

BCA

Business Council of Australia

Corporations
Amendment
(Meetings and
Documents) Bill 2021

Submission to Senate
Economics Legislation
Committee

November 2021

Contents

Overview	2
The urgent need for the Bill	2
Meetings.....	3
Documents	3
Recommended amendments to the Bill	4

Overview

This is the Business Council of Australia's submission to the Senate Economics Legislation Committee's consideration of *Corporations Amendment (Meetings and Documents) Bill 2021 (the Bill)*.

The Bill contains several targeted amendments to the *Corporations Act 2001 (the Act)* to permanently enact measures relating to 'virtual' meetings and the electronic execution of documents that were implemented on a temporary basis in 2020 and again in 2021.

The urgent need for the Bill

The BCA strongly supports all measures in the Bill to make permanent a number of legislative arrangements that are currently only temporary.

The current temporary measures were implemented by the *Treasury Laws Amendment (2021 Measures No. 1) Bill 2021 (the TLAB Bill)*, which commenced on 14 August 2021. The TLAB Bill included the following amendments:

- Virtual meetings: allow for businesses to conduct 'virtual' or 'hybrid' meetings until 31 March 2022;
- Electronic execution of documents: allow for the electronic execution of certain documents until 31 March 2022.

These amendments were strongly welcomed by Australian businesses. Whilst they were initially implemented as temporary COVID-19 'emergency' measures, they are also a long-overdue modernisation of Australia's Corporations Law, which should now be implemented on a permanent basis.

These changes do nothing more than bring the Corporations Law into alignment with everyday 21st century technology and businesses practices. It should be incomprehensible for them to not be implemented on a permanent basis, as provided for in the Bill.

The measures in the Bill are highly desirable and should be completely uncontentious. As such, the BCA strongly urges the Senate to pass the Bill as soon as possible. We note that the Committee's reporting date on the Bill is Thursday 18 November. We recommend that the Bill be passed without delay in the subsequent Senate sitting week commencing Monday 22 November.

We also note that the measures in the Bill have already been extensively considered, as part of the following processes:

1. The consultation process on exposure draft legislation conducted by the Government in 2020;
2. During the operation of the temporary COVID-19 'emergency' measures introduced in 2020;
3. The Senate Economics Legislation Committee inquiry into the TLAB Bill;
4. The Senate Economics References Committee inquiry into the TLAB Bill;
5. The Parliamentary debate on the TLAB Bill;
6. The consultation process on the first exposure draft legislation conducted by Treasury earlier in 2021; and
7. The consultation process on the second exposure draft legislation subsequently conducted by Treasury later in 2021.

As a result of these numerous consultation processes, this submission re-produces many elements of previous BCA submissions to those processes.

Meetings

The BCA strongly supports the principle that a company should be able to hold a meeting of members in whole or in part through the use of technology, provided that the format of the meeting gives members as a whole the same opportunity to participate in the meeting, and that accountability of the company is not diminished.

The Bill will enable companies to conduct virtual meetings on an ongoing basis. This ability was previously available to companies under the temporary measures that expired in March 2021. It has been available once more since 14 August 2021 following the passage of the TLAB Bill but will lapse once more on 31 March 2022 unless the Bill is passed.

We note that the amendments passed by the TLAB Bill currently allow companies to hold virtual meetings until 31 March 2022, whether or not their constitution allows for this. However, from 1 April 2022 the Bill will prevent public companies and schemes from holding virtual AGMs unless authorised by their constitutions. If their constitution does not currently allow for such meetings, then it will need to be amended in order to do so after the Bill takes effect.

These reforms recognise the capacity for technology to facilitate the holding of company meetings in a more modern and efficient manner. They will also bring Australia into line with other comparable jurisdictions, such as the United Kingdom, Canada and parts of the United States.

The ability to hold virtual meetings has been necessary as a result of limits on the size of physical gatherings since the onset of COVID-19. There is a clear risk that such limits could continue to apply in some form for the foreseeable future. As such, it is not tenable for businesses to revert back to the pre-COVID-19 position.

In any event, conducting meetings through 'virtual' technology has now increasingly become the 'new normal' for those businesses able to do so. This process has merely been accelerated by COVID-19. The Business Council is not aware of any evidence to suggest that the holding of meetings in this way has diminished the accountability of companies or disenfranchised shareholders. It has, in fact, enabled all shareholders to have equal access to meetings, and has made the holding of such meetings more efficient for all parties.

Documents

The Bill would make permanent changes to the Act to allow for the electronic execution of documents without physical documents or signatories being required to be present. The COVID-19 period provided an opportunity to trial changes to electronic execution of documents as a result of the temporary measures implemented in 2020. The response of BCA members to this trial has been overwhelmingly positive.

Allowing for the electronic execution of documents means that company officers need not be physically located in the same place as other parties, which removes unnecessary costs and delays on a range of transactions and decisions. It reflects the reality that, prior to COVID-19, many businesses were increasingly entering into transactions and contracts electronically, where possible. This trend has significantly accelerated during COVID-19. Crucially, it reflects the 'new normal' that corporate officers and other signers of documents may be working from home or prevented from travelling, trends that are likely to continue to some extent in the post-COVID-19 era.

The Bill removes requirements for counterparties and their legal advisers to require proof of the technical and procedural matters that the Act would otherwise allow them to assume. Even in the absence of these measures as a result of COVID-19, such reforms to the Act were already necessary to keep pace with developments in technology that now enable businesses to execute documents without company officers or advisers being physically present.

Notably, these reforms are another major step forward in the shift to a digital economy. Australia needs to adapt and keep pace with other jurisdictions if we are to more fully unlock the productivity benefits that will flow from the use of digital technology. It is regrettable that such reforms have not previously been implemented and that the evolution of the Corporations Law has conspicuously lagged behind the evolution in technology and business practices. There is no reason why Australia's Corporations Law should not be updated on an as-required basis whenever this is necessary to keep pace with developments in technology.

Recommended amendments to the Bill

The approach taken by the Bill to the matters covered is strongly supported. However, there are two elements that could be improved to enhance its effectiveness. We recommend the following amendments to the Bill:

1. A new assumption should be added in section 129 to allow parties dealing with agents to assume their signatures comply with s110A

This will bring it closer to the position applying in relation to signatures under s127(1), which have the benefit of the assumption in s129(5). There is no reason to not adopt a similar approach in all cases.

2. Extend the reforms to other types of corporations

The provisions of the Bill deal with companies. They do not extend to foreign and statutory corporations. Such corporations are very active in Australian commerce and should be also able to sign documents (including deeds) in the same way. We do not see any policy reason why such corporations should be denied the benefits of the Bill.

BUSINESS COUNCIL OF AUSTRALIA

42/120 Collins Street Melbourne 3000 T 03 8664 2664 F 03 8664 2666 www.bca.com.au

© Copyright November 2021 Business Council of Australia ABN 75 008 483 216

All rights reserved. No part of this publication may be reproduced or used in any way without acknowledgement to the Business Council of Australia.

The Business Council of Australia has taken reasonable care in publishing the information contained in this publication but does not guarantee that the information is complete, accurate or current. In particular, the BCA is not responsible for the accuracy of information that has been provided by other parties. The information in this publication is not intended to be used as the basis for making any investment decision and must not be relied upon as investment advice. To the maximum extent permitted by law, the BCA disclaims all liability (including liability in negligence) to any person arising out of use or reliance on the information contained in this publication including for loss or damage which you or anyone else might suffer as a result of that use or reliance.