

24 February 2021

Our ref: MC-LP

Mr Michael Tidball
Chief Executive Officer
Law Council of Australia
GPO Box 1989
Canberra ACT 2601

By email: [REDACTED]

Dear Mr Tidball

Treasury Laws Amendment (2021 Measures No. 1) Bill 2021

Thank you for the opportunity to provide feedback on Treasury Laws Amendment (2021 Measures No. 1) Bill 2021.

We note from your memorandum of 22 February 2021, the bill comprises two schedules as follows:

- Schedule 1 – virtual meetings and electronic communication of documents; and
- Schedule 2 – continuous disclosure obligations.

In the short time available to consider these issues, the Queensland Law Society (QLS) makes the following comments.

Schedule 1 – virtual meetings and electronic communication of documents

QLS broadly supports the amendments proposed in Schedule 1. **Enclosed** is a copy of our submission of 30 October 2020 to the Treasury in response to the *Exposure draft of Corporations Amendment (Virtual Meetings and Electronic Communications) Bill 2020 - permanent reforms in respect of virtual meetings and electronic document execution*.

Schedule 2 – continuous disclosure obligations.

Consistent with submissions made by the QLS in response to previous inquiries into class actions, any reforms to continuous disclosure obligations should be evidence-based and flow from a review of empirical data. This was supported by [ALRC's Final Report: Integrity, Fairness and Efficiency—An Inquiry into Class Action Proceedings and Third-Party Litigation Funders](#):

Recommendation 24—The Australian Government should commission a review of the legal and economic impact of the operation, enforcement, and effects of continuous

Treasury Laws Amendment (2021 Measures No. 1) Bill 2021

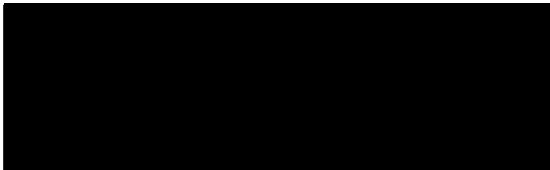
disclosure obligations and those relating to misleading and deceptive conduct contained in the *Corporations Act 2001* (Cth) and the *Australian Securities and Investments Commission Act 2001* (Cth).

The need for further information and data was also supported by a number of stakeholders in the recent parliamentary inquiry (see paragraphs 17.95 to 17.97 in the Parliamentary Joint Committee for Corporations and Financial Services (Joint Committee) in the [Final Report](#) of its 2020 Inquiry into litigation funding and the regulation of the class action industry).

Any amendments to existing laws should be based on a review of the requisite evidence and this would allow stakeholders, including the QLS, the opportunity to reach settled policy positions. While the Joint Committee did make a recommendation relating to these changes, it may be premature to make permanent these temporary amendments until such time as a further review is undertaken, followed by proper consultation.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on (07) 3842 5930.

Yours faithfully



Elizabeth Shearer
President

30 October 2020

Our ref: [MC:WD]

Manager
Market Conduct Division
The Treasury
Langton Crescent
Parkes ACT 2600

By email: [REDACTED]

Dear Manager

Exposure draft of *Corporations Amendment (Virtual Meetings and Electronic Communications) Bill 2020* - permanent reforms in respect of virtual meetings and electronic document execution

Thank you for the opportunity to provide feedback on the exposure draft of the *Corporations Amendment (Virtual Meetings and Electronic Communications) Bill 2020 (Exposure Draft Bill)*.

This response has been compiled by the Queensland Law Society (QLS) with feedback from members of a number of policy committees, including the Technology and Intellectual Property Law Committee, the Property & Development Law Committee, the Banking and Financial Services Law Committee and the Not for Profit Law Committee, whose members have substantial expertise with these issues.

Our members have expressed consistent support for the retention of the changes introduced at the federal level in the *Corporations (Coronavirus Economic Response) Determination (No. 1) 2020 (the Determination)* which were recently extended to March 2021.¹ This is our Society's view also.

The Determination has provided long-overdue reform needed in the commercial sphere and for the benefit of not-for-profits and charities. These measures, along with many of the others arising out of necessity as a result of the COVID-19 pandemic, have been of great assistance to our members and their clients.

However, as the Determination is only a temporary solution, our members broadly support the permanent reforms proposed in the Exposure Draft Bill in relation to holding virtual meetings and the electronic execution of documents.

We make the following comments on some aspects of the proposed reforms.

¹ <https://www.legislation.gov.au/Details/F2020L01194>

Exposure Draft - Corporations Amendment (Virtual Meetings and Electronic Communications) Bill 2020

Electronic execution of documents by corporations

The Exposure Draft Bill would, if enacted in its current form, clarify processes in relation to the electronic execution of documents by corporations. This is critical given current questions about electronic execution satisfying the requirements of section 127 of the *Corporations Act 2001*.

Our members consider that the permanent reforms proposed in the Exposure Draft Bill are necessary, sensible and overdue in the modern world. Businesses are experiencing significant benefits and efficiencies as a result of these reforms.

Virtual meetings

In practice, while constitutions of corporations may provide some mechanics about the holding of meetings with the use of technology, there are usually gaps in those provisions, given that they were drafted long before current platforms and through a lens seldom being used, with little or no detail about procedure for the conduct of the meeting and the voting that takes place. This has often meant clients have needed specific advice on their issues.

Potential improvements worthy of consideration include:

- Providing additional guidance about the practical operation of the reforms for larger group meetings. Guidance around identification of participants, monitoring who might leave the meeting, recording of meetings, and the steps to be taken to ensure all participants can hear and be heard would be welcomed. For example, on the issue of being able to participate, there seems to be no shortcut to taking the participants one by one and testing their audio.
- Reconsidering the voting process required at meetings. Requiring voting by poll seems unnecessary, particularly if a meeting is being held in a hybrid manner and there are not many members. This procedural matter should be left to the usual mechanisms about whether a poll is demanded.
- The issue of if there are inconsistencies between the legislative provisions and what a particular entity's constitution might provide should also be addressed.
- Reforms allowing direct voting by the use of voting papers, web sites or Apps without the need to convene an actual meeting.
- Guidance and information be made available to industry to assist with cybersecurity challenges and ensuring that boards provide appropriate technology solutions for meetings. This is particularly important to ensure compliance with the requirements of proposed section 253Q(1) of the Exposure Draft Bill, that the technology used gives all persons entitled to attend the meeting a reasonable opportunity to participate without being physically present in the same place.

**Exposure Draft - Corporations Amendment (Virtual Meetings and Electronic Communications) Bill
2020**

In practice our members are reporting that there has been little to no risk of these mechanisms being used inappropriately. To the contrary they facilitate more efficient decision making by corporations.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on (07) 3842 5930.

Yours faithfully

A large black rectangular redaction box covering the signature of Luke Murphy.

Luke Murphy
President