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# Response to the Attorney-General Department's Consultation to inform options for implementing the Model Law on Electronic Transferable Records in Australia

Submission to the Attorney-General's Department on behalf of Freight &Trade Alliance (FTA) and the Australian Peak Shippers Association (APSA)

"KEEPING AUSTRALIA'S INTERNATIONAL TRADE MOVING"

FTA FREIGHT & TRADE ALLIANCE

Australian Peak Shippers Association Inc. (APSA)

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## ABOUT THE ALLIANCE

Freight & Trade Alliance (FTA) is the peak body for the international trade sector with a vision to establish a global benchmark of efficiency in Australian biosecurity, border related security, compliance, and logistics activities.

FTA represents more than 500 businesses including Australia's leading customs brokerages, freight forwarders and major importers.

On 1 January 2017, FTA was appointed the Secretariat role for the Australian Peak Shippers Association (APSA). APSA is the peak body for Australia's containerised exporters and importers under *Part X of the Competition and Consumer Act 2010* as designated by the Federal Minister of Infrastructure and Transport.

APSA is also a member and has board representation on the Global Shippers Forum (GSF) that represents shippers' interests and that of their national and regional organisations in Asia, Europe, North and South America, Africa and Australasia.

FTA / APSA also provide international trade and logistics advocacy support to the following associations:

- Australian Council for Wool Exporters and Processors;
- Australian Dairy Products Federation;
- Australian Horticulture Exporters and Importers Association**;**
- Australian International Movers Association;
- Australian Meat Industry Council;
- Australian Steel Association; and
- Tyre Stewardship Association.

The current APSA Officers and Committee of Management are listed below:

- Olga Harriton (Manildra Group) - APSA Chair
- Brian Thorpe (Visy) - APSA Vice Chair
- Flaminio Dondina (Casella) - Treasurer
- Paul Zalai - APSA Secretary
- Sarah Granger (Fletcher International Exports)
- Billy Davies (Australian Meat Industry Council)
- Brian Wright (Australian International Movers Association)
- Mark Christmas (QMAG)
- Michael Brittain (AGT Foods Australia)

A list of all members and further information about FTA / APSA is available at www.FTAlliance.com.au

## EXECUTIVE SUMMARY

Freight & Trade Alliance (FTA) and the Australian Peak Shippers Association (APSA) welcome the opportunity to provide feedback to the Attorney-General's Department on the Model Law on Electronic Transferable Records (MLETR).

Confirming the legal validity of electronic transferable records is a key step for Australia in advancing towards a framework for paperless trade. Transferable records play a critical role in domestic and international trade, yet the continued reliance on paper-based documents remains a significant barrier. This reliance causes inefficiencies, raises costs, and hampers competitiveness, particularly impacting small and medium enterprises (SMEs) with resource constraints. Recognising the legal standing of electronic transferable records would directly address these limitations, streamlining processes across supply chains and supporting broader trade accessibility.

The MLETR offers a globally recognised standard for electronic records, ensuring they carry the same legal weight as their paper counterparts. Adopting MLETR-based legislation in Australia would not only simplify trade processes but also align Australia's framework with those of key international trading partners. This alignment would ensure interoperability, enhancing Australia's capacity to engage in global trade seamlessly. FTA/APSA supports measures that prioritise interoperability with other jurisdictions and stresses the importance of harmonising efforts within Australian regulatory authorities to create a cohesive, secure environment for the adoption and use of electronic records.

Australia's adoption of MLETR requires thoughtful legislative integration to maintain the function and security of transferable records while fostering industry confidence in new technologies. FTA/APSA members, including freight forwarders, customs brokers, importers, exporters, and logistics providers, support MLETR as a pathway to significant operational efficiencies and cost reductions. To maximise these benefits, it is paramount that Australia's regulatory framework harmonises requirements across government departments, thus laying a solid foundation for SMEs and large enterprises alike to confidently transition to electronic records, enhancing the efficiency, security, and competitiveness of Australia's trade ecosystem.

**CONTACT**



**Question 1**
Please identify which of the below documents you most predominantly use in your business activities.

**FTA/APSA Response:** The primary transferable documents utilised by our members, including freight forwarders, customs brokers, importers, exporters, and logistics providers, are as follows:

Consignment Notes
Bills of Lading
Warehouse Receipts
Transferable Insurance Certificates (e.g., Marine and Cargo Insurance)
Air Waybills
Letters of Credit
Ships Delivery Orders
These documents are integral to our members' operations as they provide legal and financial security, facilitate ownership transfer, and reduce risks. Their prevalent use reflects the current reliance on physical documentation, highlighting an industry-wide need for secure, legally valid electronic alternatives under an MLETR-aligned framework.

**Question 2**
Can you identify any other document, used in Australia or by Australian entities, where a person needs to physically possess the document to claim the goods or money stated on the document?

**FTA/APSA Response:** A commonly used document in the Australian market that requires physical possession to obtain the release of goods is the Letter of Indemnity (LOI). This document is typically issued to secure the release of goods when the original bill of lading is unavailable.

**Question 3**
Please describe how you (or your business) use transferable records in your day-to-day business practices.

**FTA/APSA Response:** Transferable records are essential in daily operations, involving freight forwarders, customs brokers, importers, exporters, and logistics providers. They serve as primary instruments for transaction security and trade finance, involving shippers, carriers, consignees, and financial institutions. Physical possession verifies legal control, reducing risks of fraud and enhancing compliance.

**Question 4**
If you or your business use transferable records in the context of trade, do you use these records in the context of international, inter-state or intra-state trade?

**FTA/APSA Response:** Transferable records are used across all trade contexts—international, inter-state, and intra-state. This broad application meets the varied logistics needs of freight forwarders, customs brokers, importers, exporters, and logistics providers.

**Question 5**
How many hours per year do you estimate you, or your business, spend in processing paper-based transferable records?

**FTA/APSA Response:** Feedback from our members suggests that the total hours spent processing paper-based records is substantial, albeit challenging to quantify precisely. As the logistics sector has been slow to adopt digital technology, members estimate significant time

investments due to manual processing requirements, which could be reduced under MLETR.

**Question 6**
What would you estimate to be the average annual financial cost to you, or your business, in processing paper-based transferable records?

**FTA/APSA Response:** Processing paper-based records incurs considerable financial costs, including wages, courier fees, and error correction. Implementing electronic alternatives under MLETR could result in substantial cost savings, potentially in the tens to hundreds of thousands annually across the sector.

**Question 7**
If possible, please provide an estimate of how many hours you (or your business) might expect to save per year processing electronic transferable records, compared to paper versions.

**FTA/APSA Response:** Transitioning to electronic records under MLETR would save hundreds of hours yearly, due to reduced courier needs and fewer manual entries, benefiting freight forwarders, customs brokers, importers, exporters, and logistics providers.

**Question 8**
If possible, please provide an estimate of the financial savings you (or your business) might expect per year processing electronic transferable records, compared to paper versions.

**FTA/APSA Response:** Electronic records could save logistics providers significant amounts by reducing courier, printing, and manual handling costs, with potential savings ranging from tens to hundreds of thousands of dollars annually.

**Question 9**
How would you assess the impact of using electronic transferable record processes upon your or your business' customers and consumers?

**FTA/APSA Response:** Adopting electronic records would likely lower costs for customers and consumers by reducing processing times and expenses, ultimately lowering end-product costs due to greater efficiency among freight forwarders, customs brokers, importers, exporters, and logistics providers.

**Question 10**
To what extent are your (or your business') trade documentation processes generally affected by the specific issue of uncertainty about the legal validity of electronic transferable records?

**FTA/APSA Response:** Legal uncertainties surrounding electronic transferable records have a notable impact. Reliance on paper documentation remains necessary to avoid disputes. Establishing clear electronic record validity would streamline processes, reducing the burden on logistics providers, freight forwarders, customs brokers, importers, and exporters.

**Question 11**
Can you identify any Australian laws – whether in legislation, the terms of a contract, or common law – which concern or require the possession or transfer or use of a paper transferable record?

**FTA/APSA Response:** Relevant laws include the Carriage of Goods by Sea Act 1991 and the Bills of Exchange Act 1909, both of which contain references to paper records. Industry contracts often require physical possession to meet regulatory standards.

**Question 12**
If the MLETR were implemented, what issues (if any) do you anticipate in its application to any of the laws referenced under this section (including any laws identified by yourself in Question 11)?

**FTA/APSA Response:** Implementing MLETR may raise concerns around interpreting "possession" and "control" digitally. Clarifications will be needed to ensure MLETR aligns with existing laws and supports compliance for freight forwarders, customs brokers, importers, exporters, and logistics providers.

**Question 13**
Please describe any views, suggestions or issues which the department should consider to ensure that electronic transferable records are an identifiable form of possessable property under Australian law, including under the PPSA.

**FTA/APSA Response:** It's crucial to ensure electronic transferable records are explicitly recognised as possessable property to allow secure ownership transfer and facilitate financing under MLETR.

**Question 14**
What other evidence or regulatory requirements relating to transferable records are you aware of, under Australian law?

**FTA/APSA Response:** Additional requirements include compliance with PPSA provisions for securing interest in negotiable instruments, alongside laws requiring document retention for evidence in legal or regulatory contexts.

**Question 15**
Comments regarding the applicability of the Uniform Australian ETAs towards electronic transferable records?

**FTA/APSA Response:** The ETA's framework could conflict with MLETR, particularly around definitions of possession. Aligning MLETR with ETA requirements will be critical to avoid duplication and ensure a cohesive legal framework.

**Question 16**
Have you used electronic bills of lading through private contractual frameworks?

**FTA/APSA Response:** Yes, some members have used private systems for electronic bills of lading (eBOLs). These systems streamline trade but face challenges such as limited interoperability and alignment with official requirements.

**Question 17**
What comparative advantages or disadvantages can you identify in the approach to legal validity between the MLETR, and the approach enabled under the SCDAs and the COGSA?

**FTA/APSA Response:** MLETR provides clear functional equivalence requirements, fostering confidence in digital records, unlike the SCDA and COGSA, which are less prescriptive and may hinder interoperability.

**Question 18**
How should an Australian option for implementing MLETR-aligned legislation interact with existing, contractually-enabled eBOLs?

**FTA/APSA Response:** Legislation should acknowledge existing eBOL frameworks and ensure compatibility, potentially by offering an optional pathway for compliance for eBOL systems meeting MLETR criteria.

**Question 19**
How do you assess the effectiveness of contractual frameworks to confirm the legal validity of electronic transferable records?

**FTA/APSA Response:** The effectiveness of contractual frameworks is mixed, depending on the technology and consistency. Contractual systems may not provide comprehensive validity, especially when operating across multiple jurisdictions.

**Question 20**
In your view, should securities like shares and bonds, investment instruments, and letters of credit be excluded from any Australian implementation of MLETR?

**FTA/APSA Response:** Yes. These instruments are complex, with unique regulatory requirements. Including them may dilute MLETR's focus on trade-related records.

**Question 21**
Please share your views about whether any other records should be specifically included or excluded from Australia's implementation of MLETR?

**FTA/APSA Response:** MLETR should remain focused on trade documents, particularly those that support logistics, as including broader financial instruments could complicate implementation.

**Question 22**
Should an Australian option for MLETR extend to documents like straight bills of lading or other documents which must generally be physically possessed, but need not be transferable?

**FTA/APSA Response:** Yes. Including possessable but non-transferable documents will offer a more comprehensive solution, simplifying processes for logistics providers.

**Question 23**
Should an Australian option for MLETR be limited to transferable records which are used specifically in the context of international trade?

**FTA/APSA Response:** No. Limiting MLETR to international trade would restrict its utility. Expanding it to cover domestic trade contexts will allow for greater consistency across all trade levels.

**Question 24**
Would adoption of the MLETR in its current form provide you with confidence that electronic transferable records are just as legally valid as paper versions of those records for the purpose of Australian law?

**FTA/APSA Response:** Yes. The MLETR's functional equivalence provisions provide adequate assurance, though clarity on terms like "exclusive control" would enhance confidence.

**Question 25**
Is there anything under Australian law that justifies a unique approach to confirming the functional equivalence of transferable records?

**FTA/APSA Response:** No unique approach is necessary; adopting the MLETR's functional equivalence framework aligns Australia with international standards, ensuring consistent trade facilitation.

**Question 26**
Does the approach to reliability under article 12 of the MLETR appropriately balance stakeholder confidence and flexibility?

**FTA/APSA Response:** Yes, it provides an adequate balance, although additional factors like data privacy and fraud prevention could enhance reliability considerations.

**Question 27**
Do the factors under article 12 sufficiently promote stakeholder trust and security in the use of electronic transferable records?

**FTA/APSA Response:** Yes, though specific data security protocols and fraud prevention measures should be clarified to address industry concerns.

**Question 28**
Should an Australian MLETR implementation option utilise an accreditation system to specify that certain electronic transferable record management systems are sufficiently reliable?

**FTA/APSA Response:** Yes, an accreditation system would provide needed assurance, setting standards for compliance, which would be beneficial for industry adoption.

**Question 29**
To what extent do you consider that adoption of the MLETR would enable an internationally interoperable legal framework for electronic transferable records?

**FTA/APSA Response:** Adoption of MLETR would significantly enhance interoperability by aligning Australia with international digital trade standards.

**Question 30**
Assuming that Australia enacted legislation based on the MLETR: would you consider the legality of electronic transferable records in other international jurisdictions, before you adopted electronic transferable records into your business practices?

**FTA/APSA Response:** Yes. Legal compatibility across jurisdictions is essential for confident adoption, particularly for businesses with a global trade presence.

**Question 31**
Are you aware of, or have you ever used, an electronic system to issue or transfer a unique electronic document, in a way that maintains exclusive control of that document?

**FTA/APSA Response:** Yes, blockchain-based solutions are increasingly common among members for tracking and controlling electronic documentation securely.

**Question 32**
Please share any views on how the government can encourage interoperability between different technologies, and use of common data standards, under a MLETR-aligned legal framework?

**FTA/APSA Response:** The government could support industry-wide adoption of common data standards, like those offered by TradeTrust, to facilitate seamless interoperability.

**Question 33**
What challenges do you expect software vendors may face in developing technology to enable the use and transfer of electronic transferable records in compliance with the MLETR?

**FTA/APSA Response:** Software vendors may face challenges in meeting high security standards, ensuring interoperability, and navigating regulatory compliance.

**Question 34**
How else can the Australian Government involve industry, and encourage industry readiness, to promote industry confidence in the usability of electronic transferable records?

**FTA/APSA Response:** Engaging industry through educational seminars, pilot programs, and clear communication about compliance requirements would enhance readiness and confidence.

**Question 35**
Further comments or considerations relevant to the MLETR implementation in Australia.

**FTA/APSA Response:** For MLETR's successful adoption in Australia, harmonisation across domestic government departments and regulatory authorities is paramount. Coordinated alignment within Australia's own regulatory framework is essential to ensure that electronic transferable records can operate smoothly within national trade, finance, and legal systems. This internal consistency will lay a robust foundation for interoperability with global frameworks, such as those set by UNCITRAL. By synchronising efforts among domestic authorities, Australia can enhance the legal clarity and operational security needed for industry adoption of electronic records.

A harmonised approach across Australian departments will build industry confidence, support SMEs in adopting electronic transferable records, and help Australian businesses seamlessly engage in international trade, knowing they align with universally accepted standards.

## CONCLUSION

The Freight & Trade Alliance (FTA) and Australian Peak Shippers Association (APSA) appreciate the opportunity to contribute to the Attorney-General Department's consultation on the Model Law on Electronic Transferable Records (MLETR). Our responses highlight the substantial efficiencies and cost reductions that a shift from paper-based to electronic transferable records can offer. By adopting MLETR, Australia would remove long-standing barriers to trade while aligning its legal framework with those of international trading partners, ensuring that Australian businesses, particularly small and medium enterprises, remain competitive in an increasingly digitised global market.

As outlined, our members—encompassing freight forwarders, customs brokers, importers, exporters, and logistics providers—view MLETR as a crucial step in modernising trade practices, enhancing security, and reducing the complexity of transactional processes. Nonetheless, achieving these benefits requires careful legislative integration within Australia's existing framework to preserve the operational integrity and legal certainty of transferable records in digital form.

We encourage the Australian Government to prioritise harmonisation across domestic regulatory authorities, creating a unified and secure foundation for adopting electronic transferable records. This harmonisation will be essential to ensuring smooth industry uptake, fostering trust in digital trade tools, and establishing Australia as a forward-thinking, globally integrated trading nation. We look forward to ongoing dialogue and collaboration with the Government as this process advances.