



16 July 2021

We would like to thank the Department of the Prime Minister and Cabinet and the Treasury Department for inviting us to comment on the Exposure Draft for Treasury Laws Amendment (Measures for Consultation) Bill 2021 (**Bill**). We understand that the proposed amendments contained in the Bill assume that the Treasury Laws Amendment (2021 Measures No. 1) Bill 2021, currently before the Senate, will pass and become law.

We welcome the changes that are proposed in the Bill, particularly the Government’s position to adopt the use of technology. The COVID-19 pandemic brought about the rapid development, adoption, and reliance on technology for many businesses. FinTech Australia has been a long-time advocate for the continued adoption of technology, where appropriate, to encourage and promote regulatory compliance. FinTech Australia members are leaders in their use of technology to promote simpler and better ways to conduct business.

FinTech Australia and its members broadly support and welcome the changes that are proposed by the Bill. FinTech Australia and its members have provided their feedback on the key proposals that are made in the Bill.

Proposed Reform in the Bill (and amended/new section in Corporations Act)	FinTech Australia Feedback
Directors’ meetings are able to be held using technology, if agreed by all directors (s 248D)	We welcome the inclusion of this provision as it gives companies the flexibility to conduct board meetings virtually and will have particular benefits to start-ups and scale-ups that often rely on directors that are spread across the country and overseas. We think that this will encourage greater participation by directors, using technology to promote better corporate governance.
Member/shareholder meetings can be held either in person, a mixture of in-person or using technology, or solely by using technology. However, a Constitution must expressly permit a completely virtual meeting (s 249R)	This provision will suit and benefit many in the start-up, scale-up and technology community. There is a risk that there may be difficulty in arranging changes to existing Constitutions to expressly permit meetings to be held entirely virtually as at least 75% of shareholders, or members, to agree to such a change. We think that this will be particularly difficult for larger companies, particularly companies that are listed on the ASX, which will have a larger number of shareholders. We think that the increased flexibility offered by this section will allow for better shareholder engagement in members meetings, however relief should be provided to companies who wish to change their Constitution for this purpose.
Member/shareholder meetings must afford all members entitled to attend the reasonable opportunity to participate (s 249S)	We welcome the requirement for all members to have the right to participate in a meeting. We think that this provision will have the additional benefit of encouraging development in the technologies that are available for use of meetings to ensure that they are more secure, appropriate and accessible. Companies that wish to use technology will need to ensure that any virtual meeting technology that is used is able to support the holding of a member meeting. This includes the ability to host and manage all members that are entitled to attend in a secure virtual environment, with many virtual meeting providers having participant limits. There must also be appropriate facilities to

	<p>screencast documents and take questions from members using the digital technology. We think that this will encourage further development and investment in specific technology.</p>
<p>Voting at a members meeting must be done by a show of hands unless a poll is demanded (section 250J(1))</p>	<p>We would recommend that this provision is repealed to be consistent with the existing provision in the bill currently before the Senate or otherwise amended. The ability to count the votes of members by show of hands can be very difficult using virtual technology, particularly if there are issues with camera technology or connection issues, especially if there are large numbers of members in attendance. Virtual meetings should be given the option to count votes using either a poll or by show of hands depending on the specific requirements of each company and the circumstances of each member meeting, without the need to demand a poll each time.</p>
<p>Changes to increase clarity around when a sole-director can sign on behalf of a company (s127)</p>	<p>We welcome this change as it removes some of the ambiguity that is currently in the Corporations Act around whether a sole-director can sign if a company does not have a secretary, or if the secretary is not the sole-director. We welcome a change that clarifies that a sole-director that has no secretary or who is also the sole-secretary can sign alone on behalf of the company, however, a sole-director who is not also the sole-secretary must sign with a secretary.</p>
<p>New Part 2G.6 – applies to listed companies and schemes and allows for independent observation and reporting on votes by poll</p>	<p>We think that the increase in accountability for listed entities to ensure that the votes by a poll are conducted fairly and honestly is a positive change.</p>
<p>Permanence of changes made in Treasury Laws Amendment (2021 Measures No. 1) Bill 2021</p>	<p>We strongly welcome the removal of the interim relief for execution of documents (including deeds) by digital means. This means that execution is permitted by physical paper or by digital means. We think that this will allow for the rapid adoption of digital signature software and reduce the burden on all parties to have documents wet-signed. This will eliminate the unnecessary costs associated with having officers of a company sign in person together or having original hard-copy documents posted around Australia. The provision appears to take a technology neutral approach, neither requiring nor restricting the use of technology for the execution of documents.</p> <p>The digital signature provisions do not cover signing outside of the Corporations Act or outside the assumptions made under s129 (i.e. if signing as an individual, partnership, as an individual trustee or under power of attorney etc.). There are many companies that operate as Australian branches or due to their size have a number of agents or attorneys appointed to execute documents on behalf of the company under s126 of the Corporations Act. In these cases there is no change in the ability for them to use digital execution as it falls outside the changes made to s127 and s129. We would welcome further reform in this space to allow a broader range of signatories to validity execute documents using a digital signature.</p> <p>Additionally, we welcome the ability to take and record minutes of meetings digitally, and notify members of meetings by virtual means, provided they have consented.</p>

Further, we think it is prudent that the Government considers digital accountability now that there is the ability for digital execution. We understand that companies need to put in place reasonable safeguards to ensure that those

that are signing documents using digital means are the people that are permitted to sign on behalf of the company, however we think it is important that the Government considers policy that is able to reasonably connect individuals to the accounts that they use for digital execution.

We again thank you for providing our members with the opportunity to provide feedback to the Treasury in relation to electronic execution of documents and the use of technology for meetings of members.

A handwritten signature in grey ink, appearing to read 'Rebecca Schot-Guppy'.

Yours sincerely,

Rebecca Schot-Guppy
Chief Executive Officer
FinTech Australia