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T +61 2 9223 5744 F +61 2 9232 7174

E info@governanceinstitute.com.au

Level 10, 5 Hunter Street, Sydney NSW 2000

GPO Box 1594, Sydney NSW 2001

W governanceinstitute.com.au

Manager
Market Analysis and Deregulation Unit
Market Conduct Division
Treasury
Langton Cres
Parkes ACT 2600

By email: mbcomms@treasury.gov.au

Dear Sir,

Treasury Laws Amendment (Modernising Business Communications) Bill 2021 (ED)

Who we are

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

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

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

Preliminary comments

The ED is drafted on the basis that the *Corporations Amendment (Meetings and Documents) Bill 2021* passed into legislation. Unfortunately, that legislation failed to pass through Parliament on the final sitting day in 2021. The provisions in that Bill were an important step in modernising the Corporations Act, something for which we have advocated for many years. This means that companies in all sectors continue in a state of uncertainty, pending passage of that Bill and passage of the amendments proposed in the ED. It will be important to examine the provisions of the ED against that Bill to ensure the proposed reforms capture all that was intended by both sets of legislation.

Our members support the proposals in the ED and consider they will bring about long overdue modernisation of business communications. The proposals will increase efficiency, save costs and also enable companies to reduce their environmental footprint by reducing paper waste and preserving the natural environment. Our members are particularly pleased to see that the legislation addresses the long-standing issue of the requirement to continue to send material to 'lost shareholders' for a six-year period.

Governance Institute's members strongly encourage Government to maintain the momentum and funding for the modernisation agenda and associated projects.

General comments

We have the following general comments on the proposals:

- As the last two years 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 and 2021. It is therefore critical that legislation be technology and mode neutral to enable businesses and consumers to respond to rapid technological change.
- Principles should guide legislative change. The legislative process takes time, and it would be unfortunate if overly prescriptive legislation meant that businesses and consumers were to find themselves hampered by outdated legislation within a short space of time.
- Increased efficiency should be one of the aims of the Project – any proposed changes should not involve applying technological solutions to entrench inefficient, manual processes.
- Governance Institute is an active participant in the Modernising Business Registers Project (MBR) through our membership of the Business Advisory Committee. It will be important that both Projects interact closely to ensure the Projects are aligned.
- To deliver the Project effectively the various agencies within the Treasury portfolio will need to be actively involved and engaged in the modernisation program. Similarly, some of the current barriers to improving the technology neutrality of Treasury portfolio laws are the result of the interaction between Commonwealth and state legislation – securing cooperation from the various states will be key to delivering the Project effectively. It will be critical that inconsistent state legislation does not impede progress of the modernisation agenda.
- Governance Institute's members support 'digital by default' provided this means governments are encouraged to provide digital options wherever possible while considering implementation issues, potential risks and costs, and without imposing digital-only on key stakeholders who need non-digital options
- Our members would also support harmonisation of the various provisions relating to execution, delivery and retention of documents in a technology neutral way.

Specific issues

Companies' ability to communicate electronically with shareholders

For many years companies, their agents, and share registries, have been trying to increase the number of shareholders for whom they hold email addresses.¹ For example, some companies have held competitions to encourage shareholders to provide email addresses and many companies routinely encourage shareholders to provide email addresses when communicating with them. Despite sustained efforts over many years, on average companies hold email addresses for approximately 50 per cent of their shareholders.

Many shareholders, particularly those using online brokerage firms to purchase shares, are under the impression that if they provide their email address to a broker it is automatically passed to the company/share registry. They are usually surprised when they learn this is not the case because the company/share registry asks for their email address again. The current CHES Replacement Project is attempting to address this issue and ASX has been working closely with brokers to enable them to send email addresses to companies/share registries through the CHES system

¹ See Submission to the Deregulation Taskforce, [Bringing shareholder communications into the 21st century](#), Governance Institute of Australia and Australasian Investor Relations Association, 28 November 2019 at page ff.

and is likely to achieve some success. However, this will not capture all shareholders and in some cases not passing email addresses on relates to concerns around privacy requirements. One possible solution may be to include shareholders' email addresses as part of the information they must supply for a company's register, subject to appropriate privacy considerations and the need for any carve outs around public disclosure.

Many of the reforms proposed as part of the Modernising Business Communications Project will not be achieved and companies will not realise the efficiencies and benefits of electronic methods of communication if they do not have shareholders' email addresses where they exist. Another area where inefficiencies continue to exist, noted in our submission on the original Modernising Business Communications Consultation Paper is dividend statements.² If companies have email addresses for more shareholders the process of issuing dividend statements is likely to be simpler and less costly.

Our members have some concerns about the proposed sections 648CB and section 669B. These sections create strict liability offences in circumstances where a company has sent an electronic communication to a shareholder but is notified that the communication cannot be delivered. In these circumstances the company is then obliged to send a hard copy communication to the shareholder within three days. Our members consider there are some practical implementation issues with the proposals and that the sections are at odds with the overall intent of the legislation which is to modernise business communications.

Governance Institute recommends amendments to ensure that shareholders' email addresses, where they exist, be able to be shared with companies/registries to enable them to use these addresses for all legitimate shareholder communications including sending dividend statements. A possible solution may be to include shareholders' email addresses as part of the information they must supply for a company's register, subject to appropriate privacy considerations and the need for any carve outs around public disclosure.

Publication of notices

Our members fully support the modernisation of various requirements of Treasury Portfolio agencies to publish notices in newspapers. We suggest that agencies such as the ATO should not rely solely on publication of notices but should also be able to use other methods of communication such as MyGov inboxes for communication.

Governance Institute recommends that in addition to publishing notices regulators and agencies should be able to use methods of communication such as MyGov inboxes to make notifications.

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

Yours faithfully,



Megan Motto
CEO

² See [Modernising Business Communications – Improving the technology neutrality of Treasury Portfolio Laws](#), Governance Institute of Australia, 28 February 2021 at page 11.