

19 July 2024

Our ref: WD:NFP

Meetings and Documents Review
c/- Better Business Communications Unit
Market Conduct and Digital Division
The Treasury
Langton Crescent
Parkes ACT 2600

By email: [REDACTED]

Dear Review Team

Statutory Review of the Meetings and Documents Amendments

Thank you for the opportunity to provide feedback on the consultation paper 'Statutory Review of the Meetings and Documents Amendments' (**Consultation Paper**).

The Queensland Law Society (**QLS**) is the peak professional body for the State's legal practitioners. We represent and promote over 14,000 legal professionals, increase community understanding of the law and help protect the rights of individuals. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

This response has been prepared with input from the QLS Not for Profit Law Committee and Litigation Rules Committee, whose members have substantial expertise in this area.

The Consultation Paper seeks comment on amendments to the *Corporations Act 2001* (Cth) (**CA**) during the COVID-19 pandemic in 2021 and 2022. The amendments facilitated online meetings (including voting) and electronic document execution and electronic giving of meeting-related documents.

As a general comment, QLS supports legislative amendments in this context which are technology-neutral. Any further amendments must be drafted in such a way as to accommodate rapid changes in technology and without reference to particular platforms or programs.

Meetings – online and hybrid meetings

In our members' experience, the amendments regarding online and hybrid meetings have broadly been positive and have facilitated greater flexibility in participation and voting.

Many of our members also advise not for profit entities and the reduced cost of holding online and hybrid meetings is a welcome outcome.

Electronic Notices

Recommendation: That section 110K of the CA is 'switched off' for charitable companies.

Part 1.2AA of the CA was introduced to assist companies with executing and delivering documents electronically during the COVID-19 pandemic lockdowns. Under this part, sections 110E and 110J of the CA permit members of companies to elect whether they would like to receive documents from a company in physical or electronic form.

However, section 110K of the CA requires public companies to send annual notices to members informing them of their rights to (emphasis added):

- (a) ... elect under section 110E, and to request under section 110J, to be sent documents in physical form; and*
- (b) ... elect under section 110E, and to request under section 110J, to be sent documents in electronic form; and*
- (c) ... elect under section 110E not to be sent documents covered **by subsection 110E(5)**.*

The documents covered by subsection 110E(5) of the CA include 'financial reports *mentioned* in section 314' (emphasis added). However, section 314 of the CA does not apply to charitable companies, as a result of section 111L(1) of the CA. It means there is a technical contradiction for charitable companies between section 110K, which imposes a strict liability offence for failing to give notice, and the inapplicability of section 314 of the CA.

QLS recommends that section 110K of the CA be 'switched off' for charitable companies. Such a change would be consistent with the switching off of the requirement to send notice of meetings of members and directors under section 249J of the CA.

Additionally, there is an overarching requirement in ACNC Governance Standard 2 that registered charities be accountable to their members.

General comments about electronic signing

Consultation question 13 seeks feedback on any issues that have been experienced with the electronic signing of documents. We note from the Panel's stated approach to the consultation (at page 3 of the paper) it will consider whether the amendments have succeeded in facilitating simple and efficient operation of technology neutral giving, signing and execution of documents and whether there are greater risks of fraudulent or other misuse of the law regarding signing and execution of documents.

QLS members report significant benefits to their practices and to their clients as a result of the efficiencies and certainty that electronic document execution provides. We strongly support the retention of these processes and refer to the comments above about the need to ensure processes remain "tech-neutral".

We take this opportunity to comment on whether there is an increased risk of fraud from using these methods. In our members' experience, when a document is electronically executed, it is easier to determine how the document was signed and to verify the identity of the relevant people. There are digital footprints created that can be accessed if there is a need to verify

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identity or other information. This does not exist when a document is signed in hard copy using wet ink.

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 [REDACTED]

Yours faithfully,

[REDACTED]
President