

September 2021

Submission to Treasury Consultation Paper

Exposure Draft of the Treasury Laws
Amendment Bill 2021: Use of
Technology for Meetings and
Related Amendments 2021



Introduction

auDA

.au Domain Administration Limited (auDA) is the .au Country Code Top Level Domain (ccTLD¹) administrator and self-regulatory policy body.

We are endorsed by the Australian Government and through agreement with the global Internet Corporation for Assigned Names and Numbers (ICANN) to oversee the operation and management framework of the .au domain of the Internet.

As a critical part of the digital economy, our purpose is to provide a safe, secure, and reliable namespace for the benefit of all Australians.

auDA performs the following functions:

- develop and implement domain name policy
- license 2LD registry operators
- accredit and license registrars
- implement consumer safeguards
- facilitate .au Dispute Resolution Policy
- represent .au at ICANN and other international fora
- technical management of the .au zone file
- manage and maintain a secure and stable Domain Name System.

auDA's stakeholders

auDA operates under an industry self-regulatory model, working closely with suppliers, business users, non-profit organisations, consumers and the Australian Government.

It seeks to serve the interests of the Internet community as a whole and takes a multi-stakeholder approach to Internet governance, where all interested parties can have their say.

auDA belongs to a global community of organisations and plays an active role in representing .au at international fora, such as the Internet Corporation for Assigned Names and Numbers (ICANN) and the Asia Pacific Top Level Domain Association (APTLD).

Advocacy

auDA's advocacy is guided by the following key principles:

1. **Purpose driven** – we are a for purpose organisation. Our purpose is to:

¹ The .au ccTLD includes the following namespaces: .au, com.au, net.au, org.au, asn.au, id.au, vic.au, nsw.au, qld.au, sa.au, tas.au, wa.au, nt.au, act.au, edu.au, and gov.au.



- a. administer a trusted .au domain for the benefit of all Australians
 - b. champion an open, free, secure and global internet
2. **Multi-stakeholder Approach** – we take a multi-stakeholder approach to our work, working closely with domain name suppliers, businesses, not-for-profit organisations, education and training providers, consumers and Government entities to serve the interests of the Internet community as a whole.
3. **Independence** – we are independent from government and operate transparently and openly in the interests of all Australians
4. **Leadership** – we seek to actively advance an open, free, secure and global internet and positively influence policy and outcomes related to internet governance, including through undertaking research and informing and educating Australians about an open, free and secure internet and its benefits
5. **Support the digital economy through innovation and partnership** – we seek to partner with like-minded organisations and foster innovation across the technology sector, recognising its benefit to growing our digital economy and, in turn, benefitting of all Australians. We recognise the impact that legislative burden can have on innovation in the technology sector and encourage a consultative approach to regulation.

We look forward to engaging with Treasury as works to strengthening Australia’s digital economy by enhancing businesses’ interaction with technology and efficiency.

Submission

auDA offers the below comments in response to the Exposure Draft of the *Treasury Laws Amendment Bill 2021: Use of Technology for Meetings and Related Amendments 2021* (the Bill)

Signing Documents

Technology neutral signing

auDA welcomes the technology neutral approach to signing documents. Technology continues to rapidly change the way our stakeholders interact. Where practical auDA embraces this change. As documents can be created, edited, and stored in many different media it seems impractical to restrict valid execution to the physical media alone.

auDA believes that by enabling entities to accept the validity of electronically executed documents is beneficial and will create business efficiency through use of technology.

For example, auDA has accredited more than 30 registrars in relation to the .au ccTLD to provide services relating to the issue, renewal and transfer of domain name licences to Australian businesses, not-for-profit organisations, and individuals. Currently there are more than 3.3 million domain name licences registered. Registrants are based in Australia and overseas. Licences are regularly renewed and transferred. This represents a significant number of documents that need



to be signed and relied upon. To support the maintenance of a safe, secure, and reliable namespace auDA welcomes a regime of clear rules that govern execution of documents, and do not require physical presence or limit the way executed documents can be stored, retrieved, or used.

Fixing common seals can be witnessed in neutral manners

auDA agrees with the approach taken to amending section 127(2A) to enable witnessing common seals in a technology neutral manner. In auDA's dealings with multiple stakeholders, in multiple locations this flexibility to enable the affixing of a common seal will increase convenience and efficiency.

Generally, most of the documents which auDA and its stakeholders sign are agreements rather than deeds, which do not require the affixing of a common seal. Therefore the practice of affixing seals is not a usual one. However, when a need for a common seal arises, for instance in the execution of deeds, it is important to have a clear process to enable organisations to execute documents validly and efficiently. The process needs to be as similar as possible to the process for executing documents that do not require seals. This is because the use of a company seal is not mainstream and organisations may risk improper execution of documents through a failure to understand and adopt the correct process.

Entitlement to make assumptions

auDA and the Registrars receive applications for domain name licenses and renewals from a diverse range of companies. auDA and the registrars benefit from the ability to make assumptions that documents are signed with authority. This should be a technology neutral right.

As mentioned above there are significant numbers of agreements and applications exchanged in the administration of the .au domain namespace. In addition, registrars must validate that an applicant for a domain name meets specified eligibility criteria, including that the applicant has power to enter agreements such as the domain name licence agreement. Thus, it is important that auDA and registrars can rely on the assumptions in the legislation when dealing with company applicants.

Giving documents electronically

Documents covered by the regime

auDA appreciates the Bill's approach to meeting-related documents that a company or responsible entity is required to send, give, or otherwise provide to a member. The non-exhaustive list of accepted documents gives satisfactory scope to allow the provision to work appropriately.

auDA does not conduct many formal member meetings. As a member-based organisation it has Annual General Meetings and occasional Extraordinary General Meetings. However, auDA sees real advantages in being able to send documents electronically, as its members and



stakeholders are widely disbursed, including in regional and international areas. The cost saving and efficiency of this measure is strongly supported.

Sending documents

Organisations should be enabled to send documents electronically where reasonable. The assessment of reasonableness would include considering if documents can be readily accepted by the recipient. This is a fair balance of practicality and essential for encouraging the digital economy.

auDA facilitates and drives engagement with the digital economy through its administration of the .au ccTLD namespace. Consequently, it fully supports mechanisms to ensure that documents can be communicated or delivered by electronic means. Encouraging the legitimacy of transferring documents electronically assists Australia's transition to a digital economy.

Elections by members

All members of companies should have the right to elect to receive meeting documents electronically or in hard copy. While auDA expects that its stakeholders would all be enabled to receive the documentation electronically it appreciates that this may not be everybody's preference. However, given the number and disbursement of auDA's members and auDA's size, as a small organisation, this reform would deliver important efficiencies.

Hybrid meetings of shareholders of a company or registered scheme

How meetings may be held

auDA welcomes the ability for companies and registered schemes to hold physical, virtual, and hybrid meetings. The possibility of wholly virtual meetings expressly permitted or required by the Constitution is a positive initiative to offer entities so they can determine how they would like to host their meetings.

The principal of technology neutrality should also apply to the act of taking minutes at a meeting. Whether a record keeper is physically present with meeting attendees or present through an online medium should make no difference to the validity of the record.

This concept relating to record keeping is important to include in the legislation to give legitimacy and full effect to the efficiencies proposed to the nature of meetings.

Reasonable opportunity to participate

Offering flexibility in choosing the environment in which meetings must be held and prescribing a reasonableness standard in relation to member participation will allow companies and



registered schemes to act diligently in coordinating virtual and hybrid meetings.

The requirement that entities be given a *reasonable opportunity to participate* at a meeting is a valid mechanism to safeguard members' rights to participate to their full capacity. This is regardless of how the meeting itself is conducted

auDA General Meetings attract a range of members and stakeholders who may wish to participate in discussion. auDA feels it is very important to enable this participation either physically or virtually.

Conclusion

auDA supports the permanent changes proposed in the Exposure Draft of the Bill to support efficiency and enhance businesses interaction with technology . auDA supports the proposed amendments to the *Corporations Act 2001* (Cth).

Should Treasury or the government wish to consult further on these matters, auDA would welcome the opportunity to provide input. If you would like to discuss our submission, please contact auDA's Chief Operating Officer, Bruce Tonkin, on bruce.tonkin@auda.org.au.

.au Domain Administration Ltd
www.auda.org.au

PO Box 18315
Melbourne VIC 3001
info@auda.org.au

