

16 July 2021

Data Economy Unit
Market Conduct Division
Treasury
Langton Crescent
PARKES ACT 2600

via email: businesscomms@treasury.gov.au

Dear Sir/Madam

Treasury laws amendment (measures for a later sitting) bill 2021: use of technology for meetings and related amendments

Chartered Accountants Australia and New Zealand and CPA Australia (together 'the Major Accounting Bodies') welcome the opportunity to respond to Treasury's exposure draft legislation and explanatory memorandum on the use of technology for meetings and related amendments ('the exposure draft'). Together, we represent over 280,000 professional accountants in Australia, New Zealand and around the world.

The Major Accounting Bodies support the proposed amendments to the Corporations Act 2001 (the Act) to permit the use of digital technologies to facilitate both the conduct of meetings and the execution of documents required under the Act.

We see these proposals as a step towards modernising the Act to make it more adaptable to technological advancements. It will also create a level of certainty for businesses, allowing them to push forward with their own changes to embed digital technologies within their corporate governance structures and document processes.

Since the onset of the COVID pandemic in early 2020, we have seen businesses adapt their operations to incorporate the temporary reforms to the Act which allowed for electronic execution of documents as well as virtually held meetings and the electronic circulation of meeting-related materials. This period has shown us that businesses, from large to small companies (including not-for-profits), have been able to adjust with seemingly few issues of concern associated with the transformation. Businesses have also benefitted from the redistribution of resources which would typically be used to fund physical meetings and print and post of documents as well as the reduction of associated labour costs. We do not believe that there are obvious disadvantages to implementing the permanent changes as outlined in the exposure draft.

Package of measures relating to the use of technology

We understand this exposure draft builds upon Schedule 1 of the *Treasury Law Amendment (2021 Measures No. 1) Bill 2021* (The Bill) which is currently before the Senate. It will be important for the temporary and permanent changes relating to the use of digital technologies to facilitate both the conduct of meetings and the execution of documents proposed by Schedule 1 of The Bill and this exposure draft to be passed in a timely manner. We do not believe this exposure draft alone will achieve the intended outcomes.

As companies continue to operate in an uncertain environment, legislation needs to be adaptive to allow appropriate flexibility to determine which method (i.e. virtual only, hybrid or in person) is more appropriate for their meetings while supporting the rights of their shareholders. Timely passing of this complementary legislation will enable appropriate measures to be taken by companies as they enter into the 2021 Annual General Meeting (AGM) period (e.g., in relation to the notifications for AGMs, including where the shareholders will physically meet).

Additionally, we encourage Government to consider and act on Recommendation 1 from the recent report of the Senate Economics References Committee (*Economics References Committee, Treasury Laws Amendment (2021 Measures No. 1) Bill 2021 [Provisions], June 2021*) (committee report),

2.215 The committee recommends that Schedule 1 of the bill be passed, with the following amendment:

- *that Schedule 1 provisions sunset at least six months from the bill's date of Royal Assent, with regard to the timing of annual general meeting cycles; and*
- *the government finalise the drafting of permanent provisions within six months of the date of Royal Assent of the bill.*

Given the delay in passing Schedule 1 of this Bill, we consider that the permanent provisions (considered in this exposure draft) should be passed sooner than six months after Royal Assent of the Bill. As stated above, we strongly encourage Government to consider the timely passing of this exposure draft as well as Schedule 1 of the Bill.

Further, we recommend ASIC's 'no-action' position be extended to 31 December 2021 to allow companies, particularly those currently affected by the current New South Wales lockdown (and potentially other states) to adequately prepare for virtual AGMs (if chosen) for the upcoming period.

An overarching framework

We encourage Treasury to consider an overarching framework that clearly outlines how amendments, such as those in this exposure draft, complement other existing (or future) modernising and deregulation projects. For example, an overarching framework would assist in identifying how this exposure draft aligns with the recent Treasury [Consultation paper on Modernising Business Communications](#). In our response, we highlighted that business communication requirements in Treasury laws create a burden for business where legislation requires written notice, records and non-electronic forms to be used with physical signature approval.

Extension to external administration (Insolvency)

We suggest extending the ability to provide meeting-related documents electronically to the *Insolvency Practice Rules (Corporations) 2016* where certain requirements still currently need to be undertaken in writing.

For example, section 75-10 requires that ‘the convenor of a meeting must give notice in **writing** of the meeting to as many of the persons appearing on the company’s books’ and section 75-95 ‘If necessary, an external administrator must ask a creditor to give evidence in **writing** in relation to a debt claimed by the creditor to establish the liability of the company for the debt.’

Liaison with Australian Taxation Office

Under current Australian income tax law, A company is a resident of Australia if:

- it is incorporated in Australia, or
- although not incorporated in Australia it carries on business in Australia and has either
 - its central management and control in Australia, or
 - its voting power controlled by shareholders who are residents of Australia.

Factors relevant in determining central management and control include the location of board meetings and the place where key decisions are made. The Australian Tax Office (ATO) has adopted a pragmatic approach to this issue during COVID, accepting that many companies have pivoted to ‘virtual’ board meetings.

Noting that the Treasurer announced changes to the company tax residence definition in the 2021 Federal Budget, we nonetheless think it prudent for Treasury officials to ascertain from the ATO the tax regulator’s perspective on any tax impacts of the changes proposed in the exposure draft and the bill.

The insights obtained from the ATO should be reflected in future explanatory memorandums accompanying the exposure draft when it is introduced so that parliamentarians and the business community can fully understand any tax ramifications.

Opt-in Pilot Program

We acknowledge that the opt-in pilot program will commence once the extension to the temporary relief ends (as introduced by the bill). We would like to express our interest in being kept up to date on its progress as we can reach out to our memberships for interest in participation.

If you have any questions about our submission, please contact Karen McWilliams (CA ANZ) at karen.mcwilliams@charteredaccountantsanz.com or Ram Subramanian (CPA Australia) at Ram.Subramanian@cpaaustralia.com.au.

Yours sincerely

Gary Pflugrath CPA

Executive General Manager, Policy and
Advocacy
CPA Australia

Simon Grant FCA

Group Executive – Advocacy, Professional
Standing and International Development
Chartered Accountants Australia and
New Zealand