

9 December 2021

Manager  
Market Analysis and Deregulation Unit  
Market Conduct Division  
Treasury  
Langton Cres  
Parkes ACT 2600

Via email: [mbcomms@treasury.gov.au](mailto:mbcomms@treasury.gov.au)

Dear Sir/Madam

## Consultation – Improving the technology neutrality of Treasury Portfolio laws

CPA Australia and Chartered Accountants Australia and New Zealand represent over 300,000 professional accountants in Australia, New Zealand and around the world. We welcome the opportunity to respond to the [Treasury Laws Amendment \(Modernising Business Communications\) Bill 2021](#) (Draft Bill) and associated [Treasury Laws Amendment \(Modernising Business Communications\) Regulations 2021](#) (Draft Regulations).

In line with our previous submissions on the various reform proposals to modernise business communications (refer to Appendix 1), we support the proposed measures to introduce certain technology-enabled communication solutions that will allow greater flexibility for businesses, individuals and regulators to communicate. However, we continue to view the “digital first” approach, while retaining a hard-copy option (by choice), to be an appropriate balance to cater for those individuals who may not have access or appropriate support to use technology-enabled communication solutions.

We have previously highlighted the need, as part of the overarching digital strategy, for a roadmap that clearly outlines and ‘connects the dots’ to other existing and future projects being carried out by Government, such as Director ID, MyGovID, modernising business communications and modernising document execution. While a roadmap may not contain all the information for future projects, it should illustrate the intended connectivity, helping to dispel any possible misconceptions that the work being carried out is piecemeal and reactive. Given the broad spectrum of statutory requirements the reforms are likely to impact, we believe the roadmap is a critical tool to obtain an overview of such impact.

### Signatures, Sending Documents and Lost Member Relief

We support the proposals to sign, execute and send documents electronically and the introduction of relief from sending documents to members whose contact details are known to be incorrect. In particular, we support the proposals in the Draft Bill to expand the scope of the previous proposals for electronic signing and sending of documents to all documents under the Corporations Act 2001.

In addition, in our previous submissions (refer to Appendix 1), we also highlighted other areas of interaction with Government that could benefit from the introduction of digital technologies as part of the modernising business communications reform agenda. For example, the Australian Securities and Investments Commission (ASIC) [Electronic Lodgement Protocol](#) (ELP) requires retention by the submitter of original paper documents for a period of 7 years. The ELP is an ASIC requirement arising from s352(1)(b) of the Corporations Act 2001 and s216(1) of the National Consumer Credit Protection Act 2009. In our view, this paper-based storage requirement places an impost on many of our members who incur unnecessary costs to maintain physical records for a substantial period of time. Alternative, cost-effective technology-based document management systems could enable the maintenance and record keeping of such documents in an electronic format and achieve the desired regulatory outcomes.

Further, as noted in our submission to the Deregulation Taskforce's consultation document on *modernising document execution* we suggest that the Government expands the scope of electronic execution of documents to a wider range of legislation, in particular, outdated requirements such as written notices, records and non-electronic forms which require physical signature approval.

For example, section 18(3) of the Superannuation Industry (Supervision) Act 1993 requires the Australian Prudential Regulation Authority to be informed of an election being made by written notice that is: (a) in the approved form; and (b) signed by the trustee. It is not clear whether this notice can be issued or signed electronically.

## Newspapers

We do not support the proposals to replace provisions that require or permit notices in newspapers by Government entities. However, we believe that these technology neutral publication permissions, in addition to requiring or permitting notices in newspapers, will allow notices to be published in a manner that not only results in them being publicly available and reasonably prominent but also easily searchable.

Regardless of whether notices are published in newspapers, a website or another digital medium, there is a risk that these notices do not come to the attention of those for whom they are intended. In addition to enabling the publication of notices using technology-based solutions, consideration should also be given to how notices published digitally reach their target audience. We suggest the Government carry out an assessment to consider the audience that is reached through different notice methods to determine which approach is most effective and if any approach should be reconsidered.

In respect of the proposals as they relate to notices issued by the Australian Taxation Office (ATO), we believe the ATO should not be reliant solely on the publication of notices in order to properly administer relevant tax laws. Instead, the ATO should seek to communicate directly with those affected at more effective interaction points. Notices should be provided to the taxpayer, their nominated contact and their tax agent, including, where there is a potential issue or dispute. Open communication between all parties (ATO, tax agent and taxpayer) will be important to allow effective resolution of any issues that may arise and it is vital the ATO continues to include the tax agent in respect to alerts when they are a nominated contact point.

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

Yours sincerely

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## Appendix 1

### Previous joint submissions by CA ANZ and CPA Australia to the Senate Inquiry into the Corporations Amendment (Meetings and Documents) Bill 2021 and other Treasury Consultations on related matters

3 November 2021

Senate Standing Committees on Economics  
PO Box 6100  
Parliament House  
Canberra ACT 2600

via email: [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

Dear Sir/Madam

#### **Inquiry into Corporations Amendment (Meetings and Documents) Bill 2021 [Provisions]**

CPA Australia and Chartered Accountants Australia and New Zealand (together 'the Major Accounting Bodies') welcome the opportunity to respond to the Economic Legislation Committee inquiry into Corporations Amendment (Meetings and Documents) Bill 2021 [Provisions]. Together, we represent over 300,000 professional accountants in Australia, New Zealand and around the world.

In line with our previous submissions to Treasury (refer to Appendix 1), the Major Accounting Bodies support the permanent 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 reiterate the issues raised in our previous submissions to Treasury, which are to consider:

- an overarching framework extending the ability to provide meeting-related documents electronically to the *Insolvency Practice Rules (Corporations) 2016*;
- the company tax residence definition under current Australian income tax law;
- a "digital first" approach to reflect the transition to electronic communications whilst retaining a hard-copy option by choice; and
- extending electronic execution of documents to other areas of statutory communications, for example to the Australian Securities and Investments Commission (ASIC).

We encourage the Committee to consider, as a part of the overarching digital strategy, a roadmap that clearly outlines and 'connects the dots' to other existing and future projects being carried out by Government, such as Director ID, MyGovID, modernising business communications and modernising document execution. While a roadmap may not contain all of the information for future projects, it should illustrate the intended connectivity, helping to dispel any possible misconceptions that the work being carried out is piecemeal and reactive.

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

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6 July 2021

Data Economy Unit  
Market Conduct Division  
Treasury  
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PARKES ACT 2600

via email: [businesscomms@treasury.gov.au](mailto: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](mailto:karen.mcwilliams@charteredaccountantsanz.com) or Ram Subramanian (CPA Australia) at [Ram.Subramanian@cpaaustralia.com.au](mailto:Ram.Subramanian@cpaaustralia.com.au).

Yours sincerely

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Dear Sir/Madam

## **Treasury Laws Amendment (Measures for Consultation) Bill 2021: Use of technology for meetings and related amendments**

CPA Australia and Chartered Accountants Australia and New Zealand (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.

In line with our previous [submission](#) in response to the *Treasury Laws Amendment (Measures For a Later Sitting) Bill 2021: Use of Technology for Meetings and Related Amendments*, 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. However, we reiterate the issues raised in our previous submission: to consider an overarching framework extending the ability to provide meeting-related documents electronically to the *Insolvency Practice Rules (Corporations) 2016*, as well as the company tax residence definition under current Australian income tax law.

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

### **Giving documents electronically**

S110D of the exposure draft proposes that a document may be sent to the recipient either in a physical form or provided using electronic means (subject to being readily accessible for future reference). This approach is different from the previous proposal in s253RA of the *Treasury Laws Amendment (2021 Measures No. 1) Bill 2021*, which allowed for the provision of the document to the recipient using electronic means, with an option for the recipient to elect to receive the document in hard copy. In our view, the “digital first” approach previously proposed (s253RA) better reflects the transition to electronic communications while still retaining a hard-copy option by choice.

## Extending electronic execution of documents to other areas of statutory communications

Whilst the proposals take significant steps forward to modernising corporate communications through amendments to the Act, there are other areas of interaction with government that could also benefit from the introduction of digital technologies as part of the modernising business communications reform agenda. For example, the Australian Securities and Investments Commission (ASIC) currently requires ASIC Registered Agents and Digital Service Providers to obtain an original “wet” signature on [Form 362 Notification by a company to nominate or cease a registered agent or contract address](#) and retain the original signed form for no less than 7 years. We believe such regulatory compliance requirements could benefit from technology-based solutions to replace the current paper-based approach to regulatory compliance.

### Opt-in Pilot Program

As stated in our previous submission, referred to above, we would like to express our interest in being kept up to date on the progress of the Opt-in Pilot Program as we can reach out to our memberships to seek their interest in participation.

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

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