

28 May 2021

Dear Committee,

Thank you for the opportunity to make a submission to the Senate Economics References Committee regarding its inquiry into the Treasury Laws Amendment (2021 Measures No. 1) Bill 2021 (the **Bill**).

The COVID-19 pandemic caused considerable uncertainty for Australian businesses and changed the way workforces operate and business gets done, both in Australia and globally. Official responses to the pandemic, such as social distancing and travel restrictions, accelerated a shift towards remote working arrangements and the adoption of digital solutions to support this new business environment.

Measures introduced by the Federal Government during this period, including permitting the electronic execution of documents, were welcome and enabled Australian businesses to better manage the workplace and workflow changes caused by the pandemic. The expiry of those critical measures and the reinstatement of archaic paper-based requirements for document execution have created significant uncertainty for businesses and need to be addressed as a matter of urgency.

Nitro Software confines its comments to Schedule 1 of the Bill regarding the proposed changes to electronic execution of documents (**Proposal**) – changes that have the potential to affect our future prospects, as a global provider of eSignature products and services, and how we run our own operations.

We support the Proposal, but think it is critical that these reforms be embedded as a permanent solution (and not simply a temporary measure in place until 15 September 2021). To that end, we welcome and fully support the comments in the Second Reading Speech to the Bill, which support these specific measures being adopted as “permanent reforms.”

It is our belief that permanently enabling electronic execution of documents will enable Australian organisations to operate more productively and efficiently and will enable Australian businesses to remain at the forefront of technological innovation. A return to mandated paper-based document execution risks leaving Australia as an outlier in global business practices.

The Federal Government’s indication that our international borders will effectively remain closed for an extended period into 2022 only reinforces the need for Australian businesses to be able to operate as seamlessly as possible in an increasingly digital world.

About Nitro Software

Founded in Melbourne in 2005, Nitro Software is an ASX-listed global document productivity software company included on the All-Tech index. Nitro is led by co-founder and Chief Executive Officer Sam Chandler, an Australian who was a past recipient of the Ernst & Young Emerging Entrepreneur of the Year award.

Nitro's products help organisations eliminate paper, accelerate business processes, and drive digital transformation through PDF productivity and eSigning capabilities. The company is headquartered in San Francisco, with offices in Australia, Canada, the United Kingdom and Ireland. As a leader in document productivity and eSigning – with more than 11,700 business customers in 154 countries – Nitro understands the importance of a clear position on eSignatures for Australian businesses.

Nitro is, in fact, a perfect case study of an ASX-listed business that will be adversely affected by any wind-back of the temporary electronic execution measures. The majority of Nitro's Board members and all of our senior leadership team, with one exception, reside outside of Australia. With the current border closures expected to remain in force into 2022, it is impossible for Nitro's leadership to meet physically in Australia to conduct business or execute contracts.

The Impact of the COVID-19 Pandemic

The COVID-19 pandemic has been a challenging period for businesses worldwide, accelerating a fundamental shift in how businesses and workers interact and operate. Measures put in place to address COVID-19 resulted in more people working from home and, for many organisations, this change is here to stay. To this end, there is an increased need for electronic signatures to ensure business continuity and execution of business documents.

Research¹ commissioned by Nitro during this period – known as the *Future of Work* Report² – evidences the transformational shift that has occurred in this new business environment, including:

- A significant decline in printing
 - 52% decline globally
 - 70% decline in Australia
 - 76% decline in the UK
 - 42% decline in the US
- Expedited migration to digital workflows
 - 108% increase in electronic signature requests
 - 61% increase in digital signing
 - 92% increase in digital form filing
 - 67% in digital annotation and collaboration

In the absence of regulatory regression, it is Nitro's expectations that these changes will be permanent and will dramatically improve workplace productivity and efficiency. In fact, the *Future of Work* research found the use of electronic signing contributed to a 43% increase in signature rates across all document types, including contracts and invoices.

¹ Nitro partnered with Qualtrics, a global research and customer experience firm, to survey 1,632 knowledge workers in the US, Australia, UK and Ireland between May and June 2020

² <https://www.gonitro.com/future-of-work-part-1> and <https://www.gonitro.com/future-of-work-part-2>

Electronic Execution of Documents, in Australia and Other Jurisdictions

In the absence of an extension to the electronic execution legislation, the Federal COVID-19 relief measures have expired, including permitting electronic signatures and split execution of documents under the *Corporations Act*.

US law generally recognises that documents can be executed by electronic signature, with limited exceptions³. Similarly, the English law position is that electronic signatures are valid. In March 2020, Robert Buckland MP, the UK Justice Secretary, in responding to the UK Law Commission's report on electronic execution of documents stated:

"... the existing framework makes clear that businesses and individuals can feel confident in using e-signatures in commercial transactions" and that "electronic signatures ... are permissible and can be used in confidence in commercial and consumer documents."

The purpose of the UK report⁴ was to "address any uncertainty as to the formalities around the electronic execution of documents" and "to ensure that the law governing these formalities is sufficiently certain to remain competitive in a post-Brexit environment."

The attention given to this issue by the UK Government reinforces the significance and urgency in ensuring the law in Australia reflects the modern business environment, especially in a COVID-19 setting. Australian businesses should not be further penalised because of outdated legislation.

Proposed Changes to the Bill

The Bill makes two suites of changes to the *Corporations Act*, including the use of electronic signatures in Schedule 1. As noted in the Second Reading Speech to the Bill: "It's necessary for the continuation of business that companies be able to host meetings and execute documents without having to physically meet."

The Second Reading Speech further notes that the amendments:

"... also ensure that, whether company officers physically or electronically execute documents, including deeds, via signature or witnessing the application of the company seal, such execution will be valid. This means that rights and obligations contained in those documents will be enforceable. They also improve the technology neutrality of other regulatory requirements related to meetings and document execution. These improvements are consistent with the recommendations of the interim report of the Senate select committee inquiry on financial technology and regulatory technology."

"In response to the positive feedback from consultation, the government proposes permanent reforms that will continue to allow companies to electronically sign documents and send meeting related materials electronically, to be in place when this temporary extension ends."

³ <https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2020/07/Coronavirus-the-US-Legal-Framework-Supporting-the-Validity-of-Electronic-Signatures-2.pdf>

⁴ <https://www.lawcom.gov.au/project/electronic-execution-of-documents/>

Importantly, the Bill does not prohibit the continued use of ‘wet signatures’ on a physical paper document, allowing both methods of executing documents to continue side-by-side depending on the preference of the parties involved.

As noted above, we fully support the Proposal, but think it is critical that these changes be embedded as a permanent solution.

Conclusion

We would strongly urge the Committee to recommend that electronic signing measures as contemplated in the draft legislation be permanently enshrined in law, as was previously foreshadowed by the Treasurer, the Hon Josh Frydenberg MP⁵. This would be consistent with overseas jurisdictions and, importantly, provide much needed support and stability for Australian businesses in line with the Government’s digital business plan.

Thank you for the opportunity to make this submission. Please do not hesitate to contact us if you require input or clarification.

Yours sincerely,

Sam Chandler
Co-Founder and CEO
Nitro Software

⁵ <https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/extension-measures-relating-virtual-agms-and-signing>

Additional Supporters

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