



Law Council
OF AUSTRALIA

Office of the President

15 July 2021

Market Conduct Division
Treasury
Langton Cres
Parkes ACT 2600

By email: businesscomms@treasury.gov.au

Dear Treasurer

Using technology to hold meetings and sign and send documents

The Law Council of Australia (**Law Council**) appreciates the opportunity to provide a submission to the Treasury in response to the exposure draft legislation, the Treasury Laws Amendment (Measures for Consultation) Bill 2021: Use of technology for meetings and related amendments (**Exposure Draft**). The Law Council acknowledges the contributions of its Business Law Section and the Queensland Law Society in preparing this submission.

The Exposure Draft proposes amendments to the *Corporations Act 2001* (Cth) (**Corporations Act**) to make permanent the temporary measures put in place during the COVID-19 pandemic relating to electronic execution of company documents and meeting notifications.¹ Similar changes are proposed in Schedule 1 of the Treasury Law Amendment (2021 Measures No. 1) Bill 2021 (Cth) (**TLAB**). As at the date of this submission, the TLAB has not been passed by the Australian Parliament.²

In general terms, the Law Council supports and welcomes the proposed measures in the Exposure Draft. Specifically, the Law Council supports:

- 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;

¹ See, The Treasury, *Using technology to hold meetings and sign and send documents* (Web Page, 25 June 2021) <<https://treasury.gov.au/consultation/c2021-177098>>; Treasury Laws Amendment (Measures for Consultation) Bill 2021: Use of technology for meetings and related amendments, Exposure Draft Explanatory Materials <<https://treasury.gov.au/sites/default/files/2021-06/c2021-184943-exm.pdf>> ('ED EM').

² Two Senate Committees have conducted inquiries into this Bill. In March 2021, the Senate Economics Legislation Committee recommended that the entire Bill be passed while separate dissenting reports from Labor Senators and the Australian Greens did not oppose the passage of sch 1 (with some caveats): Senate Economics Legislation Committee, *Treasury Laws Amendment (2021 Measures No. 1) Bill 2021 [Provisions]*, (Report, March 2021). In June 2021, the Senate Economics References Committee recommended that sch 1 of the Bill pass with two amendments, while a Dissenting report from Coalition Senators recommended that sch 1 pass unamended: Senate Economics References Committee, Parliament of Australia, *Treasury Laws Amendment (2021 Measures No. 1) Bill 2021 [Provisions]* (Report, June 2021).

- provision ensuring that members have the right to ask questions and make statements at meetings orally as well as in writing;
- the conferral of a new right on shareholders with at least 5 per cent to require external oversight of, or a report on, a poll;
- the 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 Law Council considers that the package of measures in the Exposure Draft, when read in light of the TLAB, represent a sound and proportionate balancing of the various interests. They will also bring the requirements of the Corporations Act in line with other jurisdictions, and reflect the procedures that businesses are, in the experience of the members of the legal profession, implementing in practice. It is also noted that the validity of execution of documents and passing of resolutions is an issue which arises regularly in litigation and the Exposure Draft proposes sensible steps to modernise these processes.

The Law Council suggests that the Exposure Draft could be materially improved by:

- conferring on the Australian Securities and Investments Commission (**ASIC**) an emergency power to facilitate virtual only meetings if circumstances require such a measure, given the ongoing impact of the COVID-19 pandemic through the 2021 Annual General Meeting (**AGM**) season, and the possibility of future similar circumstances. This should include a power to grant exemptions and/or modifications from Chapter 2G of the Corporations Act to provide the mechanical facilitation that may be required in the absence of specific virtual meeting provisions in company constitutions, and consideration of a regulation-making power to the same effect;
- ensuring that the relevant measures apply to all Corporations Act companies, including those registered with the Australian Charities and Not-for-profits Commission (**ACNC**) as charities – recognising that any reforms to be contained in Part 2G.2 will not currently otherwise apply to ACNC registered companies, under the terms of section 111L of the Corporations Act;
- clarifying the independence requirement in proposed new Part 2G.6, in particular by clarifying that a company's share registry provider can generally be an 'independent person' for the purpose of this Part; and
- incorporating the substance of section 249J(4) as to be inserted by TLAB 1 as provision of the Act that applies unless a constitution provides otherwise, rather than as a replaceable rule, in order to provide a default "time of service" rule, given that electronic notices or (notification of access) are to be the default method subject to opt out, but many constitutions would not include "time of service" rules.

Specific comments and submissions in relation to the provisions in the Exposure Draft are set out in the table at **Attachment A**, which has been prepared by the Law Council's Business Law Section with input from Law Council Constituent Bodies.

I hope that this information is of assistance to the Treasury. Should you require any further information or assistance, I am contactable directly on 0438 301 956 or at Jacoba.Brasch@lawcouncil.asn.au.

Alternatively, I invite you to contact Mr John Keeves, Executive Member of the Business Law Section, at john.keeves@jws.com.au, or on 0419 039 019.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Paul W QC". The signature is written in a cursive style with a horizontal line underneath.

Dr Jacoba Brasch QC
President

Attachment A: Responses to Exposure Draft

Note: These responses assume Treasury Laws Amendment (2021 Measures No.1) Bill 2021 (**TLAB**) has been passed.

Item	Section	Text	Comment	Submission
Schedule 1				
1	248D	A directors' meeting may be called or held using any technology consented to by all the directors. The consent may be a standing one. A director may only withdraw their consent within a reasonable period before the meeting.	Reinstates section 248D	Supported. In our submission, there was no need to repeal section 248D and directors' meetings have been operating satisfactorily under section 248D.
2	249R	<p>How meetings of members may be held</p> <p>A company may hold a meeting of its members:</p> <p>(a) at one or more physical venues; or</p> <p>(b) at one or more physical venues and using virtual meeting technology; or</p> <p>(c) using virtual meeting technology only, if this is required or permitted by the company's constitution.</p>	Does not facilitate virtual meeting unless required or permitted by a company's constitution	<p>Supported* This gives companies and their shareholders a choice as to whether to have virtual meetings, the choice being made by a shareholder's resolution in accordance with normal principles of corporate governance.</p> <p>Hybrid meeting are facilitated, which should work for most practical purposes, even in a lockdown.</p> <p>The Law Council would have no objection in principle to an additional provision to facilitate virtual only meetings if that is approved by a special resolution. However, it may be that such a provision could create conflicts with provisions of a corporate constitution and additional mechanical facilitative provisions would be required.</p> <p>The Law Council considers that an additional provision should be inserted to allow virtual only meetings in emergency circumstances, as lock downs could conceivably continue for a number of months and affect the 2021 AGM season or beyond. In our submission an appropriate balance</p>

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				<p>would be to give ASIC a power to grant exemptions and modifications on a case-by-case and class basis (including a general modification or exemption for all companies) with the ability to provide the mechanical provisions that would be necessary to facilitate virtual only meetings in the absence of specific constitutional provisions.</p> <p>The Law Council would also suggest that consideration be given to including a regulation making power to the same effect.</p> <p>The Law Council also submit that the measures to be inserted in Part 2G.2 by the Exposure Draft should be extended to charities registered with the ACNC. Section 111L of the Corporations Act excludes (“turns off”) the provisions of Part 2G.2 for all companies registered with the ACNC. The Exposure Draft will insert the main provisions for companies (sections 249R and 249RA) in Part 2G.2 in contrast to TLAB that would insert a new Part 2G.5, that would apply to companies registered with the ACNC.</p> <p>* It is noted that the Queensland Law Society has expressed the view that should the current provisions remain, consideration should be given to removing the limitation with respect to holding meetings wholly virtually ‘only if permitted by the constitution’ in proposed subsection 249R(c). As an alternative, the Queensland Law Society suggests that this provision could say, ‘unless holding a virtual meeting in that way is specifically prohibited by the constitution’, which would require the company to consider and decide whether it wishes to prohibit virtual meetings.</p>

Item	Section	Text	Comment	Submission
2	249RA	<p>Place and time of meetings and presence at meetings</p> <p>(1) The place at which a meeting of the members of a company is held is taken to be:</p> <ul style="list-style-type: none"> (a) if the meeting is held at only one physical venue (whether or not it is also held using virtual meeting technology)—that physical venue; or (b) if the meeting is held at more than one physical venue (whether or not it is also held using virtual meeting technology)—the main physical venue of the meeting as set out in the notice of the meeting; or (c) if the meeting is held using virtual meeting technology only—the registered office of the company. <p>(2) The time at which the meeting is held is taken to be the time at the place at which the meeting is held.</p> <p>(3) A member who attends the meeting (whether at a physical venue or by using virtual meeting technology) is taken for all purposes to be present in person at the meeting while so attending.</p>		<p>Supported. Sub-section (3) should help overcome the application of normal meeting rules etc to a hybrid or virtual meeting.</p>
2	249S	<p>Reasonable opportunity to participate</p> <p>(1) A company that holds a meeting of its members must give the members entitled to attend the meeting, as a whole, a reasonable opportunity to participate in the meeting.</p> <p>Note: Section 1322 provides for consequences of a breach of this subsection.</p>		<p>Supported. The Law Council submit that the language of sub-section (2) may introduce uncertainty. The Law Council suggest that sub-section (2) be expressed as simply the concept that sub-sections (3) to (9) do not limit sub-section (1).</p> <p>While the concept of “virtual technology” being reasonable (ss (7)) is potentially to vague, The Law Council nevertheless consider that it will be workable in practice.</p>

Item	Section	Text	Comment	Submission
		<p>(2) Without limiting the scope of subsection (1), the effects of that subsection include those set out in subsections (3), (4), (5), (6), (7), (8) and (9).</p> <p>(3) The meeting must be held at a time that is reasonable at:</p> <p>(a) if the meeting is held at only one physical venue (whether or not it is also held using virtual meeting technology)—that physical venue; or</p> <p>(b) if the meeting is held at more than one physical venue (whether or not it is also held using virtual meeting technology)—the main physical venue of the meeting as set out in the notice of the meeting; or</p> <p>(c) if the meeting is held using virtual meeting technology only—a physical venue at which it would be reasonable to hold the meeting.</p> <p>(4) If the meeting is held at only one physical venue (whether or not it is also held using virtual meeting technology), it must be reasonable to hold the meeting at that physical venue.</p> <p>(5) If the meeting is held at more than one physical venue (whether or not it is also held using virtual meeting technology), it must be reasonable to hold the meeting at its main physical venue as set out in the notice of the meeting.</p> <p>(6) If the meeting is held at more than one physical venue (whether or not it is also held using virtual meeting technology), the technology used to hold the meeting at more than one physical venue must be reasonable.</p> <p>(7) If the meeting is held using virtual meeting technology (whether or not it is also held at more than one physical venue), that virtual meeting technology must be reasonable.</p>		<p>The Law Council note that the policy setting is that rights to speak and ask questions (ss (8)) must be exercisable orally if the member wishes to (in addition to written format). This can be facilitated by available technology and avoids the probably worse problem of extra regulation as a result of using only written questions or statements at virtual meetings.</p>

Item	Section	Text	Comment	Submission
		<p>(8) If a law or the company’s constitution confers a right to speak or ask questions at the meeting on:</p> <p>(a) the members entitled to attend the meeting as a whole; or</p> <p>(b) a member entitled to attend the meeting; that right may be exercised orally or in writing.</p> <p>(9) A person is taken to have tabled a document at a meeting of the members of a company if:</p> <p>(a) a law or the company’s constitution requires or permits the person to table the document at the meeting; and</p> <p>(b) the person makes a copy of the document reasonably accessible to members attending the meeting, for example by:</p> <p>(i) giving a copy of the document before the meeting to the members entitled to attend the meeting; or</p> <p>(ii) giving a copy of the document during the meeting to the members attending the meeting; or</p> <p>(iii) screencasting the document in a reasonable way during the meeting to the members attending the meeting, as a whole.</p>		
3	250BB(1)(b)	if the proxy has 2 or more appointments that specify different ways to vote on the resolution—the proxy must not vote on a show of hands; and	Reverts the provision to the pre-TLAB position	Supported.
4	250J(1)	A resolution put to the vote at a meeting of a company’s members must be decided on a show of hands unless a poll is demanded	Reverts the provision to the pre-TLAB position	Supported.

Item	Section	Text	Comment	Submission
5	252P	<p>How meetings of members may be held</p> <p>A registered scheme may hold a meeting of its members:</p> <ul style="list-style-type: none"> (a) at one or more physical venues; or (b) at one or more physical venues and using virtual meeting technology; or (c) using virtual meeting technology only, if this is required or permitted by the scheme's constitution. 		Supported. See item 2.
5	252PA	<p>Place and time of meetings and presence at meetings</p> <ul style="list-style-type: none"> (1) The place at which a meeting of the members of a registered scheme is held is taken to be: <ul style="list-style-type: none"> (a) if the meeting is held at only one physical venue (whether or not it is also held using virtual meeting technology)—that physical venue; or (b) if the meeting is held at more than one physical venue (whether or not it is also held using virtual meeting technology)—the main physical venue of the meeting as set out in the notice of the meeting; or (c) if the meeting is held using virtual meeting technology only—the registered office of the responsible entity of the scheme. (2) The time at which the meeting is held is taken to be the time at the place at which the meeting is held. (3) A member who attends the meeting (whether at a physical venue or by using virtual meeting technology) is taken for all purposes to be present in person at the meeting while so attending. 		Supported. See item 2.

Item	Section	Text	Comment	Submission
5	252Q	<p>Reasonable opportunity to participate</p> <p>(1) A registered scheme that holds a meeting of its members must give the members entitled to attend the meeting, as a whole, a reasonable opportunity to participate in the meeting.</p> <p>Note: Section 1322 provides for consequences of a breach of this subsection.</p> <p>(2) Without limiting the scope of subsection (1), the effects of that subsection include those set out in subsections (3), (4), (5), (6), (7), (8) and (9).</p> <p>(3) The meeting must be held at a time that is reasonable at:</p> <p>(a) if the meeting is held at only one physical venue (whether or not it is also held using virtual meeting technology)—that physical venue; or</p> <p>(b) if the meeting is held at more than one physical venue (whether or not it is also held using virtual meeting technology)—the main physical venue of the meeting as set out in the notice of the meeting; or</p> <p>(c) if the meeting is held using virtual meeting technology only—a physical venue at which it would be reasonable to hold the meeting.</p> <p>(4) If the meeting is held at only one physical venue (whether or not it is also held using virtual meeting technology), it must be reasonable to hold the meeting at that physical venue.</p> <p>(5) If the meeting is held at more than one physical venue (whether or not it is also held using virtual meeting technology), it must be reasonable to hold the meeting at its main physical venue as set out in the notice of the meeting.</p>		Supported. See item 2.

Item	Section	Text	Comment	Submission
		<p>(6) If the meeting is held at more than one physical venue (whether or not it is also held using virtual meeting technology), the technology used to hold the meeting at more than one physical venue must be reasonable.</p> <p>(7) If the meeting is held using virtual meeting technology (whether or not it is also held at more than one physical venues), that virtual meeting technology must be reasonable.</p> <p>(8) If a law or the scheme's constitution confers a right to speak or ask questions at the meeting on:</p> <p>(a) the members entitled to attend the meeting as a whole; or</p> <p>(b) a member entitled to attend the meeting;</p> <p>that right may be exercised orally or in writing.</p> <p>(9) A person is taken to have tabled a document at a meeting of the members of a registered scheme if:</p> <p>(a) a law or the scheme's constitution requires or permits the person to table the document at the meeting; and</p> <p>(b) the person makes a copy of the document reasonably accessible to members attending the meeting, for example by:</p> <p>(i) giving a copy of the document before the meeting to the members entitled to attend the meeting; or</p> <p>(ii) giving a copy of the document during the meeting to the members attending the meeting; or</p> <p>(iii) screencasting the document in a reasonable way during the meeting to the members attending the meeting, as a whole.</p>		

Item	Section	Text	Comment	Submission
6	252Z(4)	Omit “company” (wherever occurring), substitute “responsible entity”.	Drafting correction.	Supported.
7	253J(2)	Any other resolution put to the vote at a meeting of the scheme’s members must be decided on a show of hands unless a poll is demanded. The resolution is passed on a poll if it has been passed by at least 50% of the votes cast by members entitled to vote on the resolution		This provision should be amended to read: <i>The resolution is passed on a poll if it has been passed by more than 50% of the votes cast by members entitled to vote on the resolution.</i> This error is in the original legislation.
8	Part 2G.5	[heading]		
9	Division 2 of Part 2G.5	Repeal the Division	Relates to virtual meetings [to be] inserted by the 2021 Bill	Supported.
10	253RA(4)	After “ASIC”, insert “or the Registrar”.		Supported.
11	253RD(3)	After “ASIC”, insert “or the Registrar (as the case requires)”.		Supported.
12	1322(3A)	If the members of a company who are entitled to attend a meeting of the company’s members do not have, as a whole, a reasonable opportunity to participate in the meeting or in a proceeding at the meeting, the meeting will only be invalid on that ground if: (a) the Court is of the opinion that: (i) a substantial injustice has been caused or may be caused; and (ii) the injustice cannot be remedied by any order of the Court; and (b) the Court declares the meeting or proceeding invalid.		Supported.

Item	Section	Text	Comment	Submission
13	1679A	Note: The amendments relating to Chapter 2G meetings made by Schedule 1 to the <i>Treasury Laws Amendment (2021 Measures No. 1) Act 2021</i> are superseded by the amendments made by Schedule 1 to the <i>Treasury Laws Amendment (Measures for Consultation) Act 2021</i> (see section 1687A).		Supported.
14	1679E and 1679F	Repeal the sections	Removes the time limit on the amendments to meetings and electronic execution enacted by TLAB	Supported.
15	1687A	<p>Application—meetings using virtual meeting technology</p> <p>(1) The amendments made by the amending Schedule apply in relation to a Chapter 2G meeting if notice of the meeting is given on or after the commencement day.</p> <p>(2) Despite subsection (1), the amendments made by items 1, 2, 5 and 9 of the amending Schedule do not apply in relation to a Chapter 2G meeting if:</p> <p>(a) before the commencement day, notice of the meeting is given to at least one person entitled to attend the meeting; and</p> <p>(b) the meeting is held before 16 September 2021.</p>	Sub-section (2) is designed to preserve the operation of TLAB amendments for meetings held before 16 September,	Supported.
15	1687B	<p>Review of operation of laws</p> <p>(1) The Minister must cause a review to be undertaken of the operation of this Act, as in force immediately after the commencement of this section, resulting from the amendments made by:</p>		Supported. In principle, the Law Council supports reviews of new legislation after a defined period. Law reform should always be viewed as an ongoing process, with refinements being introduced wherever possible where a new measure has been introduced.

Item	Section	Text	Comment	Submission
		<p>(a) Schedule 1 to the <i>Treasury Laws Amendment (2021 Measures No. 1) Act 2021</i>; and</p> <p>(b) the amending Schedule and Schedule 2 to the <i>Treasury Laws Amendment (Measures for Consultation) Act 2021</i>.</p> <p>(2) The review must be conducted no later than the earliest practicable day after the end of 2 years after this section commences.</p> <p>(3) The Minister must cause one or more written reports about the review to be prepared.</p> <p>(4) If there is more than one report under subsection (3), each of those reports need not deal with the operation of all the amendments mentioned in subsection (1). However, the reports as a whole must deal with all of those amendments.</p> <p>(5) The Minister must cause a copy of a report of a review under subsection (3) to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.</p>		
Schedule 2				
1	127(1)(c)	<p>Repeal the paragraph, substitute:</p> <p>(c) for a proprietary company that has a sole director—that director, if:</p> <p>(i) the director is also the sole company secretary; or</p> <p>(ii) the company does not have a company secretary.</p>	<p>Permits execution by sole director who is the sole company secretary, or there is no company secretary (current position is that sole director must also be the sole secretary)</p>	Supported. This overcomes a significant shortcoming in section 127 as presently drafted.
2	127(2)(c)	<p>Repeal the paragraph, substitute:</p>		Supported. See item 1.

Item	Section	Text	Comment	Submission
		<p>(c) for a proprietary company that has a sole director— that director, if:</p> <p>(i) the director is also the sole company secretary; or</p> <p>(ii) the company does not have a company secretary.</p>		
3	129(5)	<p>Repeal the subsection (not including the heading), substitute:</p> <p>(5) A person may assume that a document has been duly executed by the company if the document appears to have been signed in accordance with subsection 127(1).</p>	<p>Replaces the assumption provision for documents executed by a sole director.</p>	<p>This provision should be amended, or an amendment should be made to sub-section 129(2) to deal with the situation of sole directors.</p> <p>Existing sub-section 129(5) has a special operation of allowing an assumption to be made that a person is the sole director and secretary if that is stated in the document being executed. This is necessary because it is not possible to assume that a person is the sole director and secretary merely because an ASIC search states this, since another director or secretary may have been appointed but not yet notified to ASIC. There is nothing in the Act that allows a person to assume that an ASIC search disclosed <u>all</u> the directors or secretaries at a particular time because appointments do not have to be notified immediately.</p> <p>Section 129(2) allows a person to assume that a person appearing in an ASIC search to be a director or secretary has been duly appointed but nothing says that the ASIC register can be assumed to be complete in the sense that it establishes that only the persons stated are all the directors at a given time.</p> <p>To rely on section 127 in relation to a sole director it is necessary to establish a negative – that no one else has been appointed as a director or secretary. This is what the second sentence of sub-section 129(5) currently does.</p>

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				<p>The same need to establish a negative will apply under the amended form of section 127, so an analogue of the current section 129(5) is required in relation to the amended section. The following language is suggested:</p> <p><i>For the purposes of making the assumption, a person may also assume that anyone who signs the document and states next to their signature that they are the sole director of the company is the sole director.</i></p> <p>Unless such language is included, or an equivalent amendment made to sub-section 129(2), the proposed amendment will not work as intended, leaving doubt as to whether a person is in fact a sole director, and hindering the purpose of section 127 and 129 – which is to create commercial certainty for people dealing with companies.</p> <p>There should not be any concern about treating single director companies differently from other companies because the “establishing a negative” issue does not arise with a multiple director company. In that case, a person dealing with the multiple director company needs only to establish (or be able to assume) that the persons who signs the document are duly appointed – and this is the purpose of sub-section 129(2). But they do not need to establish or assume that the persons signing the document are the <u>only</u> such duly appointed officers.</p>
4	129(6)	Repeal the subsection (not including the heading), substitute:		See item 3. A similar amendment needs to be made for the same reasons.

Item	Section	Text	Comment	Submission
		<p>(6) A person may assume that a document has been duly executed by the company if:</p> <p>(a) the company's common seal appears to have been fixed to the document in accordance with subsection 127(2); and</p> <p>(b) the fixing of the common seal appears to have been witnessed in accordance with that subsection.</p>		
5	Part 2G.6	[heading]		Supported. The possibility of the exercise of the new rights in Part 2G.6 will provide an incentive for polls to be conducted properly and the possibility should give members confidence, whether or not the rights are actually exercised. The cost of exercise of the rights is unlikely to be material, particularly if a person from the entity's external share registry provider, auditor or an independent law firm are able to provide such services.
5	253T	<p>Application of Part</p> <p>This Part applies:</p> <p>(a) in relation to a company, if the company is listed; and</p> <p>(b) in relation to a registered scheme, if the scheme is listed.</p>		Supported. The application of these new measures to listed entities is appropriate.
5	253V	<p>Company members' rights to request observer on poll</p> <p>(1) Members of a company with at least 5% of the votes that may be cast at a meeting of the company may request the company to appoint an independent person to observe the conduct of a poll at the meeting.</p> <p>(2)The request must:</p> <p>(a)be in writing; and</p>		<p>Supported (generally). The 5 business day period may not long enough in practice and the Law Council submits that the policy purpose of the new measure could be satisfied with a longer period, say 10 business days.</p> <p>The Law Council submits that the legislation should clarify what is meant by "independent", and in particular should clarify that a company's share registry provider is presumptively independent</p>

Item	Section	Text	Comment	Submission
		<p>(b) identify the poll to which it relates; and</p> <p>(c) be made no later than 5 business days before the day the meeting is held.</p> <p>(3) A company commits an offence if:</p> <p>(a) the company receives a request under subsection (1); and</p> <p>(b) the company fails to take reasonable steps to ensure that an independent person observes the conduct of the poll to which the request relates.</p> <p>Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).</p> <p>(4) An offence based on subsection (3) is an offence of strict liability.</p> <p>(5) A company that appoints an independent person for the purposes of this section is liable to pay the person his or her fees.</p> <p>(6) To avoid doubt, an independent person appointed for the purposes of this section may be an auditor (including an auditor of the company concerned), unless the relevant poll concerns an issue relating to the person.</p>		<p>(except in the rare event that a resolution somehow might relate to the share registry provider – but that possibility is remote). With respect to sub-section (5), there is some uncertainty as to how the obligation to pay the fees will operate. However, in practice, it is likely that companies will be able to agree a fee or the basis for a fee in advance of the appointment. It is not clear how the provision will operate if the basis of fees is not agreed – presumably that appointee cannot specify any fee that it wishes to charge, no matter the amount. It might be worthwhile to amend sub-section (5) so that it refers to “reasonable fees”.</p>
5	253VA	<p>Company members’ rights to request report on poll</p> <p>(1) Members of a company with at least 5% of the votes that may be cast at a meeting of the company may request the company to appoint an independent person to prepare a report on a poll at the meeting.</p> <p>(2) The request must:</p> <p>(a) be in writing; and</p> <p>(b) identify the poll to which it relates; and</p>		<p>Supported (generally). See comments on section 253V.</p>

Item	Section	Text	Comment	Submission
		<p>(c) be made no later than 5 business days after the day the meeting is held.</p> <p>(3) To avoid doubt, the request may be made before the meeting is held.</p> <p>(4) A company commits an offence if:</p> <p>(a) the company receives a request under subsection (1); and</p> <p>(b) the company fails to take reasonable steps to:</p> <p>(i) ensure that an independent person prepares a report on the poll to which the request relates; and</p> <p>(ii) ensure that a copy of the report is made readily available to the members of the company within a reasonable time after the request is received.</p> <p>Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).</p> <p>(5) An offence based on subsection (4) is an offence of strict liability.</p> <p>(6) A company that appoints an independent person for the purposes of this section is liable to pay the person his or her fees.</p> <p>(7) To avoid doubt, an independent person appointed for the purposes of this section may be an auditor (including an auditor of the company concerned), unless the relevant poll concerns an issue relating to the person.</p>		
5	253W	<p>Registered scheme members' rights to request observer on poll</p> <p>(1) Members of a registered scheme with at least 5% of the votes that may be cast at a meeting of the scheme may request the responsible entity of the scheme to appoint</p>		Supported (generally). See comments on section 253V.

Item	Section	Text	Comment	Submission
		<p>an independent person to observe the conduct of a poll at the meeting.</p> <p>(2) The request must:</p> <p>(a) be in writing; and</p> <p>(b) identify the poll to which it relates; and</p> <p>(c) be made no later than 5 business days before the day the meeting is held.</p> <p>(3) A responsible entity of a registered scheme commits an offence if:</p> <p>(a) the responsible entity receives a request under subsection (1); and</p> <p>(b) the responsible entity fails to take reasonable steps to ensure that an independent person observes the conduct of the poll to which the request relates.</p> <p>Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).</p> <p>(4) An offence based on subsection (3) is an offence of strict liability.</p> <p>(5) A responsible entity of a registered scheme that appoints an independent person for the purposes of this section is liable to pay the person his or her fees.</p> <p>(6) To avoid doubt, an independent person appointed for the purposes of this section may be an auditor (including an auditor of the registered scheme concerned), unless the relevant poll concerns an issue relating to the person.</p>		
5	253WA	<p>Registered scheme members' rights to request report on poll</p> <p>(1) Members of a registered scheme with at least 5% of the votes that may be cast at a meeting of the scheme may</p>		<p>Supported (generally). See comments on section 253V.</p>

Item	Section	Text	Comment	Submission
		<p>request the responsible entity of the scheme to appoint an independent person to prepare a report on a poll at the meeting.</p> <p>(2) The request must:</p> <p>(a) be in writing; and</p> <p>(b) identify the poll to which it relates; and</p> <p>(c) be made no later than 5 business days after the day the meeting is held.</p> <p>(3) To avoid doubt, the request may be made before the meeting is held.</p> <p>(4) A responsible entity of a registered scheme commits an offence if:</p> <p>(a) the responsible entity receives a request under subsection (1); and</p> <p>(b) the responsible entity fails to take reasonable steps to:</p> <p>(i) ensure that an independent person prepares a report on the poll to which the request relates; and</p> <p>(ii) ensure that a copy of the report is made readily available to the members of the scheme within a reasonable time after the request is received.</p> <p>Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).</p> <p>(5) An offence based on subsection (4) is an offence of strict liability.</p> <p>(6) A responsible entity of a registered scheme that appoints an independent person for the purposes of this section is liable to pay the person his or her fees.</p> <p>(7) To avoid doubt, an independent person appointed for the purposes of this section may be an auditor (including an</p>		

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		auditor of the registered scheme concerned), unless the relevant poll concerns an issue relating to the person.		
5	253X	<p>Right of independent person to information</p> <p><i>Right to information</i></p> <p>(1) An independent person appointed for the purposes of section 253VA or 253WA in relation to a poll may make a request for any information that the person reasonably considers is necessary for the purposes of preparing a report on the poll.</p> <p>(2) A company commits an offence if:</p> <p>(a) the company receives a request for information under subsection (1); and</p> <p>(b) the company fails to take reasonable steps to provide the information to the independent person within a reasonable time after receiving the request.</p> <p>Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).</p> <p>(3) A responsible entity of a registered scheme commits an offence if:</p> <p>(a) the responsible entity receives a request for information under subsection (1); and</p> <p>(b) the responsible entity fails to take reasonable steps to provide the information to the independent person within a reasonable time after receiving the request.</p> <p>Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).</p> <p>(4) An offence based on subsection (2) or (3) is an offence of strict liability.</p>		Supported.

Item	Section	Text	Comment	Submission
5	253Y	<p>Record-keeping</p> <p>(1)A company commits an offence if:</p> <p>(a) the company receives a report on a poll from an independent person appointed for the purposes of section 253VA in relation to the poll; and</p> <p>(b) the company fails to keep a copy of the report.</p> <p>Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).</p> <p>(2) A responsible entity of a registered scheme commits an offence if:</p> <p>(a) the responsible entity receives a report on a poll from an independent person appointed for the purposes of section 253WA in relation to the poll; and</p> <p>(b) the responsible entity fails to keep a copy of the report.</p> <p>Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).</p> <p>(3) An offence based on subsection (1) or (2) is an offence of strict liability.</p>		Supported.
6	1688	<p>Application—execution of documents</p> <p>Sections 127 and 129, as amended by Schedule 2 to the <i>Treasury Laws Amendment (Measures for Consultation) Act 2021</i>, apply in relation to a document that is executed on or after the commencement of that Schedule.</p>		Supported.
10 (sic)	Penalties	<p>Subsection 253V(3) 40 penalty units</p> <p>Subsection 253VA(4) 40 penalty units</p> <p>Subsection 253W(3) 40 penalty units</p> <p>Subsection 253WA(4) 40 penalty units</p>		Supported.

Item	Section	Text	Comment	Submission
		Subsection 253X(2) 40 penalty units Subsection 253X(3) 40 penalty units Subsection 253Y(1) 40 penalty units Subsection 253Y(2) 40 penalty units		