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ModernisingDocumentExecution@ag.gov.au

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Dear Sirs,

Consultation Paper - Modernising Document Execution: Consultation on proposed reform to the execution of Commonwealth Statutory Declarations (Consultation Paper)

Who we are

Governance Institute of Australia (GIA) is a national membership association, advocating for our network of 43,000 governance and risk management professionals from the listed, unlisted, public, and not-for-profit sectors.

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

Our members have primary responsibility for developing and implementing governance frameworks in public listed, unlisted and private companies, as well as the public sector and not-for-profit organisations. They have a thorough working knowledge of the operations of the markets and the needs of investors. We regularly contribute to the formation of public policy through our interactions with Treasury, ASIC, APRA, ACCC, ASX, ACNC and the ATO. We are a founding member of the ASX Corporate Governance Council. We are also a member of the ASIC Business Advisory Committee, the Modernising Business Registers Program Business Advisory Group, the ASX Business Committee and the ACNC Sector Users Group.

In our submission to the Deregulation Task Force In October 2021 Governance Institute expressed strong support for the modernisation and deregulation agenda, noting that the outdated and inconsistent document execution laws across the Commonwealth and various states added unnecessary impediments to Australian businesses operating during the COVID-19 pandemic.¹ While our members make limited use of Commonwealth Statutory Declarations they are aware they are used extensively for a range of purposes. Our members have also been actively involved in Treasury's Modernising Business Communications initiatives involving the improvement of the technology neutrality of Treasury portfolio laws for some years.

Our members support making the temporary measures allowing e-execution of Commonwealth statutory declarations permanent. Our members also support the ability to execute statutory

¹ See Governance Institute Submission [Modernising Document Execution – Consultation on a common pathway for digital execution of statutory declarations and deeds](#), 8 October 2021.

declarations in one of three ways – traditional, paper-based execution, e-execution and digital execution using the Australian Government Identity Systems. While our members support 'digital by default' it is important to ensure equitable access by preserving the ability for wet ink signatures and physical execution, provided governments provide digital options wherever possible while considering implementation issues, potential risks and costs.

Our members remain concerned about the following issues in relation to modernisation of document execution:

- **Inconsistent patchwork of Commonwealth and State legislative and administrative requirements** – one of the key barriers to achieving leadership in digital economy regulation is the current inconsistent patchwork of legislative and administrative requirements. Despite changes during COVID-19 not all State courts or Tribunals accept electronic documents or signatures as the 'best evidence'. The Electronic Transactions Act (ETA) does not apply consistently across the Commonwealth as different Commonwealth Departments and Agencies have differing consent, execution and retention requirements. In addition, the ETA does not apply to key pieces of business legislation such as the Corporations Act. Leadership in digital economy regulation will require significant effort on the part of the Commonwealth working closely with the States to achieve a clear consistent approach to these issues.
- **Interaction with other major reform programs and need for cross agency communication and cooperation** – the Attorney General's Department is currently undertaking the review of the Australian privacy regime, Treasury has been engaged in the Modernising Business Communications Project for some years and the corporate regulator ASIC's registers are moving to the ATO as part of the Australian Business Registry Services. It will be critical for these and other current initiatives to inform each other and for there to be close communication and cooperation between the various agencies and project teams. It will also be vital for various Government Departments and agencies to adopt consistent approaches.
- **Digital only should not disadvantage key stakeholders** – there will be key stakeholders who prefer to use paper-based processes and wet ink signatures. As with the proposed changes to statutory declarations any legislative change should enable those who still wish to use wet ink signatures and hard copy to do so but should also facilitate the move to e-transactions.
- **A consistent e-commerce approach is long-overdue** – given some of the difficulties noted above our members strongly support a consistent e-commerce approach across the Commonwealth and the States. For example, the ETA should apply to Corporations Act companies. While some aspects of this Corporations Act enable electronic interaction, many other parts are still a jumble of inconsistent notice and communication requirements spread across the Act and the related Regulations.

Please contact me or Catherine Maxwell, GM Policy and Research if you have any questions in connection with this submission.

Yours faithfully,



Megan Motto

CEO