allow greater clarity in digital presentation</p>	
	<p>Regulatory savings are not able to be costed for this reform and any likely savings would be offset by the need to revise the credit document.</p>
<p>6. Sole director companies with no company secretary can execute documents electronically.</p>	
	<p>To determine the costs associated with executing a document in person, the following assumptions have been incorporated into the methodology:</p> <ul style="list-style-type: none"> <li>There are an estimated 70,000 active companies with a sole director and no company secretary in Australia. 50% of directors have already provided for electronic execution in their constitution and do so already.</li> <li>On average, 50% of businesses travel to execute one document every fortnight.</li> <li>If the director is working from home or in disparate locations, the director is required to commute one hour to execute a document.</li> <li>OBPR work-related labour cost of \$73.05 per hour.</li> </ul>

	<ul style="list-style-type: none"> <li>• Time cost of printing and other mailroom activities involved in sending a letter is approximately \$6.62.</li> <li>• Printing and postal costs per actual letter are respectively \$1.50 and \$2.20.</li> </ul> <p>As for electronic document execution, the following assumptions have been incorporated into the methodology:</p> <ul style="list-style-type: none"> <li>• Sophisticated web-based signing services are an optional extra which are not required by companies that wish to electronically execute documents</li> <li>• 50 per cent of directors would be working from home and therefore are required to travel to execute documents.</li> <li>• It takes three minutes to send an electronic document.</li> <li>• 50% prefer to execute in hard copy.</li> <li>• 1 deed is executed each year.</li> </ul> <p>The estimated average regulatory saving as a result of allowing electronic document execution for companies with a sole director and no company secretary is estimated at approximately \$8.6 million per year (over 10 years).</p>
7.	<b>Signatures and witnessing.</b>
	<p>Preliminary searches of Treasury portfolio legislation reveal that there are a substantial number of provisions that relate to signatures and witnessing. Signature requirements across legislation are not uniform. There are 19 pieces of Treasury portfolio legislation that are exempt from the operation of the <i>Electronic Transactions Act 1999</i>, meaning that electronic signatures are cannot be accepted under relevant provisions. Many stakeholders raised signatures as a pain point in consultation.</p> <p>It is not possible to determine the regulatory benefit of removing requirements for wet signatures because we have been unable to obtain sufficiently reliable parameters across so many provisions. While final estimates are yet to be calculated, initial Treasury estimates of approximately \$445 million for allowing companies to electronically execute documents were previously consulted on.</p>
8.	<b>Payment methods – cheques, money orders and cash.</b>
	<p>There a few identified provisions which solely require payment by cheque, cash or money order. Of those that have been identified, the provision was transitional or procedures have been put in place to provide for payment via other mechanisms.</p> <p>There are no identified regulatory saving for this option at this time.</p>
The estimated regulatory savings of implementing the first six reforms of Legislation Package 1 in Option 3 is approximately \$48.1 million per year.	

*Regulatory burden estimate table*

<b>Average annual regulatory costs (relative to status quo)</b>				
Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in cost
Total, by sector	-\$48.1	0	0	-\$48.1



## 5.0 Who did you consult and how did you incorporate feedback?

### Consultation process

The Treasury undertook a public consultation process with stakeholders including businesses, law and accounting bodies, community and consumer protection organisations, Government agencies and Treasury portfolio bodies. Stakeholder feedback has been incorporated into the relevant options.

The purpose of public consultation was to identify areas of business communication, develop principles to guide legislative change, identify legislative provisions for amendment, and prioritise reforms.

Options were also informed by the Modernising Business Communication Expert Panel, established to provide guidance on the most promising areas of reform and ensure meaningful benefits are realised for business and the Australian community. Members of the Expert Panel are drawn from the Australian Shareholder's Association, the Institute of Public Accountants, Emerson Economics, the Australian Institute of Company Directors, Johnson Winter & Slattery, the Australasian Investor Relations Association, the Governance Institute of Australia, the Australian Banking Association, FinTech Australia and the Australian Payments Network.

Treasury also held targeted meetings to seek stakeholder views on areas of business communication requiring reforms and to raise awareness of the Government's technology neutral reform agenda and public consultation process. On 18 December 2020, the Government released a public consultation paper, which was open for 10 weeks, closing on 28 February 2021.

Stakeholder feedback and submissions were collated, reviewed and analysed to identify areas of business communication, inform principles to guide legislative change, identify legislative provisions for amendment and to prioritise reforms.

### Main themes in consultation

Submissions made through the public consultation process demonstrated strong support for broad reform to selected Treasury portfolio legislation, noting the need for a step-change from incremental changes in legislation to adapt to emerging technologies towards a more agile, updated and fit-for-purpose regulatory environment. Overall, stakeholders were strongly opposed to maintaining status quo. For example, the Governance Institute of Australia noted that:

“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 critical that legislation is technology and mode neutral to enable businesses and consumers to respond to rapid technological change.”

A number of submissions, including from banks and industry bodies such as the National Australia Bank and the Australian Business Software Industry Association, were supportive of principles-based guidance, rather than further prescription. These views support technology neutrality in order to create consistency with how regulators, businesses and consumers use technology to interact with each other.

Stakeholders across a variety of groups including the Governance Institute of Australia, National Australia Bank agreed that the outcomes in response to the temporary measures is encouraging and they view the advancement of digital technologies and the opportunity to improve the technology neutrality of Treasury portfolio laws a priority and correctly reflects the future path for business engagement and communication in general.

Stakeholders acknowledged that consumers would benefit from improved technology neutrality across selected Treasury portfolio legislation by providing consumers with greater choice in determining how they receive communications. Creating technology neutral regulation would address a number of priority pain points raised by businesses by focussing on the intent and purpose of the business communication. This in turn is likely to increase customer satisfaction by information being communicated in the format the customer prefers, creating a more seamless experience.

Technology neutral reforms would not preclude consumers from using particular methods of communication. Instead consumers would be offered greater flexibility. For example, consumers that prefer traditional methods of communications such as paper would still be able to receive communication in this format. Whereas consumers that want to use electronic methods, but currently cannot because of prescriptive laws, would be able to communicate using their preferred method.

For example, the Australian Shareholders’ Association did not support forcing shareholders fully online, but are supportive of an opt-in system for shareholders for communication that they want to receive in hard copy.<sup>36</sup>

This approach ensures that legislative changes would support the needs of vulnerable people, small businesses and other segments of society that may be less likely to embrace digital technologies. This would occur by ensuring that more traditional options such as paper-based communication are retained. For example, where a shareholder or consumer

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<sup>36</sup> [20201106Submission to Treasury re making online AGMs permanent ED.pdf \(australianshareholders.com.au\)](#)

cannot receive electronic communications, does not have the ability to access online information or chooses to engage using paper-based communication, businesses would need to provide the shareholder or consumer with hard copy communication to meet their regulatory obligations.

In addition, small businesses would be able to make a commercial decision on whether to take advantage of more electronic communications options and the advantages that arise, or remain with current forms of communication without the cost associated with information technology.

Stakeholders have raised the need to progress reforms in this area through other related consultation processes. For example:

- The Australian Institute of Company Directors stated in a submission to the Treasurer that... '[t]o accelerate economic recovery, Australia needs a regulatory environment that can adjust from crisis settings to re-set for growth. Modernising Australia's corporate law is one clear priority, with benefits to stakeholders and organisations across the community.'<sup>37</sup>
- The Australian Banking Association has a 'new digital economy' campaign stating that 'The COVID-19 lockdown has highlighted century-old regulations slowing down commerce. The ABA is currently working to enable people to get a mortgage and do business digitally, including using electronic signatures.'<sup>38</sup>
- The Governance Institute 'strongly encourages Government to embrace the opportunity to amend the Corporations Act to enable companies to use technology to notify members that notices of meeting and materials are available.'<sup>39</sup>

### Further consultation

Stakeholders would have a further opportunity to provide feedback on proposed regulatory changes through consultation that would be conducted on exposure draft bills. A number of the high priority areas for stakeholders would be progressed in Legislation Package 2, which would be subject to a separate RIS due to the need to undertake policy development, alongside further consultation with stakeholders on the proposed approach.

For example, communicating with regulators was a priority for stakeholders, with a desire for Government and regulators to be leading in this area and providing consistency where possible. However, given the complexity and size of potential reforms in this category, obtaining optimal outcomes would require consultation across Treasury regulators and the

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<sup>37</sup> [aicd-letter-to-josh-frydenbergvirtual-agms-04112020.ashx \(companydirectors.com.au\)](https://www.aicd-letters.com.au/letter-to-josh-frydenberg-virtual-agms-04112020.ashx)

<sup>38</sup> [A new digital econom...~https://www.ausbanking.org.au/campaigns/electronic-transaction-reform/](https://www.ausbanking.org.au/campaigns/electronic-transaction-reform/)

<sup>39</sup> [Corporations Amendment \(Virtual Meetings and Electronic Communications\) Bill 2020 \(Bill\) \(governanceinstitute.com.au\)](https://www.governanceinstitute.com.au/corporations-amendment-virtual-meetings-and-electronic-communications-bill-2020)

identification of streamlining options where possible. Broader implications of Commonwealth legislation also need to be considered and addressed as needed.

## **6.0 What is the best option from those you have considered?**

Option 3 is the preferred option because it provides the greatest opportunity to address the longstanding issue of a lack of technology neutrality in Treasury portfolio legislation. Option 3 would reduce the regulatory burden on businesses, consumers and regulators in the most consistent and clear way in a timely fashion.

Under Option 3 businesses, consumers and regulators would have increased flexibility and greater ability to harness digital technologies to increase efficiency and productivity.

For example, one stakeholder advised that the cost of a recent takeover bid was over \$700,000 and estimated savings of approximately 60% could be achieved if the Corporations Act provisions were technology neutral. It would also potentially provide investors with critical information in a quicker manner with greater surety of receipt, as email bounce backs are often instantaneous. With an average of 26 takeovers in the last three years,<sup>40</sup> takeovers over the last three years, the regulatory savings from takeovers alone could be substantial.

Option 1 would not achieve the Government's goals or meet stakeholder expectations. As the case for change is clear and compelling, leaving legislation in the current state would cause an increasing burden on business and limit their ability to compete in the global economy.

While Option 2 would reduce red tape and modernise business communication through building on the temporary relief provided under the Corporations Act, it would not address stakeholder concerns or provide benefits across the regulated population. Option 2 would also not achieve the objectives of the Government or meet the expectations of stakeholders.

The preferred option has been informed by the regulation impact assessment process. An early assessment RIS was prepared to inform Government consideration prior to the announcement of its commitment to modernise business communications on 18 August 2020.

The early assessment RIS informed the development of the draft principles and the options and analysis put forward in the public consultation paper.

The proposed Implementation Plan was informed by the development of this decision RIS, along with the public consultation process and used to inform Treasury's advice to Government on how to proceed with reforms to modernising business communications.

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## **7.0 How will you implement your chosen option?**

Subject to policy approval, the chosen option would be implemented via permanent legislative changes to Treasury Portfolio legislation and other related subordinate instruments using a principle-based approach.

Improving the technology neutrality of Treasury portfolio legislation would require careful analysis and implementation planning. The breadth and complexity of Treasury portfolio legislation and the nature of the business environment today means that changing one area of communication or piece of legislation may significant flow-on effects in other areas. For example, the Corporations Act has significant interaction with the ASIC Act.

There are a number of considerations in improving technology neutrality that need to be observed when implementing any changes. A priority is to ensure that business and other regulated entities can understand their responsibilities in order to continue to meet their regulatory obligations in the midst of transition, recognising that uncertainty costs time and money. This may require providing a transitional period to provide adequate time for businesses to change their internal processes, should they wish to do so.

The degree to which transitional arrangements are required would depend on the extent to which businesses and consumers would be required to make adjustments to their processes and behaviours. The proposal does not require changes and instead would remove obstacles to options that could facilitate improved ways of communicating. The need for transitional arrangements would be best addresses by relevant businesses, provided sufficient notice of pending legislative changes is provided.

A key challenge in implementing this proposal would be to maintain consistency in the application of the proposed principles-based approach. To address this, Treasury would foster a whole-of-portfolio approach and, where appropriate, a whole-of-government approach to legislative development.

Reforms to legislation, if and when passed, would be subject to ongoing monitoring to ensure they operate effectively. We would continue to engage with stakeholders to determine the effectiveness of the new processes.

A formal review of the efficacy and impact of the changes would commence within two-years of completion of the project.