

23 July 2024

Independent Panel for the Statutory Review of the Meetings and Documents Amendments  
c/o Treasury Secretariat for the Statutory Review of the Meetings and Documents Amendments  
consultation

By email: [meetingsanddocumentsreview@treasury.gov.au](mailto:meetingsanddocumentsreview@treasury.gov.au)

To the Independent Panel,

## **Statutory Review of the Meetings and Documents Amendments - consultation**

The Business Council of Australia (BCA) welcomes the opportunity to make a submission to the Statutory Review of the Meetings and Documents Amendments consultation.

The BCA strongly supported the original temporary measures and subsequent permanent measures to amend the Corporations Act 2001 (Commonwealth) (the Act). Whilst initially implemented as temporary COVID-19 'emergency' measures, the amendments embodied long-overdue modernisation of Australia's corporations law and bringing requirements into alignment with everyday 21<sup>st</sup> century technology and business practices.

BCA members strongly support the retention of these amendments. Nonetheless, there are a number of areas where the current requirements could be improved upon.

- Legislating to achieving a genuinely technologically neutral approach to conducting meetings supported by development of best practice guides to maximise the benefits of flexible arrangements.
- Amending section 249S(7)(b) of the Act which has created the necessity for many companies to utilise a telephone line for hybrid meetings – a facility which has been largely redundant.
- Requiring the Australian Securities and Investments Commission (ASIC) to refresh their regulatory guidance for the conduct of virtual meetings and articulating the principles which will guide the exercise of their powers to permit a virtual meeting under section 253TA of the Act.
- Continuing efforts to modernise the Act by embedding electronic communication as the default standard whilst preserving the ability of members to elect their preferred communication approach.
- Harmonisation of requirements across states and territories for electronic execution of documents.

As Australia continues to grapple with the challenges of slow growth in productivity, the amendments arising from the pandemic serve to assist the translation of governance requirements to a modern, digital economy. It is essential that the Australian economy is able to benefit into the future from these

changes and that increasingly sophisticated technological capabilities are able to be readily adapted by business. It is regrettable that such changes were not made possible prior to the pandemic.

## Virtual meetings

Consistent with our position at the time of the amendments, the Business Council strongly supports the principle that a company should be able to hold a meeting of members in whole or in part through the use of technology, provided that the format of the meeting gives members as a whole the same opportunity to participate in the meeting, and that accountability of the company is not diminished.

These measures have provided clarity on Australia's legal position regarding virtual meetings and, in providing a path to permitting virtual meetings, also broadly brought Australia into line with other comparable jurisdictions, such as the United Kingdom, Canada, New Zealand and parts of the United States (particularly Delaware).

Conducting meetings through 'virtual' technology has increasingly become the 'new normal' for those businesses that are able to do so. This process was accelerated by COVID-19. As noted by the consultation paper there was widespread uptake of virtual meetings during 2020 and 2021 and the Business Council is not aware of any evidence to suggest that the holding of meetings in this way has diminished the accountability of companies or disenfranchised shareholders. Rather, it has enabled all shareholders to have equal access to meetings and has made the holding of such meetings more efficient for all parties.

Despite these benefits, the cessation of the ability to hold virtual meetings without a constitutional amendment has seen a decline in virtual meetings since 2021. Our members advise that the 75 per cent majority required to amend company constitutions to enable virtual meetings has created a significant hurdle and at a practical level has effectively removed the ability for listed companies to hold virtual meetings. Absent the exercise of ASIC's modification powers under section 253TA of the Act, this leaves those companies in no better position than during the pandemic.

**Recommendation 1: The BCA recommends that the existing rules governing the use of physical, hybrid and virtual meetings be amended to provide a technologically agnostic approach by removing the requirement for constitutional amendment. In addition, that consideration be given to facilitating the development of complementary best-practice guidance to support companies conduct hybrid and virtual meetings (development could draw on the experience and expertise of relevant associations including the Business Council). Such an approach will enable the benefits of flexible meeting arrangements whilst maximising their efficacy for participants.**

Members have raised concerns about the requirements in section 249S(7)(b) of the Act that members must be allowed to "exercise orally and in writing" and that a strict interpretation is necessitating the provision of a telephone line at meetings adding unnecessary cost and complexity. Participating by telephone, for the few shareholders who do so, is not a user-friendly experience due to the challenges of a shareholder holding on the telephone line or speaking at the meeting and at the same time listening in on the meeting itself. Overwhelmingly, members are not utilising this form of technology and so costs are being wasted and the conduct of meetings is being hampered.

Further, explicit reference to 'oral' participation in the legislation is overly prescriptive and therefore may limit the utility of the provision, and of virtual meetings into the future, as virtual meeting technology will naturally continue to evolve.

**Recommendation 2:** that section 249S(7)(b) be amended to ensure that members are allowed to “exercise orally or in writing” to remove the implicit necessity of a telephone line for meetings.

In addition, there is scope for ASIC to improve its regulatory guidance concerning how and under what circumstances they may utilise their emergency powers under section 253TA and the procedures it expects companies to adopt in holding a meeting (particularly in respect of question time). Doing so would provide clarity and confidence to listed companies in how to manage emergent situations in the future whilst maintaining good governance and compliance with corporations law.

**Recommendation 3:** That ASIC provide updated regulatory guidance on the conduct of meetings to articulate when it would utilise its emergency powers under s253TA to permit virtual meetings irrespective of a company’s constitution.

## Provision of documents

BCA members are supportive of the amendments made to provide a flexible and modern approach to document provision to date. Electronic delivery of documents has enabled material to be efficiently transmitted to shareholders and provides additional benefit in reducing the carbon footprint of printing and transporting large quantities of physical materials in addition to its immediacy.

Our membership has noted that the requirements are working well with very few issues with the giving or receipt of electronic notices of meeting and related documentation. In addition, very few shareholders have requested hard-copy documentation.

There is an opportunity to build upon existing changes by reversing the onus that presently requires shareholders to opt-in to electronic communications. Consistent with a modern, digital economy, and to reduce the volume of paper for sustainability purposes, electronic communication should be made the default requirement with an option for shareholders to elect to receive paper-based communications. This will still allow members to elect to receive communications in a paper-based format but strike the right balance in moving towards a digital economy. To facilitate this, the Act could be amended to require shareholders to provide a valid email address to enable a company to issue electronic notices.

**Recommendation 4:** that the Act is amended to enable electronic communications as the default standard (including by requiring shareholders to provide a valid email address), whilst preserving the ability for members to elect their preferred method of communication.

## Electronic execution of documents

Feedback from the Business Council’s membership have been overwhelmingly positive of the amendments made relating to the electronic execution of documents. Allowing for the electronic execution of documents means that company officers need not be physically located in the same place as other parties, which removes the unnecessary costs and delays on a range of transactions and decisions.

The amendments reflected the reality that prior to COVID-19, many businesses were increasingly entering into transactions and contracts electronically, where possible, and has gained momentum since. Even absent the pandemic, these amendments were necessary to keep pace with developments in technology that now enable businesses to execute documents without company officers or advisers being physically present. Notably, these changes were a constructive step forward

in the shift to a digital economy. In this regard, members have noted that this is a particularly useful development for the operation of Australian companies with global operations.

To support the full benefit of electronic execution of documents to be obtained, it is recommended that the Independent Panel recommend that the Australian Government work with states and territories to support the harmonisation of requirements to support a seamless, national economy.

**Recommendation 5: That the Australian Government work with states and territories to support the harmonisation of requirements to support a seamless, national economy.**

Thank you again for the opportunity to comment on these important matters.

Yours sincerely



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