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

The Property Council welcomes the opportunity to provide comments to Treasury on the *Modernising Business Communications: Improving the Technology Neutrality of Treasury Portfolio Laws* Consultation Paper.

The Property Council of Australia champions the industry that employs 1.4 million Australians and shapes the future of our communities and cities. Property Council members invest in, design, build and manage places that matter to Australians: our homes, retirement villages, shopping centres, office buildings, industrial areas, education, research and health precincts, tourism and hospitality venues and more.

We support the Government's intent to reduce business costs and better reflect the way Australians want to engage and communicate digitally. There is a need for businesses and consumers to meet obligations electronically, whilst being assured of security, authenticity, and reliability.

We welcomed the introduction of *Treasury Laws Amendment (2021 Measures No. 1) Bill* to parliament which ushers in reform around virtual AGMs and the signing and sending of electronic documents. These reforms allow more flexibility for business, greater engagement with stakeholders, investors, and shareholders, and reduce costs both in time and spend. Bringing permanency to these reforms is an important next step and we look forward to seeing this occur over the coming months.

Modernising Business Communications in the Property Sector

In a modernised world with increased technological and security advances, paper-based processes cause unnecessary delays. These delays became especially disruptive with the COVID-19 pandemic, with lengthy delays caused primarily by: an inability for individuals to physically be present; infrequent and limited access to office equipment; and unreliable postal and delivery timeframes. If electronic signing or witnessing is not an option, transactions could be delayed with an unexpected lockdown.

Regarding the property sector, there are processes across federal and state/territory jurisdictions which are still dependent on paper-based and in-person obligations. Whilst states have enacted emergency measures to ensure signing and sending of documents could be completed

electronically, many of this will shortly cease to have effect. This puts business activities at the whim of a snap lockdown.

We understand that s127 of the *Electronic Transactions Act* (ETA) is out of the scope of the consultation paper. However, we take this opportunity to draw attention to the status of foreign companies and entities other than companies not being covered by the *Corporations (Coronavirus Economic Response) Determination (No. 1) 2020*, particularly when it comes to executing deeds. This means that a deed signed by a foreign company or entity other than a company must still be by 'wet-ink' unless statutory modification occurs. We seek such a modification.

Electronic signing and sending

The Property Council recognises the Government's work towards permanently changing the signing and sending of documents for businesses and consumers. We supported the emergency pandemic reforms and now reiterate our support for permanent electronic changes to signing, witnessing, and sending documents, paving the way for technology neutrality in the property sector.

Electronic signing can provide more secure ways to confirm the identity of a person. It is not entirely clear how a witness (except where the witness is required to be a lawyer, JP, etc.) adds a degree of validity to the signing of a document. The Property Council welcomes the work of the government in allowing government departments to accept e-signed documents.

Electronic propositions as default

The Property Council supports reform of electronic propositions being considered default, with an ability to request items in hardcopy. The need to obtain consent for electronic versions is time consuming and only adds to delays in finalising transactions.

Issuing of notices

The issuing of notices in newspapers is out of step with the modern consumption of information. Online sources are proving to be the main source of news and information for many segments of the population. It is a time-intensive and costly process to issue a notice in newspapers. The Property Council supports using electronic registers for the issuing of notices.

Provision of documents to regulators

There is a range of documentation that both our listed and unlisted members are required to submit to ASIC in paper form. There does not appear any obvious rationale for the continuation of this approach and we believe clear efficiency benefits for both companies and ASIC would be gained from enabling electronic submission which should be permissible for all ASIC forms. Timely submission of these forms has also been impacted by changes to Australia's postal services and the closure of ASIC offices that previously accepted hard copy lodgements.

Examples of these forms are set out below, noting this list is not exhaustive:

- Form 206 – Application for change of company type.
- Form 208 – Notification of details of shares issued other than for cash.
- Form 210 – Notification of statement of special rights carried by shares.
- Form 211 – Notification of division or conversion of classes of shares.
- Form 2205 – Notification of resolutions regarding shares.
- Form 2260 – Notification of reduction in share capital details
- Form 280 – Notification of share buy-back details.
- Form 281 – Notification of intention to carry out a share buy-back.
- Form 315 – Notification of resignation, removal or cessation of an auditor.
- Form 342 – Application for consent from ASIC to resign as an auditor of a public company.
- Form 362 – Appointment of registered agent.

- Form 488 – Application to change the review date of a company or registered scheme.
- Form 492 – Request for correction (currently, this can only be lodged electronically to correct another form that has been submitted electronically).
- Form 991 – Location of books on computer.
- Form 992 – Notification of change of location of books on computer.
- Form 909 – Notification of office at which register is kept.

We also draw attention to ASIC only accepting paper based Half Yearly Accounts, while Full Year Accounts can be lodged on-line. Relying on postal services to lodge the half year accounts with ASIC for multiple property funds is fraught and should be possible on-line.

Certain documents (including fund constitution and compliance plans) are required by ASIC to have wet-ink signatures by all directors. Compliance plans of registered schemes are modified or replaced frequently, and notice of changes must be sent to ASIC. The process of lodging a compliance plan is still completed via mail, rather than electronically. Each director of the responsible entity must sign the plan, or have an agent sign the plan, which is a time-consuming process.

In addition, any ASIC form that is not able to be lodged online requires a physical signature from a director/Company Secretary, even when the accompanying documents don't include a wet-ink signature. Furthermore, there are processes where a form can be completed online for the ASX but if the form requires accompanying documents it must be lodged physically with ASIC.

There is also a range of correspondence issued by ASIC by mail to, for example, registered addresses of companies, officeholder residential addresses and registered agents. Examples of key correspondence include late payment notices, corporate key letters and annual company statements (in the absence of online registration). This can result in lost, missing, or late correspondence and inefficient manual handling at the recipient's end. We consider that such correspondence should be issued electronically via an appropriate online portal or to nominated email addresses.

Harmonisation of states/territories

The Property Council recognises and welcomes state/territory measures to allow for electronic signing, witnessing, and sending. We would welcome leadership from the Federal Government in creating harmonisation across state/territory boundaries to allow for easy and efficient electronic inter-state transactions.

We welcome government reform which aims to improve business processes by utilising changes in the digital economy. We recognise the importance of integrity in corporate transactions and are confident that Treasury will maintain security, authenticity, and reliability in achieving technology neutrality.

If you would like to discuss any aspect of this submission further, please contact Adele Lausberg on 0415 225 638 and alausberg@propertycouncil.com.au, or myself on 0400 356 140 and bngo@propertycouncil.com.au.

Yours sincerely



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