

8 November 2021

The Secretariat
Senate Economic Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email: economics.sen@aph.gov.au

Dear Mesdames and Sirs

Corporations Amendment (Meetings and Documents) Bill 2021 (Bill)

This submission is made by the Business Law Section of the Law Council of Australia (**BLS**) in relation to the Inquiry of the Senate Economics Legislation Committee into the Bill.

In general terms, the BLS supports and welcomes the proposed permanent measures in the Bill in relation to electronic execution, electronic notices and on-line meetings.

Specifically, the BLS supports the following amendments to the **Corporations Act 2001 (Cth) (Corporations Act)**:

- the facilitation of electronic execution of documents and the expansion of section 126 of the Corporations Act;
- clarification measures including in relation to the archaic “paper, parchment or vellum” rule for deeds and other execution formalities to better facilitate electronic execution;
- the facilitation of sending documents to members by electronic means, including the proposed rationalisation of meetings and annual report-related provisions;
- the facilitation of hybrid meetings (that is, partly physical and partly virtual);
- the facilitation of virtual only meetings where they are required or permitted by the company’s constitution;
- ensuring that members have the right to ask questions and make statements at the virtual component of meetings orally as well as in writing;
- conferring a new right on shareholders with at least 5% to require external oversight of, or a report on, a poll;
- extension of document execution reforms to sole director companies, where there is no company secretary appointed; and
- the mandating of a review of the legislation after a two-year period.

The BLS considers that the package of measures in the Bill, when read in light of the *Treasury Law Amendment (2021 Measures No. 1) Act 2021* (Cth) (**2021 Measures Act**), generally represents a sound and proportionate balancing of the various interests.

However, the BLS has comments, concerns or reservations in relation to the Bill about the following key issues:

- we would strongly support the extension of electronic document delivery reforms to takeover documents under Chapter 6 of the Corporations Act;
- we have a concern about the drafting of proposed subsection 110E(8) in relation to when elections to be sent documents will operate when there is a “voluntary” general meeting of members, and it is at least arguable that the Corporations Act does not “require” a document to be sent by any given date because the company or scheme can choose when the meeting is to be held; and
- while we do not have a fundamental objection in principle, we are concerned that the new requirement for all listed entity substantive resolutions to be voted on by poll (proposed sections 250JA and 253J(1A)) is not based on evidence of abuse under the current law that warrants a new prescriptive requirement.

Annexed to this letter is a table setting out more detailed comments and submissions in relation to certain provisions of the Bill.

Given that the electronic execution, electronic notices and on-line meetings temporary measures in the 2021 Measures Act will expire at the end of March 2022, we would respectfully urge the Committee to support the Bill, to ensure that the permanent measures in the Bill are implemented well before the expiry of the temporary measures.

For further information or if you would like to discuss any aspect of this submission, please contact John Keeves, Member of the Executive of the Business Law Section john.keeves@jws.com.au 0419 039 019.

Yours faithfully,



Greg Rodgers
Chair, Business Law Section

Annexure A – Submission Table

#	Reference	Description	Submission
1.	Part 1.2AA, Division 1	Technology neutral signing	In principle, we support the policy underlying these provisions, that the Corporations Act should be technologically neutral.
2.	110B	Lodgement of documents	We support the facilitation of lodgement electronically signed documents.
3.	110E(8)	Time of elections	This provision is drafted on the assumption that the Corporations Act requires or permits a notice of meeting to be given by a particular day. However, the Corporations Act does no such thing. It merely specifies the time period before the meeting by which a notice must be given – but the actual date of the meeting is a matter of choice for the company (or the responsible entity of the scheme). So it cannot be said, prior to the date of issue of the notice – which itself is the act that gives notice of, and sets the date for, the meeting – that the notice is required to be issued by a particular date. The determination of the latest date of the notice can only be made by reference to when the notice is issued, which is logically circular. It is hoped that the provision will be interpreted by the Courts in a purposive and liberal manner, but in our submission it would be preferable to amend section 110E to overcome any uncertainty, given the importance of the provision in practice.
4.	Part 1.2AA, Division 2	Technology neutral sending of documents to members	<p>As above, in principle, we support the policy underlying these provisions, namely, that the Corporations Act should be technologically neutral. We generally support these provisions.</p> <p>We would strongly support the extension of the provisions (in due course) to documents sent to members under Chapter 6 of the Corporations Act (takeovers), to enable bidder’s statements, target’s statements and other takeover documents to be sent to members, including the sending of bidder’s statements to members using the target’s information about its members.</p> <p>While we note that the provisions of the Bill contemplate extension to other documents (see paragraph 110C(2)(c)), we consider that additional specific provisions would be required to deal properly with the sending of takeover documents (given that documents are sent by bidders to the shareholders of the target), and would strongly encourage the Government to pursue additional specific reforms in relation to takeover documents.</p>

#	Reference	Description	Submission
5.	126	Agent exercising a company's power to make contracts and execute documents (including deeds)	<p>These are significant additional reforms compared to the previous consultation.</p> <p>There are far reaching and perhaps fundamental reforms to facilitate execution by companies and will overcome many of the formalities that bedevil corporate execution of documents, including deeds.</p> <p>In principle, we support these measures.</p>
6.	127(1)(c), 127(2)(c)	Sole director execution	We support these amendments.
7.	127(2A)	Execution using seal	We support this amendment, which gives additional flexibility in satisfying the requirement for witnessing.
8.	129(5) and 129(6)	Assumptions	We support these amendments as the logical extension of the amendments to paragraphs 127(1)(c) and 127(2)(c) to facilitate sole director execution.
9.	249R and following	Hybrid meetings	We support this reform facilitating hybrid meetings (and virtual only meetings if permitted or required by the constitution), as a balanced response to the competing stakeholder interests.
10.	249S(7) and 252Q(7)	Orally and in writing	<p>We support this reform requiring shareholders rights to be able to be exercised orally, as a balanced response to the competing stakeholder interests. We note that online meeting platforms now have the necessary functionality.</p> <p>We note that the drafting has been clarified in comparison to the initial consultation so that it is clear that “oral and written rights” apply only to the virtual component of a meeting, such that written exercise of rights is not required for the physical component of the meeting.</p>
11.	250JA, 253J(1A)	Certain resolutions must be decided on a poll—listed companies and schemes	<p>While we have no fundamental objection to this amendment generally requiring all listed company substantive resolutions to be put to a poll, we do consider that evidence of a sufficient mischief requiring remedy has not been made out.</p> <p>Under the current general law, the chair of a company has an obligation to put a resolution to a poll if a different result would be obtained on a show of hands. If the proxies given to the company indicate a different result to a show of hands, the chair would be required to call for a poll under the general law. In our view, there is no evidence that meeting procedures have been abused to the extent that this prescriptive rule needs to be introduced. This change will add additional cost to meetings without there being a corresponding demonstrative benefit to shareholders.</p>

#	Reference	Description	Submission
12.	253UB(5), 253UC(6), 253UD(5), 253UE(6)	<i>Observer's reporter's fees</i> <i>or</i>	As per our submission in response to the previous consultation, it is not clear how these provisions will operate in that the quantum of fees that the company or responsible entity is liable to pay is not ascertained. That is, the provisions provide for payment of fees but say nothing about what fees can be charged.