

EXPOSURE DRAFT

EXPOSURE DRAFT (25/07/2022)

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Inserts for
**Treasury Laws Amendment
(Modernising Business Communications)
Bill 2022: Virtual hearings and
examinations (2)**

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Schedule 1	The day after this Act receives the Royal Assent.	

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Schedule 1—Virtual hearings and examinations

Australian Prudential Regulation Authority Act 1998

1 Subsection 3(1)

Insert:

virtual enquiry technology means any technology that allows a person to participate in or be represented at all or part of a hearing, examination or other enquiry without being physically present at the hearing, examination or other enquiry.

2 After section 58

Insert:

58A Proceedings at examination

(1) This section applies to the following:

- (a) an examination under Division 2 of Part VIII of the *Banking Act 1959* by an investigator appointed by APRA;
- (b) an examination under subsection 55(1), 62C(1), 62C(2) or 81(2) of the *Insurance Act 1973* by APRA or an inspector appointed by APRA;
- (c) an investigation under Division 3 of Part 7 of the *Life Insurance Act 1995* by APRA;
- (d) an examination under Division 3 of Part 6 of the *Private Health Insurance (Prudential Supervision) Act 2015* by an inspector appointed by APRA;
- (e) an examination under Division 5 of Part 25 of the *Superannuation Industry (Supervision) Act 1993* by APRA or an inspector appointed by APRA;
- (f) an examination under Division 4 of Part 10 of the *Retirement Savings Accounts Act 1997* by an inspector appointed by APRA.

(2) For the purposes of paragraph (1)(c), treat references in the following subsections to examination as references to investigation.

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- 1 (3) APRA, the investigator or the inspector (as applicable) may decide
2 to hold the examination:
- 3 (a) at one or more physical venues; or
4 (b) at one or more physical venues and using virtual enquiry
5 technology; or
6 (c) using virtual enquiry technology only.
- 7 (4) Subsection (5) applies if the examination is held:
- 8 (a) at one or more physical venues and using virtual enquiry
9 technology; or
10 (b) using virtual enquiry technology only.
- 11 (5) APRA, the investigator or the inspector (as applicable) must ensure
12 that the virtual enquiry technology provides each participant in the
13 examination (including the investigator or inspector and the
14 examinee) with a reasonable opportunity to participate in or be
15 represented at the examination.
- 16 (6) If the examination is held:
- 17 (a) at more than one physical venue; or
18 (b) at one or more physical venues and using virtual enquiry
19 technology; or
20 (c) using virtual enquiry technology only;
- 21 APRA, the investigator or the inspector (as applicable) may
22 appoint a single place and time at which the examination is taken
23 to have been held.
- 24 (7) This section applies to part of an examination in the same way that
25 it applies to all of an examination.

26 *Australian Securities and Investments Commission Act 2001*

27 **3 Subsection 5(1)**

28 Insert:

29 *virtual enquiry technology* means any technology that allows a
30 person to participate in or be represented at all or part of a hearing,
31 examination or other enquiry without being physically present at
32 the hearing, examination or other enquiry.

33 **4 After section 22**

34 Insert:

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22A Proceedings at examination

- 1 (1) The inspector may decide to hold the examination:
 - 2 (a) at one or more physical venues; or
 - 3 (b) at one or more physical venues and using virtual enquiry
 - 4 technology; or
 - 5 (c) using virtual enquiry technology only.
- 6 (2) Subsection (3) applies if the examination is held:
 - 7 (a) at one or more physical venues and using virtual enquiry
 - 8 technology; or
 - 9 (b) using virtual enquiry technology only.
- 10 (3) The inspector must ensure that the virtual enquiry technology
- 11 provides each participant in the examination (including the
- 12 inspector and the examinee) with a reasonable opportunity to
- 13 participate in or be represented at the examination.
- 14 (4) If the examination is held:
 - 15 (a) at more than one physical venue; or
 - 16 (b) at one or more physical venues and using virtual enquiry
 - 17 technology; or
 - 18 (c) using virtual enquiry technology only;
 - 19 the inspector may appoint a single place and time at which the
 - 20 examination is taken to have been held.
 - 21
- 22 (5) This section applies to part of an examination in the same way that
- 23 it applies to all of an examination.

5 After section 59

24 Insert:

59A Proceedings at hearings

- 27 (1) ASIC may decide to hold the hearing:
 - 28 (a) at one or more physical venues; or
 - 29 (b) at one or more physical venues and using virtual enquiry
 - 30 technology; or
 - 31 (c) using virtual enquiry technology only.
 - 32 (2) Subsections (3) and (4) apply if the hearing is held:
 - 33 (a) at one or more physical venues and using virtual enquiry
 - 34 technology; or
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- 1 (b) using virtual enquiry technology only.
- 2 (3) ASIC must ensure that the virtual enquiry technology provides
3 each participant in the hearing (including ASIC and a person
4 appearing at the hearing) with a reasonable opportunity to
5 participate in or be represented at the hearing.
- 6 (4) If the hearing is held in public, ASIC must ensure that:
7 (a) the virtual enquiry technology provides the public with a
8 reasonable opportunity to observe the hearing; and
9 (b) information sufficient to allow the public to observe the
10 hearing using the virtual enquiry technology is made publicly
11 available in a reasonable way.
- 12 (5) If the hearing is held:
13 (a) at more than one physical venue; or
14 (b) at one or more physical venues and using virtual enquiry
15 technology; or
16 (c) using virtual enquiry technology only;
17 ASIC may appoint a single place and time at which the hearing is
18 taken to have been held.
- 19 (6) This section applies to part of a hearing in the same way that it
20 applies to all of a hearing.

21 **6 Subsections 159(3) and (4)**

22 Repeal the subsections.

23 **7 After section 159**

24 Insert:

25 **159A Proceedings at hearings**

- 26 (1) The Chair of a Financial Services and Credit Panel may decide to
27 hold a hearing:
28 (a) at one or more physical venues; or
29 (b) at one or more physical venues and using virtual enquiry
30 technology; or
31 (c) using virtual enquiry technology only.
- 32 (2) Subsections (3) and (4) apply if the hearing is held:
33 (a) at one or more physical venues and using virtual enquiry
34 technology; or
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- 1 (b) using virtual enquiry technology only.
- 2 (3) The Chair of the Financial Services and Credit Panel must ensure
3 that the virtual enquiry technology provides each participant in the
4 hearing (including a person appearing at the hearing) with a
5 reasonable opportunity to participate in or be represented at the
6 hearing.
- 7 (4) If the hearing is held in public, the Chair of the Financial Services
8 and Credit Panel must ensure that:
- 9 (a) the virtual enquiry technology provides the public with a
10 reasonable opportunity to observe the hearing; and
11 (b) information sufficient to allow the public to observe the
12 hearing using the virtual enquiry technology is made publicly
13 available in a reasonable way.
- 14 (5) If the hearing is held:
- 15 (a) at more than one physical venue; or
16 (b) at one or more physical venues and using virtual enquiry
17 technology; or
18 (c) using virtual enquiry technology only;
19 the Chair of the Financial Services and Credit Panel may appoint a
20 single place and time at which the hearing is taken to have been
21 held.
- 22 (6) This section applies to part of a hearing in the same way that it
23 applies to all of a hearing.

8 After section 218

24
25 Insert:

218A Proceedings at hearings

- 26
- 27 (1) The Panel may decide to hold a hearing:
- 28 (a) at one or more physical venues; or
29 (b) at one or more physical venues and using virtual enquiry
30 technology; or
31 (c) using virtual enquiry technology only.
- 32 (2) Subsections (3) and (4) apply if the hearing is held:
- 33 (a) at one or more physical venues and using virtual enquiry
34 technology; or
35 (b) using virtual enquiry technology only.
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- 1 (3) The Panel must ensure that the virtual enquiry technology provides
2 each participant in the hearing (including a person appearing at the
3 hearing) with a reasonable opportunity to participate in or be
4 represented at the hearing.
- 5 (4) If the hearing is held in public, the Panel must ensure that:
6 (a) the virtual enquiry technology provides the public with a
7 reasonable opportunity to observe the hearing; and
8 (b) information sufficient to allow the public to observe the
9 hearing using the virtual enquiry technology is made publicly
10 available in a reasonable way.
- 11 (5) If the hearing is held:
12 (a) at more than one physical venue; or
13 (b) at one or more physical venues and using virtual enquiry
14 technology; or
15 (c) using virtual enquiry technology only;
16 the Panel may appoint a single place and time at which the hearing
17 is taken to have been held.
- 18 (6) This section applies to part of a hearing in the same way that it
19 applies to all of a hearing.

20 *Competition and Consumer Act 2010*

21 **9 Subsection 4(1)**

22 Insert:

23 *virtual enquiry technology* means any technology that allows a
24 person to participate in or be represented at all or part of a hearing,
25 examination or other enquiry without being physically present at
26 the hearing, examination or other enquiry.

27 **10 Subsection 44ZF(4)**

28 Repeal the subsection.

29 **11 After section 158**

30 Insert:

31 **158A Proceedings without initiation notice—use of virtual enquiry** 32 **technology**

- 33 (1) This section applies to the following (the *proceedings*):
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- 1 (a) an arbitration of an access dispute under Part IIIA by the
2 Commission as constituted by members of the Commission
3 under section 44Z;
- 4 (b) an inquiry under Part VIIA by an inquiry body (within the
5 meaning of that Part) before an inquiry Chair (within the
6 meaning of that Part);
- 7 (c) a conference convened under subsection 151AZ(1) by the
8 Commission.
- 9 (2) The members of the Commission, the inquiry Chair or the
10 Commission (as applicable) may decide to hold the proceedings:
- 11 (a) at one or more physical venues; or
12 (b) at one or more physical venues and using virtual enquiry
13 technology; or
14 (c) using virtual enquiry technology only.
- 15 (3) Subsections (4) and (5) applies if the proceedings are held:
- 16 (a) at one or more physical venues and using virtual enquiry
17 technology; or
18 (b) using virtual enquiry technology only.
- 19 (4) The members of the Commission, the inquiry Chair or the
20 Commission (as applicable) must ensure that the virtual enquiry
21 technology provides each participant in the proceedings with a
22 reasonable opportunity to participate in or be represented at the
23 proceedings.
- 24 (5) If the proceedings are held in public, the members of the
25 Commission, the inquiry Chair or the Commission (as applicable)
26 must ensure that:
- 27 (a) the virtual enquiry technology provides the public with a
28 reasonable opportunity to observe the proceedings; and
29 (b) information sufficient to allow the public to observe the
30 proceedings using the virtual enquiry technology is made
31 publicly available in a reasonable way.
- 32 (6) If the proceedings are or will be held:
- 33 (a) at more than one physical venue; or
34 (b) at one or more physical venues and using virtual enquiry
35 technology; or
36 (c) using virtual enquiry technology only;
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1 the members of the Commission, the inquiry Chair or the
2 Commission (as applicable) may appoint a single place and time at
3 which the proceedings are taken to be or have been held.

- 4 (7) This section applies to part of the proceedings in the same way that
5 it applies to all of the proceedings.

6 **158B Proceedings with initiation notice—use of virtual enquiry** 7 **technology**

- 8 (1) This section applies to the following (the *proceedings*):
- 9 (a) an appearance to give evidence or produce documents under
10 section 44AAFA before the AER or a person assisting the
11 AER;
 - 12 (b) a conference held under subsection 90A(6) by the
13 Commission as represented by a member or members of the
14 Commission under paragraph 90A(7)(a);
 - 15 (c) a conference held under subsection 93A(5) by the
16 Commission as represented by a member or members of the
17 Commission under paragraph 93A(6)(a);
 - 18 (d) a conference held under Subdivision A or B of Division 3 of
19 Part XI by the Commission as represented by a member or
20 members of the Commission under paragraph 132H(1)(a);
 - 21 (e) an appearance to give evidence or produce documents under
22 paragraph 155(1)(c) before the Commission, an associate
23 member of the Commission who is an AER member or a
24 member of the staff assisting the Commission.
- 25 (2) The person who appoints the date or day (if applicable), time and
26 place for the proceedings may decide that the proceedings are to be
27 held:
- 28 (a) at one or more physical venues; or
 - 29 (b) at one or more physical venues and using virtual enquiry
30 technology; or
 - 31 (c) using virtual enquiry technology only.
- 32 (3) If the proceedings are to be held:
- 33 (a) at more than one physical venue; or
 - 34 (b) at one or more physical venues and using virtual enquiry
35 technology; or
 - 36 (c) using virtual enquiry technology only;

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1 the single place and time at which the proceedings are taken to be
2 held is that specified in the notice for the proceedings.

3 (4) Subsections (5) and (6) applies if the proceedings are held:

- 4 (a) at one or more physical venues and using virtual enquiry
5 technology; or
6 (b) using virtual enquiry technology only.

7 (5) The AER, the person assisting the AER, the member or members
8 of the Commission, the Commission, the associate member of the
9 Commission who is an AER member or the member of the staff
10 assisting the Commission (as applicable) must ensure that the
11 virtual enquiry technology provides each participant in the
12 proceedings with a reasonable opportunity to participate in or be
13 represented at the proceedings.

14 (6) If the proceedings are held in public, the AER, the person assisting
15 the AER, the member or members of the Commission, the
16 Commission, the associate member of the Commission who is an
17 AER member or the member of the staff assisting the Commission
18 (as applicable) must ensure that:

- 19 (a) the virtual enquiry technology provides the public with a
20 reasonable opportunity to observe the proceedings; and
21 (b) information sufficient to allow the public to observe the
22 proceedings using the virtual enquiry technology is made
23 publicly available in a reasonable way.

24 (7) This section applies to part of the proceedings in the same way that
25 it applies to all of the proceedings.

26 *National Consumer Credit Protection Act 2009*

27 **12 Subsection 5(1)**

28 Insert:

29 *virtual enquiry technology* means any technology that allows a
30 person to participate in or be represented at all or part of a hearing,
31 examination or other enquiry without being physically present at
32 the hearing, examination or other enquiry.

33 **13 After section 256**

34 Insert:

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256A Proceedings at examination

- 1 (1) The inspector may decide to hold the examination:
 - 2 (a) at one or more physical venues; or
 - 3 (b) at one or more physical venues and using virtual enquiry
 - 4 technology; or
 - 5 (c) using virtual enquiry technology only.
- 6 (2) Subsection (3) applies if the examination is held:
 - 7 (a) at one or more physical venues and using virtual enquiry
 - 8 technology; or
 - 9 (b) using virtual enquiry technology only.
- 10 (3) The inspector must ensure that the virtual enquiry technology
- 11 provides each participant in the examination (including the
- 12 inspector and the examinee) with a reasonable opportunity to
- 13 participate in or be represented at the examination.
- 14 (4) If the examination is held:
 - 15 (a) at more than one physical venue; or
 - 16 (b) at one or more physical venues and using virtual enquiry
 - 17 technology; or
 - 18 (c) using virtual enquiry technology only;
 - 19 the inspector may appoint a single place and time at which the
 - 20 examination is taken to have been held.
 - 21
- 22 (5) This section applies to part of an examination in the same way that
- 23 it applies to all of an examination.

14 After section 285

24 Insert:

285A Proceedings at hearings

- 27 (1) ASIC may decide to hold the hearing:
 - 28 (a) at one or more physical venues; or
 - 29 (b) at one or more physical venues and using virtual enquiry
 - 30 technology; or
 - 31 (c) using virtual enquiry technology only.
 - 32 (2) Subsections (3) and (4) apply if the hearing is held:
 - 33 (a) at one or more physical venues and using virtual enquiry
 - 34 technology; or
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- 1 (b) using virtual enquiry technology only.
- 2 (3) ASIC must ensure that the virtual enquiry technology provides
3 each participant in the hearing (including ASIC and a person
4 appearing at the hearing) with a reasonable opportunity to
5 participate in or be represented at the hearing.
- 6 (4) If the hearing is held in public, ASIC must ensure that:
7 (a) the virtual enquiry technology provides the public with a
8 reasonable opportunity to observe the hearing; and
9 (b) information sufficient to allow the public to observe the
10 hearing using the virtual enquiry technology is made publicly
11 available in a reasonable way.
- 12 (5) If the hearing is held:
13 (a) at more than one physical venue; or
14 (b) at one or more physical venues and using virtual enquiry
15 technology; or
16 (c) using virtual enquiry technology only;
17 ASIC may appoint a single place and time at which the hearing is
18 taken to have been held.
- 19 (6) This section applies to part of a hearing in the same way that it
20 applies to all of a hearing.

Tax Agent Services Act 2009

15 At the end of section 60-105

23 Add:

24 *Use of virtual enquiry technology etc.*

- 25 (4) The Board may decide to hold a proceeding at which a person is to
26 appear before it:
27 (a) at one or more physical venues; or
28 (b) at one or more physical venues and using virtual enquiry
29 technology; or
30 (c) using virtual enquiry technology only.
- 31 (5) Subsection (6) applies if the proceeding is held:
32 (a) at one or more physical venues and using virtual enquiry
33 technology; or
34 (b) using virtual enquiry technology only.
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- 1 (6) The Board must ensure that the virtual enquiry technology
2 provides each participant in the proceeding (including a person
3 appearing before the Board) with a reasonable opportunity to
4 participate in or be represented at the proceeding.
- 5 (7) If the proceeding is held:
6 (a) at more than one physical venue; or
7 (b) at one or more physical venues and using virtual enquiry
8 technology; or
9 (c) using virtual enquiry technology only;
10 the Board may appoint a single place and time at which the
11 proceeding is taken to have been held.
- 12 (8) This section applies to part of a proceeding in the same way that it
13 applies to all of a proceeding.

14 **16 Subsection 90-1(1)**

15 Insert:

16 *virtual enquiry technology* means any technology that allows a
17 person to participate in or be represented at all or part of a hearing,
18 examination or other enquiry without being physically present at
19 the hearing, examination or other enquiry.