

30 October 2020

Our ref: [MC:WD]

Manager
Market Conduct Division
The Treasury
Langton Crescent
Parkes ACT 2600

By email: businesscomms@treasury.gov.au

Dear Manager

Exposure draft of *Corporations Amendment (Virtual Meetings and Electronic Communications) Bill 2020* - permanent reforms in respect of virtual meetings and electronic document execution

Thank you for the opportunity to provide feedback on the exposure draft of the *Corporations Amendment (Virtual Meetings and Electronic Communications) Bill 2020* (**Exposure Draft Bill**).

This response has been compiled by the Queensland Law Society (**QLS**) with feedback from members of a number of policy committees, including the Technology and Intellectual Property Law Committee, the Property & Development Law Committee, the Banking and Financial Services Law Committee and the Not for Profit Law Committee, whose members have substantial expertise with these issues.

Our members have expressed consistent support for the retention of the changes introduced at the federal level in the *Corporations (Coronavirus Economic Response) Determination (No. 1) 2020* (the **Determination**) which were recently extended to March 2021.¹ This is our Society's view also.

The Determination has provided long-overdue reform needed in the commercial sphere and for the benefit of not-for-profits and charities. These measures, along with many of the others arising out of necessity as a result of the COVID-19 pandemic, have been of great assistance to our members and their clients.

However, as the Determination is only a temporary solution, our members broadly support the permanent reforms proposed in the Exposure Draft Bill in relation to holding virtual meetings and the electronic execution of documents.

We make the following comments on some aspects of the proposed reforms.

¹ <https://www.legislation.gov.au/Details/F2020L01194>

Electronic execution of documents by corporations

The Exposure Draft Bill would, if enacted in its current form, clarify processes in relation to the electronic execution of documents by corporations. This is critical given current questions about electronic execution satisfying the requirements of section 127 of the *Corporations Act 2001*.

Our members consider that the permanent reforms proposed in the Exposure Draft Bill are necessary, sensible and overdue in the modern world. Businesses are experiencing significant benefits and efficiencies as a result of these reforms.

Virtual meetings

In practice, while constitutions of corporations may provide some mechanics about the holding of meetings with the use of technology, there are usually gaps in those provisions, given that they were drafted long before current platforms and through a lens seldom being used, with little or no detail about procedure for the conduct of the meeting and the voting that takes place. This has often meant clients have needed specific advice on their issues.

Potential improvements worthy of consideration include:

- Providing additional guidance about the practical operation of the reforms for larger group meetings. Guidance around identification of participants, monitoring who might leave the meeting, recording of meetings, and the steps to be taken to ensure all participants can hear and be heard would be welcomed. For example, on the issue of being able to participate, there seems to be no shortcut to taking the participants one by one and testing their audio.
- Reconsidering the voting process required at meetings. Requiring voting by poll seems unnecessary, particularly if a meeting is being held in a hybrid manner and there are not many members. This procedural matter should be left to the usual mechanisms about whether a poll is demanded.
- The issue of if there are inconsistencies between the legislative provisions and what a particular entity's constitution might provide should also be addressed.
- Reforms allowing direct voting by the use of voting papers, web sites or Apps without the need to convene an actual meeting.
- Guidance and information be made available to industry to assist with cybersecurity challenges and ensuring that boards provide appropriate technology solutions for meetings. This is particularly important to ensure compliance with the requirements of proposed section 253Q(1) of the Exposure Draft Bill, that the technology used gives all persons entitled to attend the meeting a reasonable opportunity to participate without being physically present in the same place.

**Exposure Draft - Corporations Amendment (Virtual Meetings and Electronic Communications) Bill
2020**

In practice our members are reporting that there has been little to no risk of these mechanisms being used inappropriately. To the contrary they facilitate more efficient decision making by corporations.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on (07) 3842 5930.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Luke Murphy', written over a horizontal line.

Luke Murphy
President